

**WOODSIDE VILLAGE  
REDEVELOPMENT AGREEMENT**

## REDEVELOPMENT AGREEMENT

**THIS REDEVELOPMENT AGREEMENT** (the "Agreement") is made as of January 12, 2012, (the "Effective Date") between THE CITY OF WESTWOOD, KANSAS (the "City"), and WOODSIDE REDEVELOPMENT, INC., a Kansas sub chapter-s corporation ("Developer").

### **RECITALS:**

A. The City duly adopted and established a redevelopment district ("Redevelopment District") in accordance with and pursuant to the Kansas Tax Incremental Redevelopment Act, K.S.A. 12-1770 et. seq, as amended (the "Act"), by Ordinance No. 919 on September 13, 2011. The Redevelopment District is comprised of that certain real property within the City which is generally located at the Northeast and Southeast corners of Rainbow Boulevard and West 47<sup>th</sup> Place and is more particularly described on Exhibit A attached hereto.

B. On December 20, 2011, the City Council of the City of Westwood (the "City Council") approved and adopted a Redevelopment Project Plan for that certain "Redevelopment District" (as defined below) by Ordinance No. 923.

C. A portion of the Redevelopment District (the "Club Property") is currently leased by Woodside Racquet Club Management, Inc., an affiliate of Developer ("WRC Management"), which Club Property is more particularly described on Exhibit A-1 attached hereto. A portion of the Redevelopment District is currently owned by the City (the "City Property"), but leased to the Westwood Foundation (the "Foundation") pursuant to a long term Ground Lease dated as of May 1, 1981, as amended (the "Ground Lease"), which City Property is subleased from the Foundation to WRC Management pursuant to a long term Sublease dated as of December 6, 2010, as amended (the "Sublease"), and which City Property is more particularly described on Exhibit A-2 attached hereto. A portion of the Redevelopment District (the "Youthfront Property") is currently owned by Youthfront, Inc., a Kansas non-profit corporation ("Youthfront"), but Developer has a binding option contract to purchase the Youthfront Property from Youthfront which is valid and enforceable through March 12, 2012, and which Youthfront Property is more particularly described on Exhibit A-3 attached hereto. A portion of the property that Developer intends to purchase from Youthfront is located in Wyandotte County, Kansas, but that portion of the Youthfront Property shall not be included in the Redevelopment District for purposes hereof. A map depicting the Redevelopment District and the various parcels described in this Recital C is attached hereto as Exhibit A-4.

D. Developer hereby proposes to cause WRC Management to renovate and improve the Woodside Health and Tennis Club located within the Redevelopment District (the "Club") by demolishing a portion of the existing improvements comprising the Club and thereafter to construct, redevelop, complete and operate new Club facilities and amenities, including without limitation, an expansion of the Club, construction of new tennis facilities, renovation and expansion of the swimming pool and other improvements described on Exhibit B-1. Developer also hereby proposes to construct, redevelop, complete and operate a mixed-use project featuring retail facilities, a residential community which includes condominium and apartment uses and live/work units and related public and private infrastructure, including

parking facilities (collectively, the "Project"), as more particularly described in Section 2.3(a) hereof and Exhibits B-1, B-2 and B-3 hereof.

E. The parties hereby understand and agree that the Project will be developed in three (3) distinct phases, as more particularly described herein, and that the Redevelopment District shall be divided into three (3) different project areas for phasing purposes (but not for purposes of the Act): (i) the "Club Project Area" which shall be as more particularly described on Exhibit C-1, and (ii) the "North Project Area" which shall be as more particularly described on Exhibit C-2, and (iii) the "South Project Area" which shall be as more particularly described on Exhibit C-3. A map depicting the Redevelopment District and the three (3) project areas described in this Recital E is attached hereto as Exhibit C-4.

F. In order to assist with the financing of the Project, the City has, subject to the terms and conditions set forth herein, approved the use of tax increment financing ("TIF") to pay certain Redevelopment Project Costs for the South Phase and the North Phase pursuant to the Act.

G. Additionally, in order to assist with the financing of the Project, the City has, subject to the terms and conditions set forth herein, approved the use of a community improvement district ("CID") to pay certain Redevelopment Project Costs for the Project pursuant to K.S.A. Section 12-6a26, *et seq.* (the "CID Act").

H. The parties hereto do now desire to make and enter into this Agreement.

## **AGREEMENT**

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree as follows:

### **ARTICLE I.**

#### **DEFINITIONS AND INTERPRETATION**

1.1 Interpretation. In this Agreement, unless a clear contrary intention appears:

- (a) the singular number includes the plural number and vice versa;
- (b) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;
- (c) reference to any gender includes each other gender;
- (d) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(e) reference in this Agreement to any article, section, appendix, annex, schedule or exhibit means such article or section thereof or appendix, annex, schedule or exhibit thereto;

(f) each of the items or agreements identified on the attached Index of Exhibits are deemed part of this Agreement to the same extent as if set forth herein;

(g) "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular article, section or other provision thereof;

(h) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and

(i) relative to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding."

1.2 Accounting Terms. Unless expressly otherwise provided, accounting terms shall be construed and interpreted, and accounting determination and computations shall be made, in accordance with GAAP.

1.3 Legal Representation of the Parties. This Agreement was negotiated by the parties hereto with the benefit of legal representation and any rules of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof or thereof.

1.4 Definitions. All capitalized terms used in this Agreement shall have the meanings ascribed to them in Annex 1 attached hereto and made a part hereof, or as otherwise provided herein.

## ARTICLE II.

### APPOINTMENT OF DEVELOPER - PHASING - IMPROVEMENTS - REDEVELOPMENT DISTRICT RESTRICTIONS

2.1 Undertaking of Developer/WRC Management. Developer hereby agrees, subject to the terms and conditions hereinafter provided, to construct, complete, and operate the North Phase and the South Phase of the Project. The performance of all activities by Developer hereunder shall be as an independent contractor and not as an agent of the City, except as otherwise specifically provided herein. Developer hereby agrees, subject to the terms and conditions hereinafter provided, to cause WRC Management to construct, complete, and operate the Club Phase. The performance of all activities by WRC Management hereunder shall be as an independent contractor and not as an agent of the City, except as otherwise specifically provided herein.

2.2 Transfer of the Released Property. Subject to the terms and conditions hereof and subject to the satisfaction of the conditions precedent set forth in Section 3.3 hereof, the City shall cause

a certain portion of the City Property (the "Released Property") to be released from the Ground Lease and the Sublease and those certain restrictions set forth in the Declaration of Restrictions dated June 21, 1976 which was filed with the Johnson County Register of Deeds Office at Volume 1126 at page 393, as amended, and the City shall convey the Released Property to Developer pursuant to a special warranty deed in the form attached hereto as Exhibit D (the "Deed") and subject to: (a) the terms and conditions of this Agreement, including without limitation, the provisions set forth in this Section 2.2, and (b) the Permitted Encumbrances described on Exhibit E, attached hereto and made a part hereof. The conveyance of the Released Property from the City to Developer as described herein shall be referred to as "Closing" in this Agreement. Notwithstanding the foregoing, Developer hereby understands and agrees that the Released Property shall be subject to Reversionary Interest in the City under the following circumstance:

(a) Developer agrees to complete construction of the Improvements (as defined in Section 2.3 below) for the South Phase on or before that date which is three (3) years following the date of Closing, subject only to Force Majeure, and if Developer fails to do so, then, in addition to (and not to the exclusion of) the City's other rights and remedies hereunder, the Released Property shall be subject to a Reversionary Interest provided however that the Reversionary Interest shall contain and be subject to "Lender Protection Provisions" set forth in Exhibit E-1.

2.3 Redevelopment. The City and Developer hereby agree that the Project shall be as described below and as set forth on the site plan and elevations attached as Exhibit F hereto and made a part hereof. Developer hereby contemplates that all buildings, parking structures and other improvements constituting the Project (the "Improvements") shall be developed, constructed, completed, and operated on the site in substantial accordance and compliance with the terms and conditions of this Section 2.3, the Redevelopment Project Plan and the final site plan approval from the Planning Commission. On and subject to the terms and provisions set forth in this Agreement, Developer shall have the sole right to, and shall be responsible for, design, construction, equipment and completion of the Improvements, and shall operate and use the Improvements in the manner described herein, all in accordance with the terms of this Section 2.3 and all other Applicable Laws and Requirements. The parties further agree as follows:

(a) The Project is contemplated to be developed, designed and constructed with the following components: Club, retail, and residential, and including the following improvements and amenities:

(i) The renovation of the existing clubhouse at the Club, and the addition of approximately 37,000 square feet of additional clubhouse space at the Club, including outdoor areas such as, but not limited to, the tennis courts – [including a structure to enclose at least four (4) tennis courts as approved by the City's Planning Commission – and other related facilities and amenities (the "Club Improvements"). The Club Improvements shall also include the following improvements to the swimming pool area and facilities: new decking, pool furniture, new shaded areas near the baby pool, a water spout, splash pad, a

hammock deck for children, a new slide to the main pool, and a renovated pool house with an upstairs game room. All Club Improvements shall be constructed in accordance with all applicable ADA accessibility standards.

(ii) Approximately 37,500 square feet of mixed-use, commercial retail development, including specialty shops and restaurants, and other ancillary uses, including office and service facilities commonly found in similar centers in the Kansas City metropolitan area (collectively, the "Retail Shops").

(iii) Approximately three hundred thirty (330) residential units, including live/work units, condominium units, and/or apartment units (collectively, the "Residential Units").

(iv) The public improvements and infrastructure which is more particularly set forth on Exhibit G attached hereto, as amended pursuant to Section 3.1(a)(v) (the "Public Improvements").

(b) Developer has worked with the City, the State of Kansas and other necessary parties to conduct the traffic and right of way management studies. Developer agrees to conduct the additional studies and improvements as are described in detail on Exhibit H attached hereto, as amended pursuant to Section 3.1(a)(v) (the "Traffic Improvements"). The City and Developer hereby agree to cooperate with one another to obtain any permits required for such Traffic Improvements.

(c) The Project shall include appropriate landscaping in connection with each Phase of the Project.

(d) Developer recognizes, stipulates and agrees that its signage shall be subject to all Applicable Laws and Regulations, and any special use permits granted by the City's Planning and Zoning Board. Developer shall also develop a sign criteria for the entire Redevelopment District.

(e) The Improvements in the Project shall include parking improvements (the "Parking Improvements") containing the number of spaces required by the Applicable Laws and Requirements for all of the Improvements. Though Developer may charge its Tenants in the Residential Units for parking, Developer hereby agrees that parking in the Parking Improvements shall be provided free of charge to the visitors, employees, customers and invitees of the Club and the Retail Shops.

(f) Developer's development, design and construction of the Improvements shall in all respects comply with the Plans and Specifications (as defined in Section 6.2).

(g) The Project described in this Section 2.3 shall not be amended or modified without (i) the prior written consent of the City, which consent shall not be unreasonably withheld and shall be granted so long as the proposed amendment is consistent with the general spirit and intent of this Section 2.3 and the balance of this Agreement, and (ii) full compliance with all Applicable Laws and Regulations.

2.4 Phasing of the Project. The parties agree that the Project may be constructed in three (3) phases (each a "Phase" or collectively "Phases"), as described below. The parties hereby understand and agree that Developer may, in its sole discretion, develop the Club Phase and the North Phase (as more particularly defined below) in any sequence that Developer deems necessary or desirable. Accordingly, Developer may elect to construct the Club Phase prior to the North Phase, or develop the North Phase prior to the Club Phase, or develop both the Club Phase and the North Phase simultaneously. However, the parties agree that the South Phase may not be commenced until the Club Phase and the North Phase have been completed as more particularly set forth in Section 3.3 hereof. The parties hereby agree that the Phases shall generally be as follows:

(a) The Club: The Club Phase of the Project (the "Club Phase") shall consist of the following Improvements, which will be designed, constructed and developed by WRC Management:

- (i) The Club Improvements;
- (ii) Site work, Traffic Improvements and other infrastructure required to enable the successful opening and operation of the Club Phase as set forth in Exhibit G and Exhibit H, each as amended pursuant to Section 3.1(a)(v) respectively;
- (iii) Parking Improvements required to service the Improvements for the Club Phase; and
- (iv) Landscaping applicable to the Club Phase.

(b) North Phase: The North Phase of the Project (the "North Phase") shall consist of the following Improvements in the North Project Area:

- (i) Approximately 21,000 square feet of Retail Shops;
- (ii) Approximately 88 Residential Units.
- (iii) Site work, Traffic Improvements and other infrastructure required to enable the successful opening and operation of the North Phase;
- (iv) Parking Improvements required to service the Improvements for the North Phase;
- (v) Landscaping applicable to the North Phase;
- (vi) Site work, Traffic Improvements and other infrastructure required to enable the successful opening and operation of the North Phase as set forth in Exhibit G and Exhibit H, each as amended pursuant to Section 3.1(a)(v) respectively;

(c) South Phase: The third Phase of the Project (the "South Phase") shall consist of the following Improvements in the South Project Area:

- (i) Approximately 16,500 square feet of Retail Shops;
- (ii) Approximately 242 Residential Units.
- (iii) Site work, Traffic Improvements and other infrastructure required to enable the successful opening and operation of the South Phase as set forth in Exhibit G and Exhibit H, each as amended pursuant to Section 3.1(a)(v) respectively;
- (iv) Parking Improvements required to service the Improvements for the South Phase; and
- (v) Landscaping applicable to the South Phase.

2.5 General Agreements. Developer agrees to promptly and completely perform each and all of its duties and obligations under this Agreement and the other Transaction Documents. The City agrees to promptly and completely perform each and all of its duties and obligations under this Agreement and the other Transaction Documents.

2.6 Redevelopment District Restrictions and Covenants. Developer hereby understands and agrees that the nature of the Club, as well as the retail and residential components of the Redevelopment District are critical to the approval of the public incentives offered by the City in connection with this Agreement. Accordingly, the parties hereby agree as follows:

(a) Developer hereby agrees that (i) the Club Project Area shall be restricted to health club uses as more particularly set forth in the Sublease, (ii) the ground floor of any Improvements on the North Project Area and the South Project Area shall be restricted to commercial uses and/or multi-family residential uses, (iii) the second floor of any Improvements on the North Project Area and the South Project Area shall be restricted to multi-family residential uses and/or commercial uses in an approved live/work unit and (iv) the third and fourth floors, if any, of any Improvements on the North Project Area and the South Project Area shall be restricted to multi-family residential uses.

(b) Developer and the City hereby agree that the following uses shall be prohibited within the Redevelopment District:

(i) Any use which is offensive by reason of odor, fumes, dust, smoke, noise, or pollution, or which constitutes a nuisance or is hazardous by reason of fire or explosion, or injurious to the reputation of the Redevelopment District. No oil, gasoline or flammable liquid shall be stored in the Redevelopment District.

(ii) A gas station or car wash.



(iii) A facility primarily used as a storage warehouse operation, mini-warehouse, or freight terminal.

(iv) A facility for the assembling, manufacturing, refining, or smelting. Drilling, mining, exploring or the producing of oil, gases or other minerals. Any use which involves the raising, breeding, or keeping of any animals or poultry except on a temporary basis, in which case such areas are to be cleaned and maintained by the owner of such portion of the Redevelopment District so that it is not a nuisance to any other adjacent property owner.

(v) Salvage or reclamation yards and the storage of inoperative vehicles.

(vi) Any pawn shop or "second hand" store (but this provision shall not restrict the sale of high quality antiques or of high quality, but previously owned art, rugs, jewelry or similar wares, all of which are specifically permitted).

(vii) Any mobile home park, camp ground, trailer court, or labor camp; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance or for shag trailers, delivery trucks or recreational vehicles of invitees of the Redevelopment District.

(viii) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any building in the Redevelopment District.

(ix) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not restrict the absolute freedom of an owner of any portion of the Redevelopment District to determine its own selling prices nor shall it preclude the conduct of periodic seasonal sales, promotional or clearance sales, all of which are specifically permitted).

(x) Any central laundry, or laundromat; provided, however, this prohibition shall not be applicable to a drop-off and pickup facility, or a central laundry or laundromat that complies with all Environmental Laws (as hereinafter defined).

(xi) Any automobile, truck, trailer or recreational vehicle with outside sales, leasing, or display unless approved by the City or in conjunction with promotions, displays and other similar marketing activities, subject, however, to compliance with all Applicable Laws and Requirements.

(xii) Any body shop repair operation, engine repair or vehicle repair facility for all vehicles, including motorcycles.

(xiii) Any mortuary or funeral home.

(xiv) Any establishment selling or exhibiting pornographic materials or which sells drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff; except that this provision shall not be deemed to preclude the operation in the Redevelopment District of either a nationally or regionally recognized book store, or a drug store or pharmacy, or a department within a retail store offering for sale its usual or customary inventory of books, magazines and/or related pharmaceutical materials.

(xv) A nightclub.

(xvi) A flea market.

(xvii) Housing in which rent is government-subsidized or "low income" housing.

(xviii) If any portion of the Redevelopment District is occupied by a user who does not pay Real Property Taxes, Developer will make, or will cause any owner or occupier to make, payments in lieu of taxes in amounts equal to the taxes, assessments and other governmental charges that would be lawfully levied or assessed or imposed upon the portion of the Redevelopment District in the absence of any tax exemption or abatement (the "PILOT Payment"). The PILOT Payment shall be due and payable at the same times as the Real Property Taxes, if such property were subject to Real Property Taxes. Developer hereby grants to City a lien (the "PILOT Payment Lien") upon the portion of the Redevelopment District for which a PILOT Payment is due to secure the payment of the PILOT Payment in accordance with the terms hereof. The PILOT Payment Lien shall be prior to all other rights hereafter granted or interests granted or created by Developer after the Effective Date. Provided however that in the event that the redevelopment contemplated by this Agreement does not proceed on the Youthfront Property, then such Youthfront Property may, without restriction or approval of the City, be retained, sold, or otherwise transferred owners or users thereof who do not pay Real Property Taxes, and in any such event, this Agreement shall terminate as to the Youthfront Property and PILOT Payments as described above shall not be imposed on the Youthfront Property.

(xix) Any use not permitted by the applicable Zoning Ordinance of the City. The foregoing list of prohibited uses is not intended to supplant the requirements and/or prohibition of uses stated within the City's Code and/or the City's Zoning Ordinance

The parties agree that the foregoing provisions are not intended to prevent resident or tenant artists from utilizing material necessary and convenient for their work, and therefore these restrictions will be interpreted according to that spirit and intent. At the Closing, Developer and the City shall execute a document which shall memorialize the restrictions set forth in this Section 2.7 and record the same against the real property within the Redevelopment District, which restrictions shall be effective and run with the land for the Term of this Agreement.

## ARTICLE III.

### CONDITIONS

#### 3.1 Conditions.

(a) General Conditions. This Agreement shall not be effective or enforceable against any of Developer or the City unless each of the following conditions are satisfied on or before that date which is thirty (30) days after the Effective Date (the "General Condition Date").

(i) Inspection. The City shall allow Developer access to the City Property for purposes of inspecting the City Property, including the right to invasive testing of same (the "Investigations"); provided however that (a) Developer, will maintain the results of any such Investigations confidential, (b) Developer shall repair any and all damage caused by the Investigations, and shall restore the City Property to the condition it was in prior to such Investigations, and (c) Developer agrees to indemnify and hold the Foundation, the City, its agents, officers, contractors and employees harmless from any and all injuries, losses, liens, claims, judgments, liabilities, costs actually incurred, expenses or damages (including reasonable attorneys' fees and court costs) sustained by or threatened against the Foundation or the City which result from any inspections by Developer or its agents or authorized representatives pursuant to this section. Notwithstanding any provision herein to the contrary, the indemnity contained in the preceding sentence shall survive the termination of this Agreement or any Closing. If Developer is not satisfied in all respects as to the condition of the City Property, then Developer shall have the rights set forth herein to terminate all of this Agreement, or to terminate that portion of this Agreement that pertains to the a particular Phase of the Project. In the event that Developer shall fail to exercise its right to terminate this Agreement pursuant to this Section 3.1(a)(i) before the General Condition Date, Developer shall be deemed to have waived this condition and accepted the condition of the Site "AS IS, WHERE IS." Except as to representations provided in this Agreement, Developer agrees that it is relying solely on its own investigation of the condition of the City Property and not on any information provided or to be provided by the City, its officers, or agents and that if Developer does not exercise the right to cancel and terminate under this Section then with regard to any obligation of the City, subject to any representations or City obligations in this Agreement, Developer shall be deemed and considered to be fully and completely satisfied with the condition of the City Property and all parts and aspects thereof..

(ii) Amendment to the Sublease. WRC Management shall have executed and delivered an amendment to the Sublease with the Foundation which is consistent with the terms set forth on Exhibit I attached hereto, and is acceptable to the City in the City's sole discretion.

(iii) Amendment to Funding Agreement. The parties shall have executed and delivered an amendment to the Funding Agreement which is acceptable to the parties in each party's respective sole discretion, and such amended Funding Agreement shall be attached hereto as Exhibit M-1.

(iv) Exhibit E to be Completed. The parties have mutually agreed upon Exhibit E, which is to be attached hereto following receipt of a title commitment for the Released Property.

(v) Amendments to Exhibit G and Exhibit H. The parties hereby recognize and agree that there are certain elements of Exhibit G (Infrastructure Improvements) and Exhibit H (Traffic Improvements) that are still being discussed by the parties. The parties hereby agree to negotiate in good faith on any amendments to Exhibit G and Exhibit H, respectively and any amendments which are mutually agreed upon by the parties prior to the General Conditions Date shall be attached hereto and replace the original Exhibit G and Exhibit H, respectively.

(b) Phase Conditions. Developer shall not commence work on any Phase of the Project unless and until each of the following conditions are satisfied as the same pertain to that particular Phase:

(i) Guarantor Financials. If applicable pursuant to Section 8.2, the City shall have the right to review and approve the financials of the Guarantor in the City's reasonable discretion (as defined in Section 8.2 below), and the City must be satisfied as to the financial net worth of such parties in the City's reasonable discretion.

(ii) Final Site Plan Approval. Developer shall have obtained all final site plan approvals and any other required approvals for such Phase as required by all Applicable Laws and Requirements.

Notwithstanding anything within this Agreement to the contrary, the pool improvements as generally set forth in 2.3(a)(i) may be constructed by Developer or WRC Management without triggering the standards, restrictions and requirements of this Agreement and construction of said pool improvements shall not constitute commencement of the Club Phase or the Project or otherwise impact any timeframes, rights or obligations set forth in this Agreement.

3.2 Termination. Upon any such termination of this Agreement pursuant to Section 3.1(a) hereof, this Agreement shall terminate, and, except as specifically set forth herein, the parties hereto shall have no further duty or obligation hereunder and without limiting the generality of the foregoing, Developer shall be solely liable and responsible for all of its costs and expenses incurred by it with respect to this Agreement and the transactions contemplated hereby, and except for the fees and expenses of the City to be paid for by Developer pursuant to that certain Funding Agreement dated as of May 23, 2011, as amended, and the provisions of this

Redevelopment Agreement, the City shall be solely liable and responsible for all costs and expenses incurred by it with respect to this Agreement and the transactions contemplated hereby.

### 3.3 Conditions to Closing.

(a) Before proceeding to Closing (as defined in Section 5.1 hereof) on the Released Property, Developer must have obtained and delivered the following to the City unless waived by the City:

(i) a final certificate of occupancy for the Club Improvements, completed as required and outlined in the final site plan approval by this Agreement and the City's Planning Commission (the "Planning Commission");

(ii) a final certificate of occupancy for the Improvements for the North Phase, completed as required and outlined in this Agreement and the final site plan approval by the Planning Commission;

(iii) each governmental permit and approval required for the commencement of the construction of the Improvements for such the South Phase;

(iv) final site plan approval for the Improvements for the South Phase from the Planning Commission;

(v) complete Plans and Specifications (as defined in Section 6.2) for the Improvements for the South Phase, approved by the City, which approval shall be processed, considered and approved or denied in due course using the City's normal standards and procedures regarding such process and all Applicable Laws and Requirements;

(vi) a guaranteed maximum price design build construction contract for the South Phase with the General Contractor (as defined in Section 6.3) or another contractor with sufficient financial strength, reputation and experience to complete the project in accordance with the agreed upon design criteria, construction and completion schedule and Plans and Specifications for the South Phase;

(vii) evidence that Developer has procured and will, at Closing, close on financing transactions for Developer's Private Contribution for such the South Phase, the net proceeds of which, when added to the demonstrable equity commitments of Developer, are sufficient and available to fully fund the hard and soft costs for such the South Phase; and

(viii) a commitment from Developer to commence construction of the Improvements for the South Phase within 90 days of Closing and diligently pursue the same to completion on or before the South Phase Completion Date subject only to delays outside of the control of the Developer.

3.4 Waiver of Conditions. If the City and Developer have a Closing of the Released Property as described herein as set forth in Article 5, both the City and Developer shall be deemed to be satisfied as to the conditions in Section 3.3 and shall be deemed to have waived the same.

#### ARTICLE IV.

#### FINANCING — SOURCE OF FUNDS

4.1 Source of Funds. The Project shall be funded in part by TIF and a community improvement district ("CID"), provided however that no portion of the Club Phase shall be funded with TIF or CID. Reference is hereby made to the Project Costs and the Total Project Budget attached hereto as Exhibit J, and by this reference made a part hereof. The Project Costs shall be paid in accordance with the procedures and requirements set forth herein. The parties hereby understand and agree that Developer will initially advance all of the Project Costs for the design, development and construction of the Project, but Developer shall, subject to the Public Financing Cap set forth in Section 4.4 below, be reimbursed from the Public Financing Proceeds (as defined below) on a "pay-as-you-go" basis.

4.2 Collection of TIF Revenues. For a period of twenty (20) years from the approval of the Redevelopment Project Plan, the City shall collect Incremental Real Property Taxes and Incremental Sales Taxes as set forth below, unless the TIF shall be earlier terminated pursuant to Section 4.4 or the other express terms of this Agreement.

(a) Real Property Taxes. Pursuant to the provisions of the Redevelopment Project Plan and the Act, including, but not limited to, Section 12-1774(a) thereof, when TIF is established by Ordinance for a redevelopment district, the real property located therein is subject to assessment for annual Real Property Taxes. Real Property Taxes shall be due in arrears, with half due on December 20<sup>th</sup> and half due on May 10<sup>th</sup> of each year in which said amount is required to be paid, and will be considered delinquent if not paid by such dates of each such year or as otherwise determined by applicable law. The obligation to make said Real Property Taxes shall be a covenant running with the land and shall create a lien in favor of the City on each such tax parcel as constituted from time to time and shall be enforceable against Developer and its successors and assigns in ownership of property in the Redevelopment District. The parties hereby understand and agree that 100% of the Incremental Real Property Taxes from the Redevelopment District shall be available to Developer for Reimbursable Project Costs, subject to the Public Financing Cap.

(b) Sales Taxes. In addition to the Real Property Taxes described herein, and pursuant to Section 12-1774(a) of the Act, Sales Taxes shall be allocated to, and paid by the collecting officer to the City Treasurer or other designated financial officer of the City. For as long as a Redevelopment District is subject to Tax Increment Financing, Sales Taxes shall be determined in accordance with the following procedures, subject to the Act:

(c) Incremental Sales Tax: An amount equal to forty percent (40%) of the City's portion of the Incremental Sales Tax generated within the Redevelopment District shall be available to Developer for Reimbursable Project Costs, subject to the Public Financing Cap.

(i) Documentation of Sales Tax for Developer Property. For any and all portions of the Redevelopment District which are owned and operated by the Developer and/or its Affiliates, Developer, its successors and assigns, shall provide the City with documentation of sales tax receipts for each such business in the Redevelopment District, or use all commercially reasonable efforts to cause such business to provide the City with documentation of such sales tax receipts, indicating the type and amount of the Sales Taxes paid by such business. Developer shall not take or allow any actions or adopt any practices or procedures which are designed to, or which may or will have the effect of, eliminating, reducing or diverting in any way any sales taxes, use taxes and/or transient guest taxes payable to the City in connection with sales made or services from, in or on and about the Redevelopment District. Developer agrees that it will provide, and that it will, by appropriate agreement, require all parties holding or operating by, through or under it, or otherwise operating on or from the Redevelopment District, to provide, to the City true and correct copies of all sales tax, use tax and transient guest tax returns filed with the State with respect to sales in, on or from the Redevelopment District, the same to be provided simultaneously with, or within ten (10) days after such filing.

(ii) Documentation of Sales Tax for Third Party Property. For any and all portions of the Redevelopment District which are leased and operated by Store Operators or other third parties who are not Affiliates of Developer, Developer, shall use good faith attempts to negotiate lease, covenants or other applicable agreements requiring that such businesses operating within the Redevelopment District provide within a reasonable period of time (but in no event more than ten (10) days after filing), the City with true and correct copies of all sales tax, use tax and transient guest tax returns filed with the State with respect to sales in, on or from the Redevelopment District for each business in the Redevelopment District. Developer will not be responsible for enforcement of such provision nor subject to any remedy hereunder for non-compliance with these provisions. Such covenants or agreements shall be subject to the reasonable approval of the City and shall grant the City an enforcement right as to this requirement. The covenants and restrictions for the Project will contain covenants allowing the Developer to view all sales tax information acquired by the City from the State for the purposes of auditing appropriate payments under this agreement and the City hereby consents to such action. Developer shall not take or cooperate with any actions or adopt any practices or procedures which are designed to, or which may or will have the effect of, eliminating, reducing or diverting in any way any sales taxes, use taxes and/or transient guest taxes payable to the City in connection with sales made or services from, in or on and about the Redevelopment District. If applicable and upon request, Developer shall, to the extent allowed by Applicable

Laws and Requirements, provide to the Kansas Department of Revenue and the trustee for any bonds issued pursuant to this Article 4, the names of all vendors operating in, on or from the Redevelopment District, their Kansas sales tax identification number and their dates of operation.

(d) Special Allocation Fund. The City Treasurer shall establish and maintain the Special Allocation Fund which shall contain two separate segregated accounts: (i) 100% of Incremental Real Property Taxes shall be deposited into the Real Property Taxes Account within the Special Allocation Fund, and (ii) 40% of the City's Incremental Sales Taxes shall be deposited into the Sales Tax Account within the Special Allocation Fund. Real Property Taxes and Sales Taxes so deposited and any interest earned on such deposits will be used for the payment or reimbursement of Project Costs, in the manner set forth in this Agreement, subject always to the Public Financing Cap.

4.3 Community Improvement District. The parties hereby agree as follows:

(a) Imposition of CID Sales Tax. Subject to the terms and conditions of this Agreement, the City shall cause imposition of a CID sales tax of one and one tenth percent (1.1%) within the Redevelopment District (the "CID Sales Taxes"), such CID Sales Taxes shall be collected and applied to reimburse Developer for Reimbursable Project Costs, subject to the Public Financing Cap. The City shall, simultaneously with the approval and execution of this Agreement, authorize the levy of the CID Sales Taxes, and direct City Staff to take all actions necessary to impose such CID Sales Taxes upon Substantial Completion of the first Phase of the Project, it being understood and agreed by the parties that the City will commence collection of the CID Sales Tax on the first day of the quarter following Substantial Completion of such Phase, provided that such Substantial Completion shall occur at least ninety (90) days prior to the first day of such quarter. For purposes of illustrative example only, if Developer shall Substantially Complete its first Phase of the Project on July 1<sup>st</sup>, the City will commence collection of the CID Sales Tax on the following October 1<sup>st</sup>; however, if Developer shall Substantially Complete its first Phase on August 10<sup>th</sup>, then the City will not commence collection of the CID Sales Tax until the following January 1<sup>st</sup>.

(b) Termination of CID Sales Tax. Subject to all Applicable Laws and Requirements, no CID Sales Taxes shall be collected after that date which is twenty-two (22) years from the date of implementation of the CID Sales Tax.

(c) Reimbursement from CID Sales Tax. Developer understands and agrees that any CID Sales Tax which is applied to reimburse Developer for Project Costs must be eligible costs pursuant to the CID Act.

4.4 Public Financing Proceeds; Public Financing Cap. The parties hereby agree that the proceeds from the Incremental Real Property Taxes, the Incremental Sales Taxes and the CID Sales Tax may be collectively referred to herein as the "Public Financing Proceeds." Developer hereby understands and agree that any payments or reimbursement from the City contemplated in this Agreement shall only be made from the Public Financing Proceeds, as and when the same



are available, and that the Public Financing Proceeds shall in no event exceed the Public Financing Cap (as defined below). Once Developer has received Public Financing Proceeds in an amount equal to the Public Financing Cap, the parties understand and agree that (x) the TIF and CID shall thereafter terminate, (y) all Incremental Real Property Taxes and Incremental Sales Taxes thereafter shall be delivered to and shall be the property of the City, and (z) the CID Sales Taxes shall terminate and no longer be required or collected within the Redevelopment District.

(a) The "Public Financing Cap" shall be an amount which is the aggregate of the following components: (i) \$3,100,000 for the Club Phase (the "Club Phase Cap"); (ii) \$7,673,000 for the North Phase (the "North Phase Cap"); and (iii) \$11,227,000 for the South Phase (the "South Phase Cap"); provided however that the various components of the Public Financing Cap shall not become effective unless and until those Phases of the Project are commenced as set forth in Section 4.4(b) below. The Public Financing Cap shall, for all purposes set forth herein, operate as a cap on the use of Public Financing Proceeds for reimbursement of any and all Reimbursable Project Costs including without limitation, any interest, financing costs, the costs of issuance of Bonds and any capitalized interest. Once a component of the Public Financing Cap is effective, Reimbursable Project Costs from one Phase of the Project may be repaid with Public Financing Proceeds from another Phase. Additionally, if multiple components of the Public Financing Cap shall become effective, then the Public Financing Proceeds available for Reimbursable Project Costs on any particular Phase shall not be limited to the amount of the Public Financing Cap for such Phase. For purposes of illustrative example only, in the event that the Public Financing Proceeds generated from the North Phase shall exceed the \$7,673,000 North Phase Cap, then those excess amounts shall still be collected in the Special Allocation Fund and may be utilized to repay Reimbursable Project Costs for the North Phase or the South Phase (if and when and to the extent that the South Phase has commenced) as provided herein so long as the aggregate Public Financing Cap has not yet been exceeded.

(b) The parties hereby agree that Public Financing Cap shall become effective as follows:

(i) The Club Phase Cap shall become effective and shall be added to the Public Financing Cap when Developer shall cause WRC Management to commence vertical construction of the Club Improvements. Unless and until WRC Management shall commence vertical construction of the Club Improvements, the Club Phase Cap shall not be included in the Public Financing Cap.

(ii) The North Phase Cap shall become effective and shall be added to the Public Financing Cap when Developer shall commence vertical construction of the North Phase. Unless and until Developer shall commence vertical construction of the North Phase, the North Phase Cap shall not be included in the Public Financing Cap.

(iii) The South Phase Cap shall become effective and shall be added to the Public Financing Cap when Developer shall commence vertical construction of the South Phase. Unless and until Developer shall commence vertical construction of the South Phase, the South Phase Cap shall not be included in the Public Financing Cap.

4.5 City Expenses. Pursuant to the terms and conditions of the Funding Agreement between the City and Developer dated as of May 23, 2011 (the "Funding Agreement"), the Developer agreed to be responsible for certain City expenses in connection with the Project. That Funding Agreement shall remain in full force and effect after the execution of this Agreement and shall continue to govern the accrual of City expenses in connection with Project during the Term of this Agreement, and Developer hereby agrees to continue to pay all current and future obligations thereunder. However, the parties hereby agree that the Funding Agreement shall be amended by mutual agreement of the parties on or before the General Conditions Date as set forth in Section 3.1(a)(iii) hereof and shall follow the structure set forth in Exhibit M attached hereto. Subject to the terms and conditions of the Funding Agreement (as amended), Developer shall from available Public Financing Proceeds, if any, hereafter be responsible for and pay the reasonable City expenses incurred for the administration of this Agreement and the Public Financing described herein. Said expenses shall be deemed "City Expenses" hereunder. When there are sufficient Public Financing Proceeds from the Redevelopment District to pay for the City Expenses, such City Expenses shall be paid from the Public Financing Proceeds prior to the payment of Reimbursable Project Costs as set forth in Section 4.7 below. If and to the extent that the Public Financing Proceeds are insufficient to pay all or a portion of the City Expenses, such unpaid amounts shall carry over and be paid as and when sufficient Public Financing Proceeds are available.

4.6 Payment of Redevelopment Project Costs.

(a) Developer's Private Contribution of approximately \$63,000,000 or such other amount necessary to construct the project ("Developer's Private Contribution") shall be the responsibility of the Developer and not the City. Developer shall be solely responsible for securing Developer's Private Contribution.

(b) In the event that the Public Financing Proceeds contemplated by the Total Project Budget for payment of Developer's Reimbursable Project Costs are in any way insufficient in any respect to pay all such Reimbursable Project Costs, and to complete any of the Improvements included therein, lien free (a "Public Financing Proceeds Shortfall"), then Developer agrees that it will, from time to time as necessary, pay any and all of said Public Financing Proceeds Shortfall and will complete such Improvements, lien free.

(c) In the event that the Public Financing Proceeds exceed the Public Financing Cap and such amounts up to the Public Financing Cap have been distributed to the Developer and the Improvements included therein have been certified as fully completed and paid for, lien free, then the TIF and CID shall terminate and any such excess shall be returned to the City.

4.7 Certificate of Expenditure.

(a) Certificate of Expenditure. In order to receive reimbursement for Reimbursable Project Costs from the Public Financing Proceeds, Developer shall submit a Certificate of Expenditure in a form reasonably approved by the City attesting to the expenditure of

Developer's Reimbursable Project Costs in accordance with the procedure set forth below. The total amount of the Certificates of Expenditures shall never exceed the Public Financing Cap. Developer shall submit no more than one (1) Certificate of Expenditure per calendar month, and Developer shall require that no transferee, purchaser, or lessee of any portion of the Redevelopment District otherwise provide Certificates of Expenditures to the City, except through Developer or except as otherwise approved by the City.

(b) Procedures for Certification of Expenditures. The City shall review Certificates of Expenditures to be made in connection with the Reimbursable Project Costs for approval or denial of the same as follows:

(i) The Developer shall submit to the City a Certificate of Expenditure setting forth the amount for which certification is sought and identification of the relevant Reimbursable Project Costs.

(ii) The Certificate of Expenditure shall be accompanied by such bills, contracts, invoices, lien waivers and such other evidence as the City shall reasonably require documenting appropriate payment.

(iii) The City reserves the right to have its engineer or other agents, consultants or employees inspect all the items set forth in subsection (ii) above as reasonably necessary to determine that the expenses therein are valid, eligible and properly incurred and constitute as Reimbursable Project Costs. Subject to the terms of Section 4.5, the costs of any such reviews shall be deemed to be City Expenses hereunder.

(c) City Expenses Paid First. At the time of each and every disbursement of Public Financing Proceeds for any Reimbursable Project Costs set forth therein from time to time, the parties hereby agree that the City shall first pay any outstanding City Expenses due prior to paying Developer's Reimbursable Project Costs.

(d) Completion of Phases. Developer hereby understands and agrees that it shall not be entitled to reimbursement for any Reimbursable Project Costs applicable to a particular Phase of the Project unless and until such Phase is Substantially Complete.

4.8 Issuance of Bonds. If and to the extent that market conditions shall in the future exist which allow for the issuance and sale of TIF bonds and/or CID bonds (collectively, "Bonds"), then the City, in its sole discretion, may authorize the issuance of Bonds as provided for under Applicable Laws and Requirements, including without limitation the TIF Act and/or CID Act and the City's Economic Development Policy.

(a) Any such Bonds shall be issued in an amount, on terms and at an interest rate or rates determined by market conditions at the time of issuance and under terms and conditions deemed acceptable by the City in its sole discretion.

(b) The underwriter(s) for any Bonds shall be selected by the City. The City shall solicit input from Developer as it relates to all components of the issuance of Bonds

in an effort to maximize the size of the issuance, but the City shall have sole right, power and authority to determine the amount, terms, interest rate or rates and other terms and conditions of the Bonds.

(c) The City shall not in any way guaranty or lend its credit to secure the Bonds.

(d) Additionally, issuance of any Bonds shall be conditioned upon Developer complying with the terms of this Agreement and the following conditions:

(i) Developer shall provide such documentation to the City as is required by the underwriter to demonstrate that the development of the Redevelopment District will generate, through Public Financing Proceeds, revenue sufficient to pay debt service on the Bonds amortized through the Term of this Agreement with a coverage factor that the underwriter determines is necessary and that is agreed to by Developer and the City.

(ii) the terms of the Bonds, including but not limited to limitations on sales and transfers to sophisticated investors only, shall be acceptable to the City in its sole discretion.

(iii) the underwriter shall hold the Bonds in its own account or be responsible for marketing and selling the Bonds, and the City shall be under no obligation to issue Bonds if such bonds are not marketable after reasonable effort by the underwriter.

(iv) the Kansas Attorney General approves the transcript of proceedings relating to the Bonds as required by Applicable Laws and Requirements.

(v) Bond counsel selected by the City provides to the City an opinion to the effect that the Bonds have been validly issued under Kansas law and, if applicable, the interest on the Bonds is exempt from Kansas and federal income taxation, subject to the standard exceptions.

(e) Statutory Bond Requirements. Developer and the City agree that they will comply with all reasonable requirements including any statutory requirements, associated with the issuance, sale, purchase and delivery of any Bonds.

(f) Discretion of the City Council. Further, Developer understands and agrees that the City cannot bind governing bodies of the City regarding the authorization, issuance, sale or delivery of Bonds and that nothing contained herein shall in any way bind the City Council of the City to accept or reject any proposal to authorize, issue, sell or deliver Bonds, which decision shall unconditionally remain within the sole discretion of such City Council.

(g) The Public Financing Cap. Any Bonds shall be in an amount less than the Public Financing Cap, reduced by any amount previously reimbursed out of Public Financing Proceeds (as defined in Section 4.4 hereof), and reduced further by costs of issuance, capitalized interest, reserves and other financing and issuance costs.

4.9 Industrial Revenue Bonds. Subject to all Applicable Laws and Requirements, the parties hereby agree that Developer may use Industrial Revenue Bonds financing to obtain an exemption on sales taxes for construction materials for the Project.

## ARTICLE V.

### CLOSING

5.1 Closing. The term "Closing" as used in this Agreement, shall be deemed to mean the date on which the Deed is delivered to Developer by the City. Developer shall provide written notice to the City at least two (2) weeks prior to the proposed Closing date. It is hereby recognized, stipulated and agreed by Developer and the City that neither party shall have any duty to proceed with Closing or to do or perform any of the duties or obligations to be performed at Closing unless and until each and all of the conditions described in Section 3.3 hereof have either been satisfied or waived in accordance with the applicable provisions of Section 3.3 hereof. Notwithstanding anything herein to the contrary, the Closing must occur on or before that date which is ten (10) years from the Effective Date (the "Drop Dead Date"), or Developer's rights to a release and transfer of the Released Property as set forth in Section 2.2 hereof shall thereafter terminate and be of no further force and effect.

## ARTICLE VI.

### CONSTRUCTION OF IMPROVEMENTS

6.1 Architect. Developer shall select such architects, engineers and other design professionals and consultants as are necessary to provide construction documents and construction oversight services for the construction of the Project and certain other infrastructure improvements to be designed, constructed and completed by Developer in or about the Redevelopment District as more particularly described on Exhibit G attached hereto, as amended pursuant to Section 3.1(a)(v) (the "Infrastructure Improvements"). All agreements respecting architectural and engineering services shall be between Developer and such Persons, and a representative of the City shall have a right to privately review a copy of each such agreement upon request of the City. Developer shall select a principal architect for each Phase of the Improvements and the Infrastructure Improvements (the "Principal Architect"), and the City shall be notified of each such selection.

6.2 Design and Plans and Specifications. Developer shall, as soon as practicable, provide the City with plans and specifications for the Improvements (collectively, the "Plans and Specifications"), which Plans and Specifications shall include cost estimates for the Improvements, the design of which is compatible with the Redevelopment Project Plan, and all Applicable Laws and Requirements. Developer recognizes, stipulates and agrees that the Plans

and Specifications will be subject to and must be in compliance with the planning, zoning, platting and permitting approvals by the Planning Commission and City Council. Without the prior written approval of the appropriate Government Authorities, there shall be no Material Changes to the Plans and Specifications subsequent to the initial approval.

6.3 General Contractor and Construction Documents. Developer shall select one or more general contractors (collectively, the "General Contractor") for the Improvements. Each such General Contractor must have experience in similar-sized projects. Developer represents that its construction documents relative to the Improvements (the "Construction Documents") will require and provide for (a) the design, development, construction, equipping and completion of the Improvements in accordance with the Redevelopment Project Plan, the Plans and Specifications and all Applicable Laws and Requirements, (b) a guaranteed maximum price, (c) guaranteed Substantial Completion not later than the completion date for each respective Phase of Improvements as set forth in Section 6.7. below (with liquidated damages for failure), and (d) surety of performance and labor and material payment bonds as set forth in Section 6.11 below. Developer shall, as soon as practicable, provide the City with a copy of the Construction Documents.

6.4 Changes or Amendments. Subject to Section 6.8 below, Developer shall not make any Material Changes to, or terminate any of the Construction Documents, or release any party therefrom without written notice to the City. Developer shall promptly deliver to the City copies of all change orders or other changes or amendments to the Construction Documents. Developer agrees with the City that it will in good faith (a) perform its duties and obligations under the Construction Documents and (b) enforce the obligations of all other parties thereunder.

6.5 Construction of Improvements. Developer agrees that it shall cause the Improvements and the Infrastructure Improvements to be constructed and completed substantially in accordance with the Construction Documents, the Redevelopment Project Plan and this Agreement. In addition, the Construction Documents, and any other contracts for the design, development, acquisition, construction and completion of the Improvements, as well as all other contracts or agreements respecting the Improvements, shall comply and conform to all Applicable Laws and Requirements.

6.6 Commencement of Construction: Developer understands and agrees that pursuant to the City's Applicable Laws and Requirements, Developer must commence construction on the Project within one (1) year of final site plan approval for the Project or the Project will be subject to re-approval via the planning and zoning ordinances. The parties hereby understand and agree that for a phased development which is approved in a single, comprehensive final site plan approval with multiple phases, as long as construction on any phase of the Project commences within the aforementioned one (1) year time period, then future phases may commence after the expiration of the one (1) year period without the re-approval or preliminary site or final development plans. In addition to the foregoing requirement, Developer hereby agrees to commence construction of the Improvements for each respective Phase as follows, subject only to Force Majeure; provided that if a particular Phase is not commenced within the time frames set forth below then the City's sole remedy for such failure shall be termination of this Agreement as to that particular Phase:

(a) The "Club Commencement Date": The Club Commencement Date shall be the date that is no later than six (6) years following the Effective Date provided that such date shall be extended to a total of ten (10) years following the Effective Date in the event the North Phase is substantially completed.

(b) The "North Phase Commencement Date": The North Phase Commencement Date shall be the date that is no later than three (3) years following the Effective Date.

(c) The "South Phase Commencement Date": The South Phase Commencement Date shall be the date that is no later than ninety (90) days following the Closing.

6.7 Completion Date. Developer shall achieve Substantial Completion of the Improvements and open the Improvements for each Phase as follows, subject only to Force Majeure:

(a) The "Club Completion Date": The Club Completion Date shall be that date that is no later than three (3) years after the Club Commencement Date.

(b) The "North Phase Completion Date": The North Phase Completion Date shall be that date that is no later than four (4) years after the North Phase Commencement Date.

(c) The "South Phase Completion Date": The South Phase Completion Date shall be that date that is no later than three (3) years after the Closing.

6.8 Permitted Modifications. Developer shall have the right, in its reasonable discretion, to modify the scope and physical parameters of the Project (each, a "Permitted Modification") if, and to the extent, that:

(a) Modifications are approved via the Planning Commission and/or Governing Body via the planning and zoning process or as required by Applicable Laws and Requirements;

(b) Modifications are required to include within the Improvements new technologies or amenities which may become available during the time that the Project is being developed.

(c) Modifications shall be allowed to the interior portions of the various buildings that constitute the Improvements.

Developer agrees that any such Permitted Modification shall be consistent, and comply, with Applicable Laws and Requirements. Developer shall give to the City reasonable prior notice of any Permitted Modification. A Permitted Modification shall not require the consent of the City. This Section 6.8 does not alter Developer's obligations or ability to seek plan review in accordance with Article 5, Section 5.12 of the City's Zoning Ordinance when applicable.

6.9 Scope and Schedule for Infrastructure Improvements. Developer and the City hereby agree that the scope of work and schedule for the Infrastructure Improvements to be completed by Developer is attached hereto as Exhibit G, as amended pursuant to Section 3.1(a)(v). The parties further agree that to the extent that the costs for the Infrastructure Improvements are eligible and legally permissible, such costs may be paid for or reimbursed with Public Financing Proceeds.

6.10 Responsibility for Design and Construction. Developer shall, subject to the terms of this Agreement and the Redevelopment Project Plan, have the sole right, and the responsibility, to design, manage, and construct the Improvements. Developer shall receive no separate fee from the City for acting as construction manager or developer of the Improvements. Notwithstanding anything set forth herein to the contrary, the Plans and Specifications shall be sealed by the Principal Architect and shall require that the Principal Architect render a certificate upon the completion of the work required thereby that said work has been completed in accordance with all Applicable Laws and Requirements.

6.11 Payment and Performance Bonds. Except as to the Club Phase, the General Contractor shall be required under the Construction Documents to furnish and maintain in full force and effect performance and labor and material payment bonds in the full amount of the project cost, as set forth in the Construction Documents. Said bonds shall be in form and substance and issued by a corporate surety reasonably satisfactory to Developer and the City. Said bonds shall be in favor of Developer and the City.

6.12 Permits and Reviews. Developer hereby recognizes, stipulates and agrees (a) that in the design, construction, completion, use or operation of the Improvements, Developer, or its General Contractor, shall procure and pay for any and all permits, licenses or other forms of authorizations that are, from time to time, required, and (b) that nothing herein shall be construed as any release by the City of the responsibility of Developer to comply with, and satisfy the requirements of, all Applicable Laws and Requirements.

6.13 Periodic Meetings with the City. From the Effective Date until Substantial Completion of the Improvements, Developer hereby agrees to meet with the City and/or its agents or consultants at such intervals as Developer, the City and any such designee shall mutually agree or reasonably request, and not more frequently than monthly, to review and discuss the design, development and construction of the Improvements and the Project.

## ARTICLE VII.

### USE AND OPERATION

7.1 Term. The Term of this Agreement shall commence on the Effective Date and shall expire upon that date which is twenty (22) years from the implementation of the CID Sales Tax (the "Term").

7.2 Use and Operation.



(a) Developer covenants that at all times during the Term it will, at its expense:

(i) Use or permit the use of the Improvements only for the Permitted Uses.

(ii) Conduct its business at all times in a dignified quality manner and in conformity with the first class industry standards and in such manner as to maximize sales and/or rentals and to help establish and maintain a high reputation for the Project.

(iii) Subject to market demand and the ability to lease the Improvements, cause the Improvements to be occupied as soon as possible in accordance with the Completion Dates set forth in Section 6.7 above.

(iv) Retain, at all times during the Term, a qualified and reputable leasing and property manager(s) (the "Retail Manager") for the leasing and property manager of the Retail Shops.,

(v) Retain, at all times during the Term, a qualified and reputable leasing and property manager(s) (the "Residential Manager"), for the leasing and property manager of the Residential Units.

(vi) Perform its duties to maintain the Improvements, the Project and the Redevelopment District as set forth in Section 7.4 hereof.

(vii) Perform its duties to repair, restore and replace portions of the Project as set forth in Sections 7.11(b) and (d).

(viii) Developer will secure a binding agreement from each tenant, owner or occupant of the Residential Units (a "Tenant")..

(ix) Developer will secure a binding agreement from each tenant, owner, user or operator of a store in the Retail Shops (a "Store Operator"), which agreement (individually, a "Store Operator Agreement" and collectively, the "Store Operator Agreements").

A. Developer will use good faith efforts to obtain covenants in the Store Operator Agreements that the Store Operators will continuously operate during the term of their Store Operator Agreement.

B. Developer will provide in the Store Operator Agreements provisions as to the restrictions set forth in Section 2.6 hereof.

(b) Developer recognizes that its covenants in this Section 7.2 are a material consideration to the City, in order that Developer might maximize potential sales possible from the Redevelopment District during the Term.

(c) Developer acknowledges that damages for the breach of the covenants contained in this Section 7.2 may be difficult to ascertain. Accordingly, in the event of a breach of the covenants contained in this Section 7.2, then:

(i) The City shall be entitled to pursue such damages for any breach of the covenants contained in this Section 7.2 as it elects; however, the City shall not be entitled only to damages, but also to injunctive relief to enforce the covenants contained in this Section 7.2 to compel performance of the terms hereof, and to restrain and enjoin any breach or threatened breach thereof; and

(ii) Without limiting the generality of Sections 9.1 and 9.2 of this Agreement, the City shall be entitled to all reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred by or on behalf of the City in connection with the enforcement of the covenants contained in this Section 7.2.

7.3 Security. Developer hereby agrees that it shall, upon completion of each Phase of the Project, install and maintain security for such Phase, including video surveillance and secured parking facilities for the Redevelopment District. Developer will submit a detailed security plan to the City to be considered along with the Final Plan for each Phase of the Project, approval of which shall not be unreasonably withheld by the City. Additionally, upon completion of the South Phase of the Project, Developer hereby agrees that it will provide 24 hour security personnel for the Redevelopment District.

7.4 Maintenance and Use. During the Term, Developer shall cause the Improvements (except for the Club the maintenance and use of which shall be set forth in the Sublease) , and all parts thereof, the Project and all other of their property used or useful in the conduct of its business and operations within the Redevelopment District, to be maintained, preserved and kept in good repair and working order and in a safe condition, consistent at all times with other first class retail, residential and health club space in the greater metropolitan Kansas City area, and will make all repairs, renewals, replacements and improvements necessary for the safe, efficient, and advantageous conduct of its business and operations within the Redevelopment District all subject to normal wear and tear. Nothing in this Section 7.4 shall preclude Developer from removing or demolishing any building or buildings, if in its reasonable judgment, such removal or demolition is desirable in the conduct of its business and not disadvantageous in any material respect to the owners of any Bonds, and as long as the same does not materially adversely affect the value of the Improvements or Developer's ability to (a) perform its obligations under this Agreement, or (b) generate Sales Taxes within the Redevelopment District. Developer may make additions, alterations and changes to the Improvements so long as such additions, alterations and changes are made in compliance with all Applicable Laws and Requirements, this Agreement, the Redevelopment Project Plan, and as long as the same do not materially adversely affect the value of the Improvements or Developer's ability to (y) perform its obligations under this Agreement, or (z) generate Sales Taxes within the Redevelopment District. Developer agrees to set aside on its books such commercially reasonable reserves for future maintenance and capital expenditures.

7.5 Compliance. Developer shall conduct its affairs and carry on its business and operations in such a manner as to comply with all Applicable Laws and Requirements, and to observe and conform to all valid orders, regulations or requirements (including, but not limited to, those relating to safety and health) of any Government Authorities applicable to the conduct of their business and operations and the ownership of the Project. Developer agrees to promptly pay any and all fees and expenses associated with any safety, health or other inspections required under this Agreement or imposed by Applicable Law and Requirements. Provided, however, that nothing contained in this Agreement shall require Developer to comply with, observe and conform to any such law, order, regulation or requirement of any Government Authorities so long as the validity thereof shall be contested by Developer in good faith by appropriate proceedings, and provided that Developer shall have set aside on its books adequate reserves in accordance with GAAP or secured adequate bonding with respect to such contest and such contest shall not materially impair the ability of Developer to meet its obligations under this Agreement.

7.6 Payment of Taxes and Other Charges. Developer shall pay or cause to be paid as they become due and payable all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon Developer or the Project or any part thereof or upon any income therefrom, including, but not limited to, any taxes, assessments or other governmental charges levied, assessed or imposed on the Club, the North Project Area, the South Project Area, and/or the Improvements. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit Developer from contesting the assessed value of the properties, improvements or the taxes thereon in good faith by appropriate proceedings; provided however that Developer shall pay any and all amounts that are contested under protest while any such proceedings are pending.

7.7 Payment of Obligations. During the Term, Developer shall promptly pay or otherwise satisfy and discharge all of its obligations and all demands and claims against it as and when the same become due and payable, unless the validity, amount or collectability thereof is being contested in good faith or unless the failure to comply or contest would not materially impair its ability to perform its obligations under this Agreement nor subject any material part of the Redevelopment District to loss or forfeiture.

7.8 Liens and Encumbrances. During the Term, except for a Permitted Mortgage, Developer shall not create or incur or permit to be created or incurred or to exist any mortgage, lien, security interest, charge or encumbrance upon the Project, or any part thereof, and shall promptly cause to be discharged or terminated all mortgages, liens, security interests, charges and encumbrances that are not Permitted Encumbrances or a Permitted Mortgage. Developer shall not encumber the portions of the Project subject to the Sublease except as provided in the Sublease. Notwithstanding the foregoing, Developer hereby specifically understands and agrees that the Released Property shall not be encumbered by any mortgage, lien, security interest, charge or encumbrance prior to Closing, and thereafter, any such mortgage, lien, security interest, charge or encumbrance shall be subject and subordinate to the City's Reversionary Interests. Also, any Permitted Mortgage shall be subject to the terms and conditions of this Agreement.

7.9 Licenses and Permits. During the Term, Developer shall procure and maintain all licenses and permits, and conduct or cause to be conducted, all inspections and/or investigations required by Applicable Laws and Requirements or otherwise necessary in the operation of its business and affairs in, on or about the Project and the Redevelopment District; provided, however, that Developer shall not be required to procure or maintain in effect any right, license or accreditation that Developer and the City shall have determined in good faith and subject to Applicable Laws and Requirements, is not in the best interests of Developer and is no longer necessary in the conduct of its business and that lack of such compliance will not materially impair the ability of Developer to pay or perform its obligations under this Agreement.

7.10 Insurance. During the Term, Developer shall maintain or cause to be maintained insurance with respect to the Improvements and operations covering such risks that are of an insurable nature and of the character customarily insured against by organizations operating similar properties and engaged in similar operations (including but not limited to property and casualty, worker's compensation, general liability and employee dishonesty) and in such amounts as, in the reasonable judgment of the City, are adequate to protect Developer, the City and the Improvements, but in no event in an amount less than that required by the Insurance Specifications attached hereto as Exhibit K, and made a part hereof, or as otherwise required by the terms of the indenture for any Bonds. Each policy or other contract for such insurance shall (i) name the City as an additional insured (with respect to liability insurance and with respect to property insurance with respect to the Club Project Area and with respect to the South Project Area prior to Closing), and (ii) contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least thirty (30) days after written notice of cancellation to Developer and each other insured, additional insured, loss payee and mortgage payee named therein.

7.11 Damage, Destruction or Condemnation.

(a) In the event of damage to or destruction of any portion of the Project resulting from fire or other casualty during the Term, or in the event any portion of the Redevelopment District is condemned or taken for any public or quasi-public use or title thereto is found to be deficient during the Term, the net proceeds of any insurance relating to such damage or destruction, the net proceeds of such condemnation or taking or the net proceeds of any realization on title insurance shall be paid into, and used in accordance with a construction escrow agreement reasonably satisfactory to the City and Developer ("Casualty Escrow").

(b) If, at any time during the Term, the Project or any part thereof shall be damaged or destroyed by a Casualty (the "Damaged Facilities"), Developer, at its sole cost and expense, shall commence and thereafter proceed as promptly as possible to repair, restore and replace the Damaged Facilities as nearly as possible to their condition immediately prior to the Casualty and shall be entitled to draw upon the Casualty Escrow for payment of said costs.

(c) If at any time during the Term, title to the whole or substantially all of the Redevelopment District which has previously been conveyed to Developer shall be taken

in condemnation proceedings or by right of eminent domain, Developer, at its sole discretion, may terminate this Agreement as of the date of such taking. For purposes of this Section 7.11(c), "substantially all of the Redevelopment District" shall be deemed to have been taken if the City and Developer, each acting reasonably and in good faith, determine that the untaken portion of the Redevelopment District, including the Parking Improvements, cannot be practically and economically used by Developer for the purposes and at the times contemplated by this Agreement.

(d) In the event of condemnation of less than the whole or substantially all of the Redevelopment District which has previously been conveyed to Developer during the Term, Developer, at its sole cost and expense, shall commence and thereafter proceed as promptly as possible to repair, restore and replace the remaining part of the Improvements, as nearly as possible, to their former condition, and shall be entitled to draw upon the Casualty Escrow for payment of said costs.

(e) Nothing in this section will require the Developer to expend funds in excess of the Casualty Escrow.

#### 7.12 Indemnity.

(a) Developer shall indemnify, protect, defend and hold the City, the Foundation and all of their officers, agents, employees, elected officials and attorneys, each in their official and individual capacities, now or previously holding office (collectively, the "Indemnified Parties" or, individually, an "Indemnified Party") harmless from and against any and all claims, demands, liabilities and costs, including reasonable attorneys' fees, costs and expenses, arising from damage or injury, actual or claimed, of whatsoever kind or character (including consequential and punitive damages), to persons or property arising or allegedly arising out of (i) the design, construction and completion of the Improvements by Developer, (ii) the use or occupation of the Improvements by Developer or anyone acting by, through or under it, (iii) damage or injury, actual or claimed, of whatsoever kind or character occurring to persons or property occurring or allegedly occurring in, on or about the portions of the Redevelopment District that do not include public right of way or public lands (except to the extent directly caused by Developer) and (iv) any claims or challenges related to the legality of the approval of, or terms contained in the planning, zoning, platting or other governmental approvals necessary for this Project, this Agreement, the Redevelopment Project Plan, the Redevelopment District, the formation of the CID and imposition of the CID Sales Tax, the Lease or Sublease, the transfer of property contemplated or the Public Financing contemplated by this Agreement.

(b) In the event any suit, action, investigation, claim or proceeding (collectively, an "Action") is begun or made as a result of which Developer may become obligated to one or more of the Indemnified Parties hereunder, the Indemnified Party shall give prompt notice to Developer of the occurrence of such event, but the failure to notify Developer will not relieve Developer of any liability that it may have to an Indemnified Party. After receipt of such notice, Developer may elect to defend, contest

or otherwise protect the Indemnified Party against any such Action, at the cost and expense of Developer, utilizing counsel reasonably approved by the Indemnified Party. The Indemnified Party shall have the right, but not the obligation, to participate, at the Indemnified Party's own cost and expense, in the defense thereof by counsel of the Indemnified Party's choice. In the event that Developer shall fail timely to defend (except pursuant to an express right herein), contest or otherwise protect an Indemnified Party against such Action, the Indemnified Party shall have the right to do so, and (if such defense is undertaken by the Indemnified Party after notice to Developer asserting Developer' failure to timely defend, contest or otherwise protect against such Action), the Indemnified Party may submit any bills for reasonable fees and costs received from its counsel to Developer for payment and, within thirty (30) business days after such submission, Developer shall transfer to the Indemnified Party sufficient funds to pay such bills. Developer acknowledges that such bills may be redacted to delete any information which would constitute attorney-client communication or attorney work product. Notwithstanding the foregoing, in the event that Developer shall at any time elect not to defend, contest or otherwise protect an Indemnified Party against such Action pursuant to subsection (a)(iv) above, Developer shall provide written notice of such election to the City and then (i) this Agreement shall be terminated and of no further force and effect, and (ii) Developer shall have no further obligation to indemnify and defend the City thereafter, except that Developer shall indemnify the City for any awards of attorneys fees to the party bringing the action. Notwithstanding the terms of subsection (b)(i) above, if a party shall advance claims that are limited to and contained within a particular Phase of the project without impacting the other Phases, the Developer shall have the right to terminate this Agreement as to that Phase only. The Developer shall not be responsible for monetary damages or other expenses incurred by the City which shall result from such election not to defend, unless and to the extent that the City shall elect to defend such action after the Developer elects not to defend as set forth herein.

(c) An Indemnified Party shall submit for approval to Developer any settlement proposal that the Indemnified Party shall receive. Developer shall be liable for the payment of any amounts paid in settlement of any Action to the extent that Developer consents to such settlement. Neither Developer nor the Indemnified Party will unreasonably withhold its consent to a proposed settlement.

(d) Developer expressly confirms and agrees that it has provided this indemnification and assumes the obligations under this Agreement imposed upon Developer in order to induce City to enter into this Agreement. To the fullest extent permitted by law, an Indemnified Party shall have the right to maintain an action in any court of competent jurisdiction to enforce and/or to recover damages for breach of the rights to indemnification created by, or provided pursuant to, this Agreement, and the right to apply any deposit or other funds submitted by Developer to the Indemnified Party in payment of the damages suffered by it, as is necessary to protect the Indemnified Party from loss. If such court action is successful, the Indemnified Party shall be reimbursed by Developer for all fees and expenses (including attorneys' fees) actually and reasonably incurred in connection with such action (including, without limitation, the investigation, defense, settlement or appeal of such action).

(e) Except as provided herein, the indemnifications for matters arising under this Agreement during the Term shall survive the termination of this Agreement.

(f) Notwithstanding anything to the contrary herein, none of the Indemnified Parties shall be indemnified against liability for damage arising from or caused by the Indemnified Parties' own respective negligent, willful or malicious acts or omissions.

#### 7.13 Prohibition on Sales, Etc.

(a) Transfer of Obligations.

(i) The rights, duties and obligations of the Developer may not be assigned, in whole or in part, to another entity, without the prior approval of the City, by resolution of the City Council following verification by the City's counsel that the assignment complies with the terms of this Agreement. Any proposed assignee shall have qualifications and financial responsibility, as reasonably determined by the City's staff (or a designated member of the City Council), necessary and adequate to fulfill the obligations of the Developer with respect to the portion of the Redevelopment District being transferred. Any proposed assignee shall, by instrument in writing, for itself and its successors and assigns, and expressly for the benefit of the City, assume all of the obligations of the Developer under this Agreement and agree to be subject to all of the conditions and restrictions to which the Developer is subject (or, in the event the transfer is of or relates to a portion of the Redevelopment District, such obligations, conditions and restrictions to the extent that they relate to such portion). The Developer shall not be relieved from any obligations set forth herein unless and until the City specifically agrees to release the Developer. The Developer agrees, at Developer's costs, to promptly record all assignments in the Register of Deeds of Johnson County, Kansas in a timely manner and following the execution of such agreements. The terms of Section 2.6(b)(xviii) shall apply to any transfers to entities exempt from property taxation.

(ii) The parties' obligations pursuant to this Agreement, unless earlier satisfied, shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties as if they were in every case specifically named and shall be construed as a covenant running with the land, enforceable against the purchasers and other transferees as if such purchaser or transferee were originally a party bound by this Agreement. Notwithstanding the foregoing, no tenant of any part of the Redevelopment District or CID shall be bound by any obligation of the Developer solely by virtue of being a tenant; provided however, that no transferee or owner of property within the Redevelopment District or CID except the Developer shall be entitled to any rights whatsoever or claim upon the Incremental Real Property Taxes, Incremental Sales Tax, or CID Sales Tax as set forth herein, except as specifically authorized in writing by the Developer.

(iii) The foregoing restrictions on assignment, transfer and conveyance and the restriction in Section 7.13(c) below shall not apply to (x) any security interest granted to secure indebtedness to any construction or permanent lender, or (y) the sale, rental and leasing of portions of the Redevelopment District for the uses permitted under the terms of this Agreement.

(b) Developer Reorganization. Nothing herein shall prohibit (or require City approval to allow) the Developer from forming additional development or ownership entities to replace or joint venture with Woodside Redevelopment, Inc. for the purpose of business and/or income tax planning; provided that Blair Tanner maintains management control of any new or restructured company. The Developer shall provide the City written notice of any such restructuring within one (1) calendar quarter.

(c) Prohibition Against Transfer of the Project, the Buildings or Structures Therein.

(i) During the term of this Agreement, the Developer shall not, except as permitted by this Agreement and in accordance with the Act, without prior approval of the City, which shall not be unreasonably withheld, conditioned or delayed, make any total or partial sale, transfer, conveyance, assignment or lease of the whole Project or any entire individual building within the Project except as permitted by this Agreement. This prohibition shall not be deemed to prevent the granting of temporary or permanent easements or permits to facilitate the development of the Project or to prohibit or restrict the sale or leasing of any part or parts of a building, structure or land effective commencing on completion.

(ii) As a condition to such transfer, the City may require such transferee to agree to be bound, in whole or in part, by the provisions of this Agreement.

(iii) If said transfer is proposed after the issuance of Bonds, the Developer may not transfer the property to a tax exempt organization without also receiving the written approval of the trustee for the Bonds and an opinion of bond counsel that such a transfer is not injurious to the bond holders.

(iv) So long as Bonds are not outstanding, the Developer may terminate this Agreement at any time and transfer or sell the real property that makes up the Project without any City approvals.

7.14 Utilities. During the Term, all utility and utility services used by Developer in, on or about the Redevelopment District shall be paid for by Developer and shall be contracted for by Developer in Developer's own name, and Developer shall, at its sole cost and expense, procure any and all permits, licenses or authorizations necessary in connection therewith.

7.15 Access. During the Term, Developer hereby recognizes, acknowledges and agrees that the City, and its duly authorized representatives and agents, shall have the right to enter the



portions of the Site previously conveyed to Developer at reasonable times and upon reasonable notice, to substantiate compliance with this Agreement or, to the extent Developer has failed to cure any breach within applicable notice and cure periods, to cure any defaults under this Agreement. In exercising its rights hereunder, the City shall use reasonable efforts to avoid unreasonable interference with the operation of the Project. Except as otherwise provided in this Agreement, the City shall pay all costs it incurs under this provision. Nothing contained in this Section 7.15 shall restrict or impede the right of the City to enter the Redevelopment District pursuant to any Applicable Laws and Requirements.

7.16 Environmental Matters. Developer shall not store, locate, generate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit or dispose of any Hazardous Substance in, upon, under, over or from the property in the Redevelopment District in violation of any Environmental Regulation; shall not permit any Hazardous Substance to be stored, located, generated, produced, processed, treated, transported, incorporated, discharged, emitted, released, deposited, disposed of or to escape therein, thereupon, thereunder, thereover or therefrom in violation of any Environmental Regulations; and as to property it owns in fee shall cause all Hazardous Substances to be properly removed therefrom and properly disposed of in accordance with all applicable Environmental Regulations; shall not install or permit to be installed any underground storage tank therein or thereunder in violation of any Environmental Regulation; and shall comply with all other Environmental Regulations which are applicable to the property in the Redevelopment District. With respect to any land owned in fee by the Developer, Developer shall indemnify the City and/or the Foundation against, shall hold the City and/or the Foundation harmless from, and shall reimburse the City and/or the Foundation for, any and all claims, demands, judgments, penalties, fines, liabilities, costs, damages and expenses, including court costs and attorneys' fees directly or indirectly incurred by the City and/or the Foundation (prior to trial, at trial and on appeal) in any action against or involving the City and/or the Foundation, resulting from any breach of the foregoing covenants or from the discovery of any Hazardous Substance, in, upon, under or over, or emanating from, the Site, it being the intent of Developer and the City that the City and/or the Foundation shall have no liability or responsibility for damage or injury to human health, the environment or natural resources caused by, for abatement and/or clean-up of, or otherwise with respect to, Hazardous Substances, which arises subsequent to a Closing. The foregoing covenants contained in this Section shall be deemed continuing covenants, representations and warranties for the benefit of the City and/or the Foundation and any successors and assigns of the City and/or the Foundation, and shall survive the termination, satisfaction or release of this Agreement, or any other instrument. Any amounts covered by the foregoing indemnification shall bear interest from the date incurred at the Prime Rate plus 2%, or, if less, the maximum rate permitted by law, and shall be payable on demand.

7.17 Power of the City. Notwithstanding anything set forth herein to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of the City to act in its capacity as a public body. Further, nothing herein shall relieve Developer from complying with all Applicable Laws and Requirements.

## ARTICLE VIII.

### SPECIAL PROVISIONS

8.1 Rental License Fee. Developer hereby understands that the City has or will soon consider approval of a rental license fee equal to \$10.00 per month or \$120 per year per rental unit (the "Rental License Fee") for all rental units within the City, which Rental License Fee may be adopted by the City Council in its discretion by approval of a future ordinance. Developer hereby understands and agrees that it will be subject to any such Rental License Fee and any other Applicable Laws or Requirements that govern the rental of units to Tenants. Developer hereby agrees not to contest in any manner the adoption, approval or application of the Rental License Fee as long as the Rental License Fee does not exceed \$10.00 per month or \$120 per year per rental unit and so long as it is applicable to all rental home/units in the City.

8.2 Guaranty Requirements. Developer recognizes, stipulates and agrees that it is a condition to the duties and obligations of the City herein, and is a covenant and agreement of Developer herein, that Guarantor execute and deliver, concurrently with the commencement of this Agreement and of each Phase of the Project, the guaranty instrument or instruments attached hereto as Exhibit L (the "Guaranty"). Without limiting any of the terms and provisions herein, in the event of any breach, default or failure to perform by Guarantor under the Guaranty, the same shall be deemed to be, and shall constitute, a default under this Agreement.

Notwithstanding any terms or provisions in this Agreement to the contrary, the parties agree that, upon the completion of any Phase, the Guaranty (and any provisions of the Guaranty related to such completed Phase) shall be immediately released as to such completed Phase. To the extent that such release requires the execution of documentation releasing the Guaranty as to such completed Phase, Developer and City hereby directs its staff and the City attorney to cause such documentation to be executed as soon as possible after the completion of such Phase.

8.3 TIF and CID Limitations. Notwithstanding anything in this Agreement to the contrary, the parties intend for this Agreement to fully comply with all Applicable Laws and Requirements related to the use of TIF and/or CID.

## ARTICLE IX.

### DEFAULT AND REMEDIES

9.1 Default Provisions. Developer shall be in default under this Agreement if:

(a) Developer fails to make any of the payments of money required by the terms of this Agreement, and Developer fails to cure or remedy the same within ten (10) days after the City has given Developer as applicable, written notice specifying such default; or

(b) Developer fails to keep or perform any covenant or obligation herein contained on Developer's part to be kept or performed, and Developer fails to remedy the

same within thirty (30) days after the City has given Developer written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by Developer within such period and diligently pursued until the default is corrected; or

(c) A default shall exist or occur with respect to any of the duties or obligations of the Developer or Guarantor (i) any of the Transaction Documents, or (ii) the Guaranty; or

(d) Developer, or Guarantor shall file a voluntary petition under any bankruptcy law or an involuntary petition under any bankruptcy law is filed against any such party in a court having jurisdiction and said petition is not dismissed within thirty (30) days or Developer, or Guarantor makes an assignment for the benefit of its creditors; or a custodian, trustee or receiver is appointed or retained to take charge of and manage any substantial part of the assets of Developer or Guarantor and such appointment is not dismissed within sixty (60) days; or any execution or attachment shall issue against Developer whereupon the Redevelopment District, or any part thereof, or any interest therein of Developer under this Agreement shall be taken and the same is not released prior to judicial sale thereunder (each of the events described in this subparagraph being deemed a default under the provisions of this Agreement);

(e) Developer breaches the representations and warranties set forth in this Agreement and fails to cure or correct same within thirty (30) days of notice from the City.

In the event of such default, the City may take such actions, or pursue such remedies, as exist hereunder, the Guaranty or at law or in equity and Developer covenants to pay and to indemnify the City against all reasonable costs and charges, including attorneys' fees, lawfully and reasonably incurred by or on behalf of the City in connection with the enforcement of such actions or remedies.

9.2 Rights and Remedies. The rights and remedies reserved by the City hereunder and those provided by law shall be construed as cumulative and continuing rights, no one of which shall be exhausted by the exercise of any one or more of such rights or remedies on any one or more occasions. If a default by Developer occurs under this Agreement and is continuing, the City may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance by Developer of any provision of this Agreement. The City shall be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Agreement, notwithstanding the availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity. In the event that a particular Phase is not commenced within the time frames called for in this Agreement, the City hereby agrees that the City's sole and exclusive remedy for such failure shall be termination of this Agreement for that particular Phase, and thereafter the City shall provide no further reimbursements to Developer from the Public Financing Proceeds for that Phase. The parties hereby agree that if any default is limited to

Developer's failure to perform or pay with respect to any particular Phase of the Project, and does not pertain to the other Phase(s) of the Project (if and to the extent that such other Phase(s) have been Substantially Completed), then subject to the terms of Section 4.4(b) hereof, the City shall only be entitled to legal or equitable relief as to that particular Phase in which the default occurs. Failure by the City to enforce any such rights reserved under this Section 9.2 shall not be deemed a waiver thereof.

9.3 Default by the City. The City shall be in default under this Agreement if the City fails to keep or perform any covenant or obligation herein contained on the City's part to be kept or performed, and the City fails to remedy the same within thirty (30) days after Developer has given the City written notice specifying such failure and requesting that it be remedied; provided, however, that if any event of default shall be such that it cannot be corrected within such period, it shall not constitute an event of default if corrective action is instituted by the City within such period and diligently pursued until the default is corrected. If a default by the City occurs under this Agreement and is continuing, Developer may take whatever action at law or in equity as may appear necessary or desirable to enforce performance and observance by the City of any provision of this Agreement, however, the City's liability for monetary amounts shall be limited to the actual amount, if any, in question, and under no circumstances shall the City be liable for any remote or consequential damages.

## ARTICLE X.

### MISCELLANEOUS

10.1 Waiver of Breach. No waiver of any breach of any covenant or agreement herein contained shall operate as a waiver of any subsequent breach of the same covenant or agreement or as a waiver of any breach of any other covenant or agreement, and in case of a breach by either party of any covenant, agreement or undertaking, the non-defaulting party may nevertheless accept from the other any payment or payments or performance hereunder without in any way waiving its right to exercise any of its rights and remedies provided for herein or otherwise with respect to any such default or defaults which were in existence at the time such payment or payments or performance were accepted by it.

10.2 Force Majeure. In the event either party hereto shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of acts of God, strikes, lockouts, failure of power or other insufficient utility service, riots, insurrection, any lawsuit seeking to restrain, enjoin, challenge or delay construction, war, terrorism or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement ("Force Majeure"), then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Section shall not be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations under this Agreement because of a lack of funds.

10.3 Covenants of Parties.

(a) Representations and Warranties of Developer. Developer represents and warrants to the City as follows:

(i) Organization. Developer is a Kansas S-Chapter S corporation duly formed and validly existing under the laws of the State of Kansas. Developer is duly authorized to conduct business in each other jurisdiction in which the nature of its properties or its activities requires such authorization. Developer shall (1) preserve and keep in full force and effect its corporate or other separate legal existence and (2) remain qualified to do business and conduct its affairs in the State and each jurisdiction where ownership of its property or the conduct of its business or affairs requires such qualification.

(ii) Authority. The execution, delivery and performance by Developer of this Agreement are within such party's powers and have been duly authorized by all necessary action of such party.

(iii) No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the organizational documents of Developer or any provision of law, statute, rule or regulation to which Developer is subject, or to any judgment, decree, license, order or permit applicable to Developer, or will conflict or be inconsistent with, or will result in any breach of any of the terms of the covenants, conditions or provisions of any indenture, mortgage, deed of trust, agreement or other instrument to which Developer is a party, by which Developer is bound, or to which Developer is subject.

(iv) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the due execution and delivery by Developer of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the performance by Developer of this Agreement or the consummation of the transactions contemplated hereby except for zoning, building and other customary permits to be obtained from the City or other governmental units.

(v) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Developer, enforceable against Developer in accordance with the terms hereof. The Guaranty described on Exhibit L is the legal, valid and binding obligations of Guarantor, enforceable against Guarantor in accordance with the respective terms thereof.

(b) Representations and Warranties of the City.

(i) Authority. The execution, delivery and performance by the City of this Agreement are within its powers and have been duly authorized by all necessary action.

(ii) No Conflicts. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof, will contravene the ordinances, rules, regulations of the City or the laws of the State nor result in a breach, conflict with or be inconsistent with any terms, covenants, conditions or provisions of any indenture, agreement or other instrument by which the City is bound or to which the City is subject.

(iii) No Consents. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the due execution and delivery by the City of this Agreement. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or Governmental Authority or regulatory body or third party is required for the performance by the City of this Agreement or the consummation of the transactions contemplated hereby.

(iv) Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

10.4 Amendments. This Agreement may be amended, changed or modified only by a written agreement duly executed by the City and Developer.

10.5 Construction and Enforcement. This Agreement shall be construed and enforced in accordance with the laws of the State.

10.6 Invalidity of Any Provisions. If for any reason any provision hereof shall be determined to be invalid or unenforceable, the validity and effect of the other provisions hereof shall not be affected thereby.

10.7 Headings. The Article and Section headings shall not be treated as a part of this Agreement or as affecting the true meaning of the provisions hereof.

10.8 Execution of Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

10.9 Time. Time is of the essence in this Agreement.

10.10 Tax Implications. Developer acknowledges and agrees that (a) neither the City nor any of its officials, employees, consultants, attorneys or other agents have provided to Developer any advice regarding the federal or state income tax implications or consequences of this Agreement

and the transactions contemplated hereby, and (b) Developer is relying solely upon its own tax advisors in this regard.

10.11 Consents and Approvals. Wherever in this Agreement it is provided that the City or Developer shall, may or must give its approval or consent, the City or Developer shall not, unless specifically herein provided otherwise, unreasonably withhold, condition, delay or refuse to give such approvals or consents.

It is agreed, however, that the sole right and remedy for Developer or the City in any action concerning the other's reasonableness will be action for declaratory judgment and/or specific performance, and in no event shall either such party be entitled to claim damages of any type or nature in any such action.

10.12 Notices. All notices required or desired to be given hereunder shall be in writing and all such notices and other written documents required or desired to be given hereunder shall be deemed duly served and delivered for all purposes if (i) delivered by nationally recognized overnight delivery service; (ii) facsimile (with follow up within one (1) business day by United States Mail); or (iii) delivered in person, in each case if addressed to the parties set forth below:

Westwood City Hall  
4700 Rainbow Blvd.  
Westwood, KS 66205  
Attn: City Clerk  
Telephone:(913) 362-1550  
Facsimile: (913) 362-3308

with a copy to:

Ryan Denk  
McAnany, Van Cleave & Phillips, P.A.  
10 E. Cambridge Circle Dr., Ste. 300  
Kansas City, KS 66103  
Telephone(913) 371-3838  
Facsimile:(913) 371-4722

and a copy to:

Todd A. LaSala, Esq.  
Stinson Morrison Hecker LLP  
1201 Walnut, Suite 2600  
Kansas City, Missouri 64106  
Telephone: 816-842-8600  
Facsimile: 816-691-3495

and to Developer at:

Blair Tanner  
Tanner & White Properties, Inc.  
1545 Stone Canyon Road  
Los Angeles, CA 90077  
Telephone: 310-476-7500  
Facsimile: 310-476-7501

with a copy to:

Chase Simmons  
Polsinelli Shughart PC  
700 W. 47<sup>th</sup> St., Ste. 1000  
Kansas City, MO 64112  
Telephone: 816-360-4207  
Facsimile: 816-572-5007

All notices given by fax or personal delivery, followed up by regular United States mail, shall be deemed duly given one business day after they are so delivered.

10.13 Real Estate Commissions. Developer represents to, and agrees with the City, that it has not authorized and will not authorize any broker, agent or finder (including brokers, agents or finders which are Affiliates) to act on its behalf in connection with the transactions contemplated hereby. Developer and the City agree that neither Developer nor the City has dealt with any broker, agent or finder purporting to act on behalf of Developer or the City or any other party, and each hereby agrees to indemnify and hold harmless the other from and against (i) any and all, losses, liens, claims, judgments, liabilities, reasonable costs, expenses or damages (including reasonable attorneys' fees and court costs) of any kind or character arising out of or resulting from any duty or responsibility to pay any commission or make any other payment by either Developer or the City other than the reimbursement provided for above, or (ii) arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by Developer or on its behalf with any other broker, agent or finder in connection with this Agreement or the transactions contemplated hereby (including without limitation, Developer's subsequent transactions with third parties for the retail or other portions of the Redevelopment District). Notwithstanding anything to the contrary contained herein, this section shall survive the Closing or any termination of this Agreement. It is further agreed that if Closing occurs, then after Closing, Developer and any broker designated by Developer in its sole discretion, shall have the exclusive right to lease or sell the Pad Sites, and that no other Person acting by, through or under the City shall have brokerage rights except as may be specifically agreed to by Developer.

10.14 Entire Agreement. Together with the Exhibits hereto, this Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes and replaces all prior oral or written agreements concerning the subject matter hereof.



10.15 Run with the Land. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, successors and assigns and shall run with the land. However, nothing herein shall release Developer from any of the terms or restrictions set forth in Section 2.2, 7.2, 7.12 and 7.16 hereof. At Closing, the parties shall record a memorandum describing this Agreement in the land records of Johnson County, Kansas.

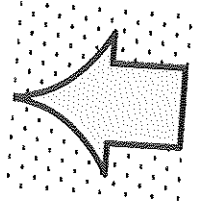
**[Remainder of page intentionally left blank. Signature pages follow.]**

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

**THE CITY**

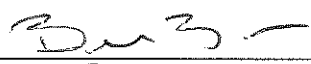
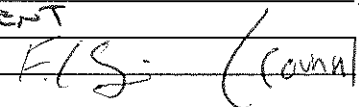
**THE CITY OF WESTWOOD, KANSAS**

By:   
Mayor Steve Stubbers



**DEVELOPER:**

**WOODSIDE REDEVELOPMENT, INC.**

By:   
Name: BLAIR TANNER  
Title: PRESIDENT  
Approved by:  (convn)

STATE OF KANSAS            )  
  ) SS.  
COUNTY OF JOHNSON        )

This instrument was acknowledged before me on <sup>January 2012</sup> ~~December 12, 2011~~ by Steve Stubbers as Mayor of the City of Westwood, Kansas.



*Kathleen McMahon*

Printed Name: KATHLEEN McMAHON

Notary Public in and for said State

Commissioned in Johnson County

My commission expires

12-21-2014

STATE OF KANSAS           )  
  ) SS.  
COUNTY OF JOHNSON    )

This instrument was acknowledged before me on January 12<sup>th</sup> 2012, 2011 by Blair Tanner, as President of Woodside Redevelopment, Inc.



My commission expires

12-21-2014

Kathleen McMahon  
Printed Name: KATHLEEN MCMAHON  
Notary Public in and for said State  
Commissioned in Johnson County

## INDEX OF EXHIBITS

- A. Redevelopment District
  - A-1 Club Property
  - A-2 City Property
  - A-3 Youthfront Property
  - A-4 Map of Redevelopment District
- B. Project Improvements
  - B-1 Club Improvements
  - B-2 Project 2 (North) Improvements
  - B-3 Project 3 (South) Improvements
- C. Project Areas
  - C-1 Club Project Area
  - C-2 North Project Area
  - C-3 South Project Area
  - C-4 Map of Project Areas
- D. Deed
- E. Permitted Encumbrances (to be attached
- F. Project Site Plan and Elevations
- G. Infrastructure Improvements
- H. Traffic Improvements
- I. Sublease Amendments
- J. Total Project Budget
- K. Insurance Specifications
- L. Guaranty
- M. General Structure of Amendments to Funding Agreement
  - M-1 Amended Funding Agreement (to be attached upon completion of same)

**ANNEX 1**  
**DEFINITIONS**

**"Abandon"** means that Developer has vacated and relinquished possession of the Redevelopment District at any time after the commencement of construction of the Improvements for a period of 30 days after written notice from the City of the same.

**"Act"** means the Kansas Tax Increment Financing Act, K.S.A. 12-1770, et seq., as amended.

**"Affiliate"** means any person, entity or group of persons or entities which controls Developer, which Developer controls or which is under common control with Developer. As used herein, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.

**"Agreement"** means this Redevelopment Agreement by and between the City and Developer.

**"Applicable Laws and Requirements"** shall mean any applicable constitution, treaty, statute, rule, regulation, ordinance, order, directive, code, interpretation, judgment, decree, injunction, writ, determination, award, permit, license, authorization, directive, requirement or decision of or agreement with or by Government Authorities, and all requirements of any insurers. Applicable Law and Requirements shall include, without limitation, the Redevelopment Project Plan, the Act, the CID Act, the Kansas Cash Basis Law (K.S.A. § 10-1100, *et. seq.*) and Budget Law (K.S.A. § 75-2§529, *et. seq.*).

**"Approved Assignment"** means any assignment, sale, lease, mortgage or other transfer of the Redevelopment District or any portion thereof by Developer or any merger, sale or other transfer of substantially all of Developer's assets which is consented to by the City pursuant to Section 7.13 hereof.

**"Approved Transfer"** is defined in Section 7.13 hereof.

**"Assignee"** means the assignee, purchaser, lessee, mortgagee, or transferee of an Approved Assignment pursuant to Section 7.13 hereof.

**"Bonds"** means any TIF bonds and/or CID bonds issued and sold pursuant to Section 4.8 hereof.

**"Casualty"** means any fire, storm, earthquake, tornado, flood or natural disaster or other sudden, unexpected or unusual cause of damage or destruction as referenced in Section 7.11 hereof.

**"Casualty Escrow"** means the escrow established in accordance with Section 7.11 hereof.

**"Certificate of Expenditure"** means those certain certificates submitted by Developer in accordance with Section 4.7.

**"CID"** means a community improvement district under the CID Act.

**"CID Act"** means K.S.A. 12-6a26, et seq., as amended.

**"CID Sales Taxes"** means those taxes imposed within the Redevelopment District pursuant to the CID Act as set forth in Section 4.3(a).

**"City"** means the City of Westwood, Johnson County, Kansas.

**"City Council"** means the governing body of the City.

**"City Expenses"** means the reasonable City expenses for the administration of this Agreement and the Public Financing described herein as set forth in Section 4.5(a)

**"City Property"** means that certain property generally described in Recital C and more particularly described on Exhibit A-2 attached hereto.

**"Closing "** means a date as defined by Sections 5.1 of this Agreement.

**"Club"** means the Woodside Health and Tennis Club located within the Redevelopment District as set forth in Recital D.

**"Club Improvements"** means the Improvements to the Club as described in Section 2.3(a)(i) hereof.

**"Club Phase"** means the Improvements described in Section 2.4(a).

**"Club Project Area"** means the that portion of the Redevelopment District described on Exhibit C-1.

**"Completion Date"** means the deadline for Substantial Completion of the various Phases of Improvements set forth in Section 6.7 hereof.

**"Construction Documents"** means those documents respecting the construction, equipping and completion of the Improvements pursuant to the terms of Section 6.3.

**"Damaged Facilities"** means any part or the whole of the Improvements to the extent that the same is damaged or destroyed by a Casualty pursuant to Section 7.11 hereof.

**"Deed"** means that special warranty deed described in Section 2.2 hereof.

**"Design Criteria"** means the criteria for architectural design of the Improvements and building materials described in Section 3.1(a)(vi) and to be attached hereto as Exhibit J.

**"Developer"** collectively means the party described in the Preamble.

**"Developer's Private Contribution"** means those funds paid by Developer as and when needed for all General Costs as described and set forth in the Total Project Budget and Section 4.6(a) hereof.

**"Club Property"** means that certain property generally described in Recital C and more particularly described on Exhibit A-1 attached hereto.

**"Effective Date"** means the date of this Agreement first above written.

**"Environmental Regulation"** means any and all present and future laws, statutes, ordinances, rules, regulations and orders of any governmental authority having jurisdiction over the parties hereto or any portion of the Redevelopment District or the Site and pertaining to the protection of human health, hazardous substances, pollution, or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and as the same may be further amended from time to time (hereinafter collectively called "CERCLA").

**"Force Majeure"** is defined in Section 10.2 hereof.

**"Foundation"** means the Westwood Foundation, as set forth in Recital C of this Agreement.

**"Funding Agreement"** means that certain Funding Agreement between the City and Developer dated as of May 23, 2011, as amended.

**"GAAP"** means generally accepted accounting principles.

**"General Condition Date"** means that date described in Section 3.1(a) hereof.

**"General Contractor"** means the contractor selected pursuant to Section 6.3 hereof.

**"General Costs"** means those costs described in the Total Project Budget to be paid by Developer's Private Contribution.

**"Government Authorities"** shall mean any and all jurisdictions, entities, courts, boards, agencies, commissions, offices, divisions, subdivisions, departments, bodies or authorities of any nature whatsoever of any governmental unit (federal, state, county, district, municipality, City or otherwise), whether now or hereafter in existence.

**"Ground Lease"** means that certain long term Ground Lease of the City Property dated as of [REDACTED], as amended between the City and the Foundation as set forth in Recital C.

**"Guaranty"** means that agreement by and between Guarantor and the City as referenced in Section 8.3 and more fully set forth in Exhibit L hereof.

**"Guarantor"** means those Persons approved by the City pursuant to Section 3.1(b)(i) hereof.



**"Hazardous Substance"** means any substance that is defined or listed as a hazardous or toxic substance and which is regulated as such or may form the basis of liability under any present or future Environmental Regulation, or that is otherwise prohibited or subject to investigation or remediation under any present or future Environmental Regulation because of its hazardous, toxic, or dangerous properties, including, without limitation, (i) any substance that is a "hazardous substance" under CERCLA, and (ii) petroleum, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas), only to the extent that the constituents of such synthetic gas are released or threatened to be released into the environment.

**"Infrastructure Improvements"** means those improvements described on Exhibit G hereof.

**"Insurance Specifications"** means the insurance requirements on Developer in connection with the Redevelopment District as generally described in Section 7.10 and more fully set forth in Exhibit K hereof.

**"Improvements"** means the buildings, parking structures and other improvements comprising the Project as set forth in Section 2.3, together with interior drives and roads, parking facilities, landscaping, infrastructure, administrative and other buildings from which Developer intends to open for business and conduct in the Redevelopment District.

**"Incremental Real Property Taxes"** means that amount of Real Property Taxes collected from the real property within the Redevelopment District that is in excess of the amount of Real Property Taxes collected from the base year assessed valuation, excluding any and all property taxes levied for schools or other special taxing districts.

**"Incremental Sales Taxes"** means that amount of Sales Taxes collected by the City from any transient guest and local sales and use taxes within the Redevelopment District that is in excess of the amount of Sales Taxes collected from the base year assessed valuation.

**"Investigations"** means the right for testing on the Redevelopment District as described in Section 3.1(a)(ii) hereof.

**"Landscape Plan"** means the detailed plan for landscaping the Project described in Section 3.1(a)(vii) and to be attached to this Agreement as Exhibit K.

**"Material Changes"** means any substantial change to any agreement, plan or other document referred to herein, which change would require changes to Developer's permits or approval of the appropriate Government Authorities or is required by Applicable Laws and Regulations.

**"North Phase"** means the Improvements described in Section 2.4(b).

**"North Project Area"** means the that portion of the Redevelopment District described on Exhibit C-2.

**"Parking Improvements"** means the parking improvements as set forth in Section 2.3(e) hereof.

**"Permitted Encumbrances"** means (a) utility, access or other easements and rights of way of record, (b) laws regulating the use or enjoyment of the Redevelopment District, (c) matters shown on Exhibit E; and (d) **[Permitted Mortgages]**;

**"Permitted Modification"** means a modification to the scope and physical parameters of the Improvements permitted pursuant to the terms and conditions of Section 6.8 hereof.

**"Permitted Mortgage"** means any mortgage placed on the Redevelopment District or any part thereof, for construction or permanent financing of the Redevelopment District; provided however that the Released Property shall not be encumbered by any mortgage, lien, security interest, charge or encumbrance prior to Closing, and thereafter, any such mortgage, lien, security interest, charge or encumbrance.

**"Permitted Uses"** means the health club uses, retail uses, residential uses, along with parking and other related uses described in Section 2.3 and in the Redevelopment Project Plan (all subject and pursuant to all Applicable Laws and Requirements).

**"Person"** shall mean any natural person, firm, partnership, association, corporation, limited liability company, trust, entity, public body or government or other entity.

**"Phase" and "Phases"** generally means the three (3) phases of the Project described in Section 2.4 hereof.

**"Planning Commission"** means the Planning Commission of the City as set forth in Section 3.3.(a)(i) hereof.

**"Plans and Specifications"** means those plans and specifications generally described in Section 6.2.

**"Principal Architect"** means the Person described as such in Section 6.1 hereof.

**"Prime Rate"** means the rate of interest announced from time to time by Bank of America, or any successor to it, as its prime rate as referenced in Section 7.16 hereof. If such bank, or any successor to it, ceases to announce a prime rate, the City shall designate a reasonably comparable financial institution for purposes of determining the Prime Rate.

**"Project"** means those improvements and projects described in Recital D, Section 2.3(a) and Exhibits B-1, B-2 and B-3 hereof.

**"Project Costs"** means the costs of constructing, developing and completing the Improvements, which costs are more particularly set on Exhibit J.

**"Public Financing Cap"** means the limitation on Public Financing Proceeds set forth in Section 4.4 hereof.

**"Public Financing Proceeds"** means the proceeds from the Incremental Real Property Taxes, Incremental Sales Taxes and the CID Sales Taxes from the Redevelopment District as provided for in Section 4.4 hereof.

**"Public Financing Proceeds Shortfall"** means a shortfall in Public Financing Proceeds as set forth in Section 4.6(b) hereof.

**"Public Improvements"** means those infrastructure and other public improvements described on Exhibit G attached hereto.

**"Real Property Taxes"** means all taxes levied on an ad valorem basis upon land and improvements within the Redevelopment District, excluding property taxes levied for schools, pursuant to K.S.A. 72-6431, and amendments thereto.

**"Redevelopment District"** means the property in Westwood, Kansas generally described in Recital A and legally described on Exhibit A hereto.

**"Redevelopment Project Plan"** means the plan adopted by the City by Ordinance \_\_\_\_\_ on December \_\_\_, 2011.

**"Reimbursable Project Costs"** means the amount of Developer's eligible Redevelopment Project Costs as generally described in the Total Project Budget hereof and certified as set forth in Section 4.7 hereof.

**"Released Property"** means that certain portion of the City Property to be released pursuant to Section 2.2 hereof, which property is more particularly described in the Deed attached hereto as Exhibit D.

**"Residential Units"** means the live/work units, condominium units and/or apartment units contemplated by Section 2.3(a)(iii) and the Redevelopment Project Plan.

**"Residents"** means residents of the City.

**"Retail Shops"** means the mixed-use, commercial retail development, including specialty shops and restaurants contemplated by Section 2.3(a)(ii) and the Redevelopment Project Plan.

**"Reversionary Interest"** means the interest reserved and retained by the City in the Released Property after its conveyance of the Released Property to Developer due to any (i) possibility of reverter, (ii) right of entry, (iii) power of termination which is included in the Deed and/or the Permitted Encumbrances strictly as provided in Article 2 hereof.

**"Sales Taxes"** means revenue received by the City from transient guest and local sales and use taxes which are collected from taxpayers doing business within that portion of the Redevelopment District.

**"Site"** means that property legally described on Exhibit 1-A hereto.

"**South Phase**" means the Improvements described in Section 2.4(c).

"**South Project Area**" means the that portion of the Redevelopment District described on Exhibit C-1.

"**Special Allocation Fund**" means that fund established and maintained by the City into which all Incremental Sales Taxes and Incremental Real Property Taxes are deposited.

"**State**" means the State of Kansas.

"**Store Operator**" means that tenant, owner, user or operator as defined in Section 7.2 hereof.

"**Store Operator Agreement**" means those agreements defined in Section 7.2 hereof.

"**Sublease**" means that certain long term Sublease of the City Property dated as of \_\_\_\_\_, as amended, between the Foundation and WRC Management as set forth in Recital C.

"**Substantial Completion**" means the stage in the progress of the construction of the Improvements, or as to any particular portion thereof, when said construction is sufficiently complete so that the Improvements or such particular portion can be occupied or utilized for its intended use provided however that finished shell space which is suitable for future tenant improvements shall be considered substantial completion.

"**Tax Increment Financing**" means the financing described in the Act.

"**TIF** " means tax increment financing under the Act.

"**Term**" means the term of this Agreement as set forth in Section 7.1 hereof.

"**Total Project Budget**" means the budget attached hereto as Exhibit J.

"**Traffic Improvements**" means the traffic and right of way management studies and improvements described in Section 2.3(b) hereof.

"**Transaction Documents**" means this Agreement, the Funding Agreement (as amended), and the Sublease (as amended).

"**WRC Management**" means Woodside Racquet Club Management, Inc., an affiliate of Developer as set forth in Recital C.

"**Youthfront**" means Youthfront, Inc., a Kansas not for profit corporation, the current owner of the Youthfront Property as set forth in Recital C attached hereto.

"**Youthfront Property**" means that certain property generally described in Recital C and more particularly described on Exhibit A-3 attached hereto.

## INDEX OF EXHIBITS

- A. Redevelopment District
  - A-1 Club Property
  - A-2 City Property
  - A-3 Youthfront Property
  - A-4 Map of Redevelopment District
- B. Project Improvements
  - B-1 Club Improvements
  - B-2 Project 2 (North) Improvements
  - B-3 Project 3 (South) Improvements
- C. Project Areas
  - C-1 Club Project Area
  - C-2 North Project Area
  - C-3 South Project Area
  - C-4 Map of Project Areas
- D. Deed
- E. Permitted Encumbrances
  - E-1 Lender Protection Provisions
- F. Project Site Plan and Elevations
- G. Infrastructure Improvements
- H. Traffic Improvements
- I. Sublease Amendments
- J. Total Project Budget
- K. Insurance Specifications
- L. Guaranty
- M. General Structure of Amendments to Funding Agreement
  - M-1 Amended Funding Agreement (to be attached upon completion of same)

**EXHIBIT A-1**  
**The Club Property Legal Description**

Lot 1, WOODSIDE CLUB COMPLEX, a subdivision of land in the City of Westwood, Johnson County, Kansas

**EXHIBIT A-2**  
**The City Property Legal Description**

Lot 2, WOODSIDE CLUB COMPLEX, a subdivision of land in the City of Westwood, Johnson County, Kansas

**EXHIBIT A-3**  
**Youthfront Property Legal Description**

All that part of Lot 5, WESTPORT VIEW, a subdivision of land in the Northwest Quarter of Section 2, Township 12 South, Range 25 East of the 6th Principal Meridian in the City of Westwood, Johnson County, Kansas, being bounded and described as follows: Beginning at the Southwest corner of Lot 1, WOODSIDE CLUB COMPLEX, a subdivision of land in said Johnson County, being also a point on the North right-of-way line of W. 47th Place, as now established; thence South 89°43'00" West, along said North right-of-way line, 319.14 feet to its intersection with the East right-of-way line of Rainbow Boulevard, as now established; thence North 00°30'02" West, along said East right-of-way line 331.14 feet to a point on the North line of said Northwest Quarter; thence North 89°49'35" East, along said North line, 322.03 feet to the Northwest corner of said Lot 1, WOODSIDE CLUB COMPLEX; thence South 00°00'00" East along the East line of said Lot 1, 330.53 feet to the Point of Beginning. Containing 106,060 square feet or 2.43 acres, more or less.



[illegible]

**EXHIBIT B-1**  
**Club Improvements**

The renovation of the existing clubhouse at the Club, and the addition of approximately 37,000 square feet of additional clubhouse space at the Club, including outdoor areas such as, but not limited to, the tennis courts – [including a structure to enclose at least four (4) tennis courts as approved by the City's Planning Commission] – and other related facilities and amenities. The Club Improvements shall also include the following improvements to the swimming pool area and facilities: new decking, pool furniture, new shaded areas near the baby pool, a water spout, splash pad, a hammock deck for children, a new slide to the main pool, and a renovated pool house with an upstairs game room.

**EXHIBIT B-2**  
**Project 2 (North) Improvements**

The construction of: (i) approximately 88 residential and/or commercial/office units, including, but not limited to, live/work units, condominium units, and/or apartment units, along with associated peripheral uses and area, including, but not limited to, lobbies, offices, parking lots, and parking garages, (ii) approximately 21,000 square feet of mixed-use commercial retail, and (iii) all associated infrastructure and utilities, as well as the construction of certain public improvements on behalf of the City.

**EXHIBIT B-3**  
**Project 3 (South) Improvements**

The construction of: (i) approximately 242 residential and/or commercial/office units, including, but not limited to, live/work units, condominium units, and/or apartment units, along with associated peripheral uses and area, including, but not limited to, lobbies, offices, parking lots, and parking garages, (ii) approximately 16,500 square feet of mixed-use commercial retail, and (iii) all associated infrastructure and utilities, as well as the construction of certain public improvements on behalf of the City.

**EXHIBIT C-1**  
**Club Project Area Legal Description**

Lot 1, WOODSIDE CLUB COMPLEX, a subdivision of land in the City of Westwood, Johnson County, Kansas

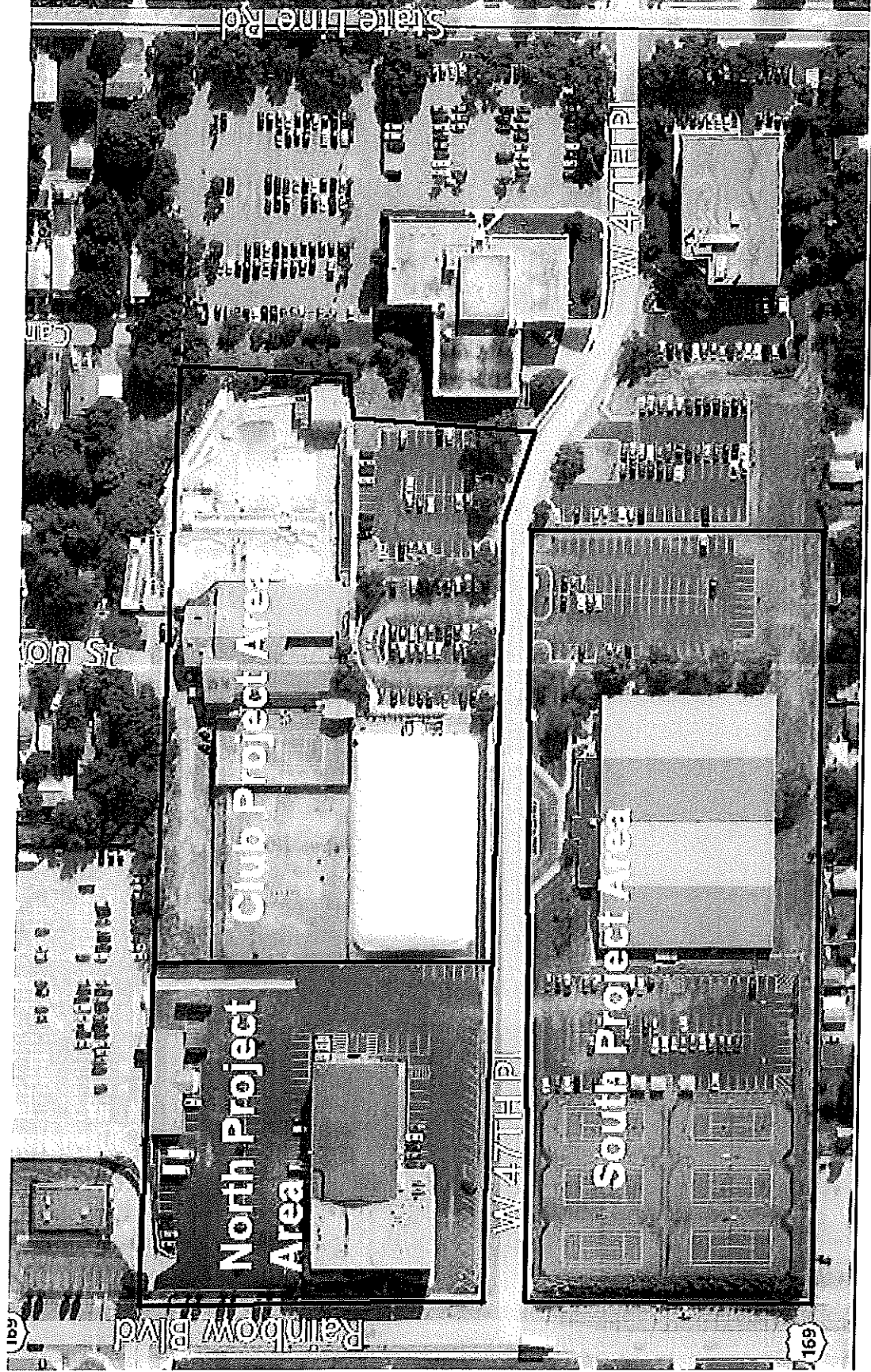
**EXHIBIT C-2**  
**North Project Area Legal Description**

All that part of Lot 5, WESTPORT VIEW, a subdivision of land in the Northwest Quarter of Section 2, Township 12 South, Range 25 East of the 6th Principal Meridian in the City of Westwood, Johnson County, Kansas, being bounded and described as follows: Beginning at the Southwest corner of Lot 1, WOODSIDE CLUB COMPLEX, a subdivision of land in said Johnson County, being also a point on the North right-of-way line of W. 47th Place, as now established; thence South 89°43'00" West, along said North right-of-way line, 319.14 feet to its intersection with the East right-of-way line of Rainbow Boulevard, as now established; thence North 00°30'02" West, along said East right-of-way line 331.14 feet to a point on the North line of said Northwest Quarter; thence North 89°49'35" East, along said North line, 322.03 feet to the Northwest corner of said Lot 1, WOODSIDE CLUB COMPLEX; thence South 00°00'00" East along the East line of said Lot 1, 330.53 feet to the Point of Beginning. Containing 106,060 square feet or 2.43 acres, more or less.

**EXHIBIT C-3**  
**South Project Area Legal Description**

Lot 2, WOODSIDE CLUB COMPLEX, a subdivision of land in the City of Westwood, Johnson County, Kansas

**EXHIBIT C-4**  
**Map Depicting Project Areas**





**EXHIBIT D**  
**Special Warranty Deed**

This indenture is made as of the \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between THE CITY OF WESTWOOD, KANSAS ("Grantor") and WOODSIDE REDEVELOPMENT, INC. ("Grantee").

In consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby SELLS AND CONVEYS to Grantee all of Grantor's interest in the real property described on Exhibit A attached hereto and incorporated herein by reference (the "Property"), SUBJECT TO (i) the permitted encumbrances listed on Exhibit B attached hereto and incorporated herein by reference (the "Permitted Encumbrances"), and (ii) that certain Woodside Village Redevelopment Agreement made as of December \_\_, 2011 between Grantor, and Grantee (the "Redevelopment Agreement"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Redevelopment Agreement, unless the context clearly indicates differently.

Grantor hereby reserves and retains unto itself a reversionary interest and the rights of reentry and reversion as provided in the Redevelopment Agreement. Grantee, for itself and its successors, assigns and successors in title, covenants and agrees that if Grantee shall fail to complete construction of the Improvements (as defined in Section 2.3 of the Redevelopment Agreement) for the South Phase on or before that date which is three (3) years following the date of Closing, subject only to Force Majeure, then Grantor shall have the right of reentry and the Property, which shall revert back to Grantor at Grantor's option.

Grantee, for itself and its successors, assigns and successors in title, covenants and agrees that it shall take the Property subject to such Reversionary Interests described above.

Grantor, for Grantor and Grantor's successors, covenants that Grantor is lawfully seized of Grantor's interest in the Property and has good right to convey Grantor's interest in the Property and guarantees the quiet possession of the Property against the claims of those claiming any right, interest or title through Grantor, except as may be provided for above, and further covenants that the Property is free from all encumbrances created by Grantor, except as may be provided for above, and Grantor will warrant and defend the Property against all lawful claims of those claiming any right, interest or title through Grantor, except as may be provided for above; but Grantor does not warrant title against those claiming any right, interest or title that arose prior to, or separate from, Grantor's interest in the Property.

GRANTOR:

**THE CITY OF WESTWOOD, KANSAS**

By: \_\_\_\_\_  
Steve Stubbers  
Mayor/CEO

GRANTEE:

**WESTWOOD REDEVELOPMENT, INC.**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF KANSAS            )  
  ) ss  
COUNTY OF JOHNSON        )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2011,  
by Steve Stubbers as Mayor of The City of Westwood, Kansas.

(SEAL)

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of  
\_\_\_\_\_ a \_\_\_\_\_ .

(SEAL)

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**EXHIBIT 1 TO DEED**

**Legal Description**

**EXHIBIT 2 TO DEED**

**Permitted Encumbrances**

**EXHIBIT E**  
**Permitted Encumbrances**

**(to be attached pursuant to Section 3.1(a)(iv))**

**EXHIBIT E-1**  
**Lender Protection Provisions**

The parties agree as follows:

A. Developer shall have the right to mortgage (including any increase, replacement, or renewal of said mortgage) its entire interest in the Released Property to a lender to secure any private loan for construction or permanent financing for the South Phase (a "Private Loan"), with such mortgage herein described as the "Permitted Mortgage". In the event that Developer obtains a Private Loan, and subject to the terms and conditions set forth in this **Exhibit E-1**, the parties hereby agree the Reversionary Interest set forth in the Agreement shall be subordinated to the Private Loan, in which event, the City and the lender in connection with a Private Loan ("Lender") shall execute such documents as may be necessary to evidence such subordinated interest.

B. The execution and delivery of such Permitted Mortgage shall not be deemed to constitute an assignment or transfer of the Agreement, nor shall Lender be deemed (prior to a foreclosure judgment or acquisition by deed in lieu of foreclosure) an assignee or transferee of this Agreement so as to require such Lender to assume the performance of any of the terms, covenants or conditions on the part of Developer to be performed under the Agreement, prior to a foreclosure judgment or acquisition by deed in lieu of foreclosure. Developer shall give prompt notice to the City of the execution and delivery of the Permitted Mortgage meeting the requirements of this **Exhibit E-1** and shall furnish it with conformed copies thereof.

C. Any Transferee (a "Transferee" being any Person who acquires the Released Property, whether as a result of any foreclosure sale, deed in lieu of foreclosure or other transfer authorized by law) shall take such Released Property subject to the Agreement as it relates to the South Phase, and shall, by such acquisition, be deemed to assume and agree to keep, observe and perform all of the terms, covenants and provisions of the Agreement on the part of Developer to be kept, observed and performed (including the obligation to cure defaults arising prior to such assumption curable by the payment of money or otherwise reasonably susceptible of being cured) as they relate to the South Phase. The City agrees to negotiate in good faith with such Transferee to make such amendments to the Agreement as may be reasonably necessary in light of then current market conditions and time periods.

D. If Developer or Lender shall provide to the City a copy of any such Permitted Mortgage, together with written notice specifying the name and address of the Lender, the City agrees that so long as any such Permitted Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by the Lender to the City, the provisions of this Subsection D shall apply. Following any such notification specifying the name and address of Lender:

(i) The City shall give Lender notice of each notice given to Developer in connection with the Reversionary Interest or the South Phase of the Project under the Agreement and this **Exhibit E-1** (such notice to be given in the same manner as provided in Section 10.12 of the Agreement) at said Lender's last address for notice provided to the City as provided above. No such notice to Developer shall be effective unless notice

thereof is so given to Lender. The City shall have no obligation to give notice to Lender at any address other than Lender's last address for notice provided to City.

(ii) Lender shall have the right, until one hundred and eighty (180) days after the later of: (x) expiration of any applicable cure period of Developer set forth in this Agreement, or (y) receipt of its copy of any such notice as is given to Developer, to remedy or cause to be remedied the event (such as an event of default by Developer) which is the basis of the notice; and the City shall accept performance by such Lender as performance by Developer; provided however, that if performance of the obligation cannot reasonably be completed within such one hundred eighty (180) day time periods, the parties will negotiate in good faith to adjust cure period as long as Lender shall have commenced to cure and is diligently pursuing the same to completion.

(iii) In the event that, pursuant to Section 2.2(a) of the Agreement, the City has the right to title to the Released Property under the Reversionary Interest (a "Reversionary Event"), the City shall take no action to effect such Reversionary Interest without first giving to Lender notice, after which Lender shall have three hundred sixty (360) days during which Lender may (x) institute foreclosure proceedings or otherwise acquire Developer's estate in and to the Released Property and to cure such Reversionary Event if the same can reasonably be cured by Lender after obtaining possession, or (y) institute foreclosure proceedings or otherwise acquire Developer's estate in and to the Released Property without curing the Reversionary Event if the same cannot reasonably be cured by Lender after obtaining possession. If Lender does not exercise such rights within said three hundred sixty (360) days, then the Lender shall agree with the City that the City shall thereafter have a right to exercise its Reversionary Interest, free and clear of the Permitted Mortgage.

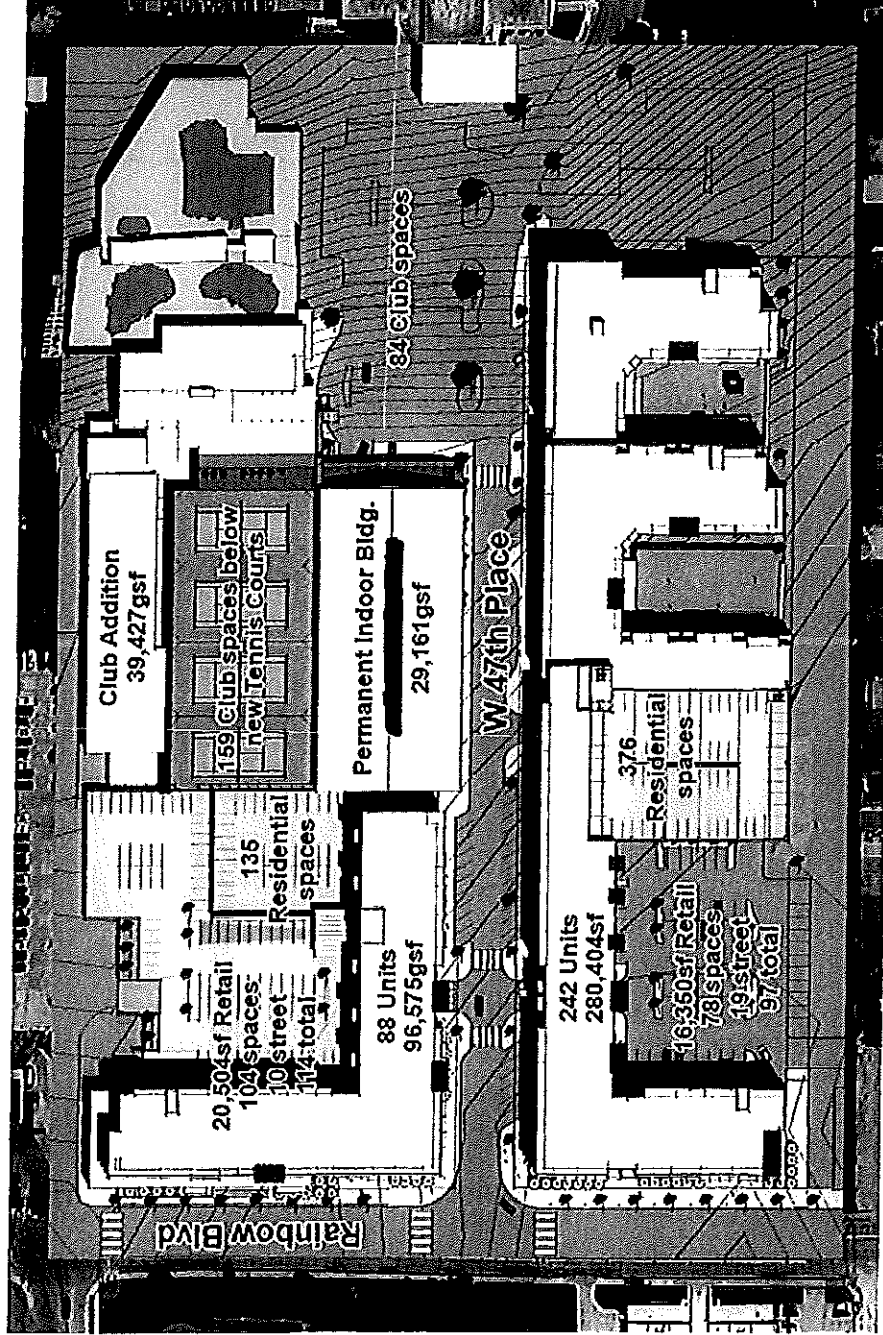
(iv) Lender shall not be required to continue possession or continue foreclosure proceedings under clause (iii) above if the particular Reversionary Event has been cured.

(v) The City's right to exercise the Reversionary Interest by reason of any Reversionary Event shall end, with respect to such Reversionary Event, on the date Lender or any purchaser at the foreclosure sale or by assignment in lieu thereof shall obtain possession of the Released Property as successor to Developer; provided that City has not, prior to such date, validly exercised its Reversionary Interest, and provided that any such Transferee has obtained possession in accordance with the provisions of this **Exhibit E-1**.

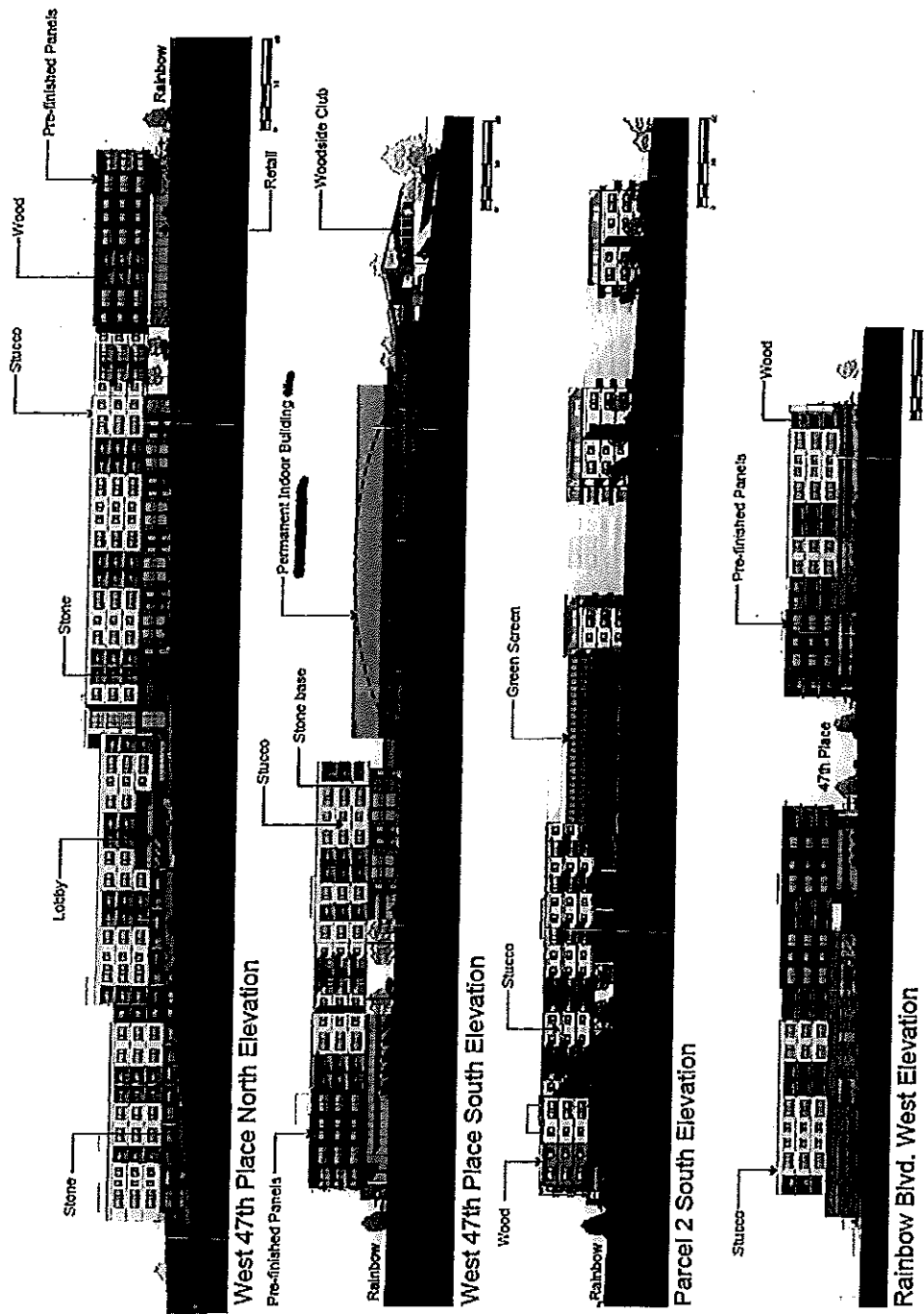
E. Nothing herein contained shall require Lender to cure or undertake to cure any default of Developer, unless and until Lender elects to exercise any right hereunder as to which such cure or undertaking to cure is a condition and subject always to the provisions of this **Exhibit E-1**.



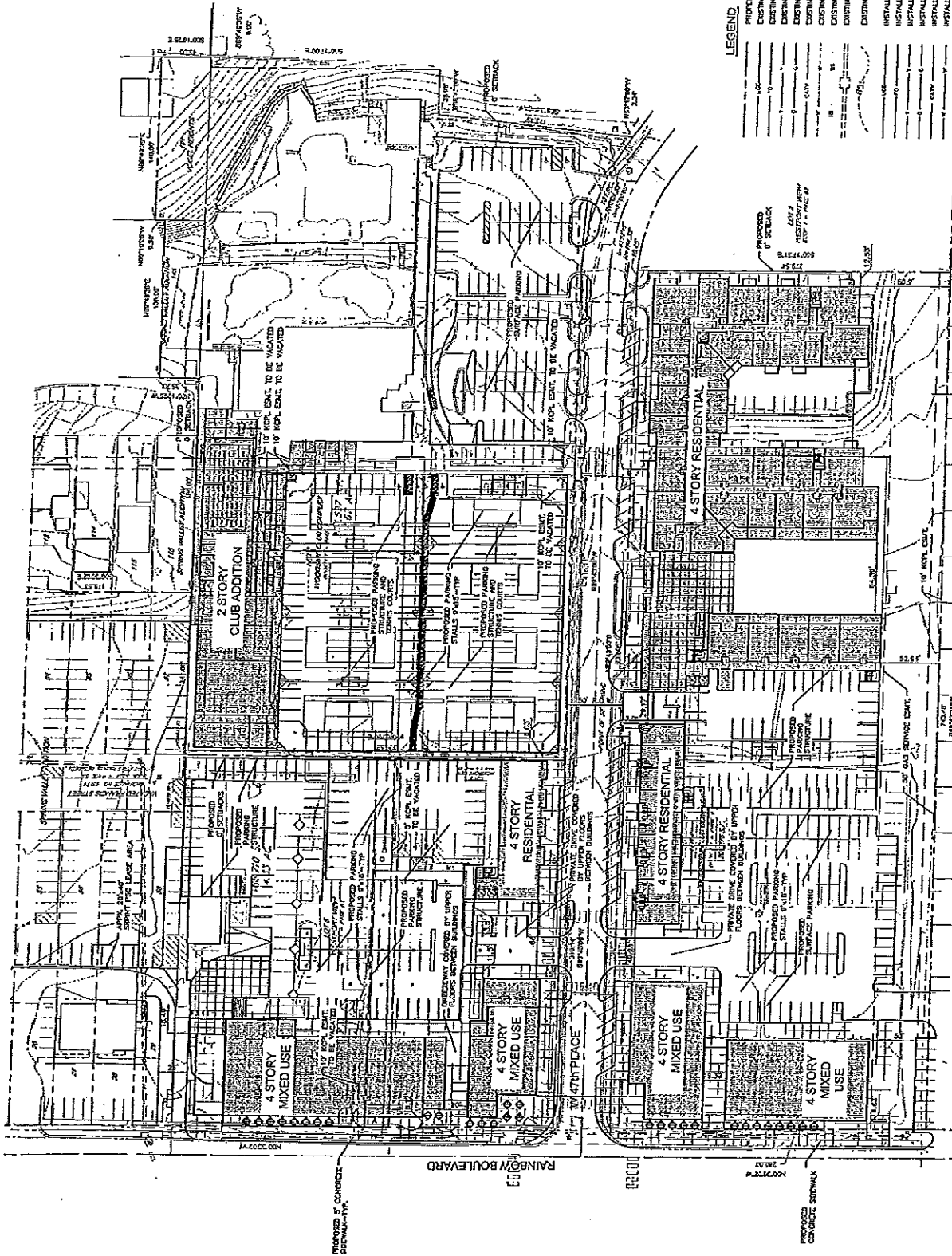
**EXHIBIT F**  
**Project Site Plan and Elevations**



DB04/805993.0002/5503699.3TD08

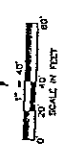


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**LEGEND**

PROPERTY LINE	EXISTING UNDERGROUND ELECTRIC SERVICE
EXISTING TIE-IN	EXISTING TELEPHONE SERVICE
EXISTING NATURAL GAS SERVICE	EXISTING CABLE TELEVISION
EXISTING WATER SERVICE	EXISTING SANITARY SEWER
EXISTING STORM SEWER	EXISTING GRADE CONTIGUOUS
INSTALL UNDERGROUND ELECTRIC SERVICE	INSTALL TIE-IN
INSTALL TELEPHONE SERVICE	INSTALL NATURAL GAS SERVICE
INSTALL CABLE TELEVISION	INSTALL WATER SERVICE
INSTALL SANITARY SEWER	INSTALL STORM SEWER



Sheep Adams Rockmore  
Hunt Projects  
CONCEPT

OSSEP ASSOCIATES  
Portland, Oregon  
Line 4

**TANNER & WHITE**  
25 July 2017

**Preliminary Plan - Woodside Village and Club**  
Westwood, CA 91361

**EXHIBIT G**  
**REQUIRED INFRASTRUCTURE IMPROVEMENTS & SERVICES<sup>1</sup>**

1. Utilities - Performance. Developer is responsible for the performance and payment of the following and in all cases Developer must comply with all Applicable Laws and Requirements, including the City's Manual of Infrastructure Standards for Right of Way Restoration. To the extent any of the required utilities are located within the City's right of way, after completion, the City will inspect to confirm the utilities were constructed in compliance with the City's requirements and if so, City will accept such utilities. Developer will be required to obtain the City's standard right-of-way permits.

(a) Burying of power and utility lines on Rainbow Boulevard within the Redevelopment District within the public right-of-way;

(b) Sanitary upgrades required for the Project, including all structures and underground piping;

(c) Storm water upgrades required for the Project, including all structures and underground piping;

(d) Maintenance, repair and replacement of all private sanitary structures and underground piping within the Redevelopment District but located outside of the City right-of-way; and

(e) Maintenance, repair and replacement of all storm water structures and underground piping within the Redevelopment District but located outside of the City right-of-way.

2. Utilities - Payment. Developer is responsible for the payment of the following costs:

(a) Those items set forth in Item 1 above for which Developer is responsible for the performance;

(b) Costs associated with installation of all necessary infrastructure for the required utility improvements for the construction of the Project, including all soft costs; and

(c) With regard to storm water, compliance with NPDES Phase II permit requirements, APWA 5600 as well as the BMP Manual developed by MARC and an APWA subcommittee. Developer will maintain all required BMPs as outlined and approved in the storm water management plan for the Project, and will provide documentation of annual inspections by a certified inspector under the direction of a professional engineer licensed in Kansas. A detailed report must be submitted to the City annually as proof of compliance. The requirements of the storm water management plan will be recorded in the Johnson County's Register of Deeds' office as a separate requirement running with the Property.

3. Services.

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<sup>1</sup> The City makes no representations as to the requirements of any other jurisdiction or utility having control over utilities or infrastructure associated with or necessary for the construction and operation of the Project.

(a) Developer is responsible for the performance and payment of all trash, recycling, and yard waste removal for the Project.

(i) No storage for trash, recycling or yard waste shall be adjacent to or visible by the single family homes bordering the south side of the Redevelopment District.

(ii) To the extent such times may be controlled by Developer, all pick-up times for trash, recycling, and yard waste must be between 8 AM and 8 PM.

(b) Developer is responsible for all construction, maintenance, repair and replacement of sidewalks, streetscape amenities, and public spaces serving the Project outside of the public right-of-way. This includes:

(i) Landscaping, irrigation, lighting, installation and upkeep of trash receptacles, seating, pruning and maintenance of landscaping, plant material, mulching; repair and replacement of sidewalks, snow removal, deicing, sweeping, cleaning and ADA compliance. Developer is responsible for all snow and ice removal for the angled parking spaces located on 47th Place and outside of the public right-of-way.

(ii) All installation, maintenance and cost of operation for lighting located outside of the public right-of-way.

(iii) All installation, maintenance and cost of operation for lighting located within the public right-of-way that is outside the standard contract between the City and the electric utility provider, including non-standard fixtures, new or additional fixtures, and adjustments to the location of fixtures.

4. Farmer's Market. Developer is responsible for the construction and maintenance of the improvements located within City-owned property necessary for the Farmer's Market.

**EXHIBIT H**  
**TRAFFIC AND RIGHT OF WAY MANAGEMENT**

Developer bears the cost of engineering and initial construction of all traffic and right of way improvements necessitated by the Project, as more fully set forth on this Exhibit H. Except as otherwise set forth herein, to the extent any of the required traffic and right of way improvements are located within the City's right of way, after completion, the City will inspect to confirm the improvements were constructed in compliance with the City's requirements and if so, City will accept such improvements and become responsible for maintenance and upkeep.<sup>1</sup>

**ALL PHASES**

1. Developer shall pay all costs for all right of way improvements including sidewalk and roadway improvements inclusive of pavement markings, traffic control devices, storm water inlets and junction boxes, curb and gutter, and additional pavement, required in connection with the construction of the Project, as set forth herein. All public improvements will be performed by Developer at Developer's cost in compliance with the requirements of the City or any other responsible jurisdiction.

2. Once constructed, the responsibility of the roadway, striping and traffic control devices (unless otherwise noted), curb and gutter, sidewalks, storm water improvements and pavement within the public right of way become the responsibility of the City and the State of Kansas, as applicable; provided that all such improvements have been constructed in accordance with the City's specifications and Applicable Laws and Requirements and accepted by the City or State, respectively.

3. Developer shall pay all costs for any required additional traffic signage and any damage done to existing roadways due to construction in connection with the Project.

4. As set forth on Exhibit G hereto, Developer shall pay all costs for street lighting for both the street and pedestrian access including cost and maintenance of the pedestrian lighting fixtures as well as ongoing power costs of the same; provided, however, any traffic control devices located within the public right-of-way will be inspected by the City after completion and transferred to the City upon acceptance. To the extent any traffic control device located within the public right-of-way meets the standard requirements of the public electric utility provider, such device will be included within the City's lease with such provider for all the traffic control devices within the City, and, therefore, City will maintain such devices in accordance with the terms of such lease.

5. Notwithstanding any terms or provisions of this Exhibit H to the contrary, nothing herein shall cause Developer to incur any costs or make any sidewalk, curb and gutter, lighting, or other improvements directly associated with any specific Phase until Developer has commenced construction of such Phase.

**REQUIRED FOR THE NORTH PHASE:**

6. Developer shall perform and pay all costs connected with the construction necessary for extending 47th Street into the Redevelopment District.

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<sup>1</sup> Notwithstanding anything set forth herein to the contrary, the City and Developer recognize and agree that the City may ultimately lease the traffic signals set forth herein from KCP&L or other parties, and in the event that such signals are leased, the parties shall negotiate the terms pursuant to which Developer would share in the cost of those leases, with the understanding that Developer's share shall be roughly equivalent to the costs of installing (and, as applicable, maintaining) the signals as required herein.

7. Developer shall perform and pay all costs for the signalization of 47th Place and Rainbow Boulevard, as well as the maintenance, repair and replacement thereof, except to the extent located in the public right-of-way.

8. Developer shall perform and pay all costs for necessary updates to the existing signal at 47th Street and Rainbow Boulevard, including interconnections with the new 47th Place and Rainbow Boulevard traffic signal.<sup>2</sup>

9. Developer shall perform and pay all costs for street improvements on 47th Place from the Club on the east to Rainbow Boulevard.

10. Developer shall perform and pay all costs for the construction of the pedestrian cross walks located mid-block on 47th Place.

11. Developer shall perform and pay all costs associated with the new turn lanes on Rainbow Boulevard, north and southbound.

12. Developer shall perform and pay all costs associated with new traffic signage on 47th Terrace.

**REQUIRED FOR CLUB PHASE AND/OR THE SOUTH PHASE:**

Any necessary work, costs or expenses due to compliance with the conditions contained in Sections 2.3 and 2.4 of this Agreement.

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<sup>2</sup> See Footnote 1.

**EXHIBIT I**  
**Sublease Amendments**

(to be attached)



**EXHIBIT J**  
**Total Project Budget**

**Woodside Village - Budget**

Category	Project 1 (North) - Club	Project 1 (North) - Residential / Retail	Project 1 (North) - Total	Project 2 (South) - Residential / Retail	Total Redevelopment Project Area
Land Acquisition	\$0	\$2,527,500	\$2,527,500	\$0	\$2,527,500
Sitework, Parking & Infrastructure Construction (Total)	\$3,300,000	\$3,600,000	\$6,900,000	\$6,525,000	\$13,425,000
Sitework & Infrastructure	\$550,000	\$1,200,000	\$1,750,000	\$1,500,000	\$3,250,000
Parking	\$2,700,000	\$1,800,000	\$4,500,000	\$4,200,000	\$8,700,000
Landscaping	\$50,000	\$100,000	\$150,000	\$325,000	\$475,000
Off Site Improvements	\$0	\$500,000	\$500,000	\$500,000	\$1,000,000
Vertical Construction	\$6,500,000	\$6,900,000	\$13,400,000	\$20,875,000	\$34,275,000
Soft Costs	\$1,250,000	\$3,875,000	\$5,125,000	\$7,800,000	\$12,925,000
<b>TOTAL</b>	<b>\$11,050,000</b>	<b>\$16,902,500</b>	<b>\$27,952,500</b>	<b>\$35,200,000</b>	<b>\$63,152,500</b>

**EXHIBIT K**  
**Insurance Specifications**

1. Worker's Compensation. Developer may self-insure, to the extent allowed by applicable law. The self-insured retention shall be that which is standard in the industry. Developer will then purchase excess Worker's Compensation Insurance with statutory limits over the self-insured retention. If self-insurance is not available under applicable state law, coverage will be purchased in accordance with the statutory requirements.
2. Commercial General Liability. Commercial general liability ("CGL") insurance providing coverage for those liabilities which is equal or broader than that currently covered by a CGL policy (a standard ISO CGL form) including at least the following hazards: (a) premises and operations; (b) products and completed operations; (c) independent contractors; and (d) blanket contractual liability for all legal contracts; such insurance to be on an "occurrence" form with a combined limit of not less than \$2,000,000.
3. Automobile Liability. Developer will purchase and maintain with primary limits of \$1,000,000.
4. Excess Liability. Developer will purchase and maintain excess liability insurance in an amount not less than \$5,000,000.
5. Special Perils Form Property Insurance. Developer will purchase on a replacement cost basis. Deductibles and limits will be standard to those in the industry, and the policy shall include an "Agreed Amount" endorsement. Earthquake and flood insurance, will be included if required and if available at a reasonable cost, fired vessel, boiler and machinery, and underground collapse may be required by the City as additional perils.

**EXHIBIT L**  
**Guaranty Agreement**

THIS GUARANTY AGREEMENT dated as of \_\_\_\_\_, 2011 (this "Guaranty"), between \_\_\_\_\_ ("Guarantor") and the City of Westwood, Kansas (the "City");

**WITNESSETH:**

A. The City and Woodside Development, Inc., a Kansas sub-chapter-s corporation ("Developer") have entered into that certain Redevelopment Agreement dated as of December \_\_\_, 2011 regarding the Woodside Village redevelopment project (the "Redevelopment Agreement"), and all capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the Redevelopment Agreement;

B. The Guarantor is related to Developer as follows: \_\_\_\_\_;

C. Guarantor desires that the City enter into the Redevelopment Agreement with Developer;

D. As a condition of entering into the Redevelopment Agreement, the City has required the execution and delivery of a guaranty in the form hereof by Guarantor;

F. Both Tax Increment Financing and Community Improvement District revenues (the "Public Financing Proceeds") are to be made available to Developer pursuant to the Redevelopment Agreement, which Public Financing Proceeds are to be applied by Developer to pay a portion of the costs of the Project for the benefit of the Developer; and

G. Developer and the Guarantor each separately and together derive substantial benefit from the operations of the Developer and the availability to the Developer of the Public Financing Proceeds, and the transactions contemplated in the Redevelopment Agreement;

**NOW, THEREFORE**, in consideration of the premises and in order to induce the City to enter into the Redevelopment Agreement and satisfy the terms thereof, the Guarantor does hereby, subject to the terms hereof, covenant and agree with the City as follows:

**ARTICLE I**  
**REPRESENTATIONS OF THE GUARANTOR**

**Section 1.1. Guarantor's Representations.** Guarantor does hereby represent and warrant that:

- (a) Guarantor is a [describe entity or individual] having power to enter into this Guaranty and neither this Guaranty nor the agreements herein contained contravene or constitute a default under any agreement, instrument or indenture to which he is a party; and

- (b) The execution of this Guaranty and the assumption by Guarantor of his obligations hereunder will result in a direct financial benefit to him.

## ARTICLE II THE GUARANTY

**Section 2.1. Guaranty.** Guarantor does hereby unconditionally and absolutely guarantee to the City the full, prompt and complete payment by Developer of all sums payable by Developer under the Redevelopment Agreement and the full, prompt and complete performance by Developer of, all and singular, the terms, covenants, conditions and provisions in the Redevelopment Agreement required to be performed by Developer for the \_\_\_\_\_ Phase of the Project (the "Guaranteed Obligations").

All payments by the Guarantor shall be made in lawful money of the United States of America. Each and every default in payment or performance of the Guaranteed Obligations shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

**Section 2.2. Guaranteed Obligations.** Without limiting the generality of Section 2.1 above, if for any reason whatsoever, Developer: (i) fails to pay any amounts due and payable under the Redevelopment Agreement, including without limitation, the Rental License Fees for the \_\_\_\_\_ Phase of the Project, or (ii) fails to promptly and fully pay and discharge all Total Project Costs as required by the Redevelopment Agreement to be paid by Developer for the \_\_\_\_\_ Phase of the Project, then the City, subject to its obligations to first seek payment from the Developer (as set forth in Section 3.1 below), in addition to the City's other rights, remedies, and resources, whether existing hereunder, under the Redevelopment Agreement or otherwise, may proceed under this Article II. In any such event, immediately after the City notifies Guarantor of Developer's failure to satisfy any condition in the Redevelopment Agreement, Guarantor agrees, at Guarantor's sole cost and expense, to perform and discharge any such obligations in accordance with and subject to the Redevelopment Agreement and to diligently pursue such performance in order to fully and completely perform and discharge any and all such obligations of the Redevelopment Agreement within the time and in the manner specified in and in accordance with the Redevelopment Agreement.

**Section 2.3 Guaranty Unconditional.** Except as set forth in Section 3.1 below, the obligations of the Guarantor under this Guaranty shall be absolute and unconditional and shall remain in full force and effect, subject to termination under Section 5.4(b) below, until the Guaranteed Obligations shall have been paid and performed, or provision made for such payment and performance, and such obligations shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following, whether or not with notice to, or the consent of, the Guarantor:

- (a) The failure to give notice to the Guarantor of the occurrence of an event or default under the terms and provisions of this Guaranty or the Redevelopment Agreement;

- (b) The waiver of the payment, performance or observance by the City or the Guarantor of any of the obligations, covenants or agreements of any of them contained in the Redevelopment Agreement or in this Guaranty;
- (c) The extension of the time for payment or performance under this Guaranty or of the time for performance of any other obligations, covenants or agreements under or arising out of the Redevelopment Agreement or the extension or the renewal of either;
- (d) The modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the Redevelopment Agreement, provided that the obligations of the Guarantor are not thereby increased or expanded without its prior written consent;
- (e) Except as set forth in Section 3.1 below, any failure, omission, delay or lack on the part of the City to enforce, assert or exercise any right, power or remedy conferred on the City in this Guaranty, or any other act or acts on the part of the City;
- (f) The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshaling or assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting the City, the Developer or the Guarantor or any of the assets of any of them, or any contest of the validity of this Guaranty in such proceeding;
- (g) The default or failure of the Guarantor to perform fully any of its obligations set forth in the Guaranty.

**Section 2.4 No Set off.** No set off, counterclaim, reduction or diminution of any obligation, or any defense of any kind or nature which the Guarantor has or may come to have against the City shall be available hereunder to the Guarantor against the City respecting its obligations hereunder; provided that nothing contained herein shall prohibit the Guarantor from asserting any separate or related claim against the City in a separate proceeding, which proceeding shall in no way delay the prompt performance by the Guarantor of its obligations hereunder.

### **ARTICLE III REMEDIES ON DEFAULT**

**Section 3.1 Default Remedies.** Upon a default in any Guaranteed Obligations when and as the same shall become due (after expiration of any applicable notice and cure periods) whether at the stated maturity thereof, by acceleration or otherwise, the City may proceed hereunder only after it has made demands for payment on Developer under the Redevelopment Agreement and failed to receive payment from Developer. Notwithstanding, the City may not file suit against the Guarantor hereunder unless such filing is simultaneous with, or subsequent to, the filing of suits against Developer.

**Section 3.2 Waiver of Notice.** The Guarantor hereby expressly waives notice from the City of its acceptance and reliance on this Guaranty. The Guarantor agrees to pay all reasonable costs, expenses and fees, including all reasonable attorneys' fees and expenses, which may be incurred by the City in enforcing or attempting to enforce this Guaranty following any default on the Guarantor's part hereunder, whether the same shall be enforced by suit or otherwise.

**Section 3.3 Remedies not Exclusive.** No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Guaranty or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but subject to the terms of Section 3.1, any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it in this Guaranty, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. In the event any provision contained in this Guaranty should be breached by the Guarantor and thereafter such breach is duly waived by the City, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder. No waiver, amendment, release or modification of this Guaranty shall be established by conduct, custom or course of dealing, but may be effected solely by an instrument in writing duly executed by the City. Notwithstanding the foregoing, Guarantor's liability hereunder for monetary amounts shall be limited to the actual amount of damages, if any, in question, and under no circumstances shall Guarantor be liable for any remote or consequential damages.

#### **ARTICLE IV GENERAL COVENANTS AND AGREEMENTS**

**Section 4.1. Minimum Net Worth.** Guarantor hereby covenants and agrees that it shall have and maintain a net worth of not less than \$\_\_\_\_\_ for the duration of the term of this Guaranty (as the same may be terminated pursuant to Section 5.4(b) below).

**Section 4.2** [Intentionally Deleted]

**Section 4.3. Beneficiaries.** This Guaranty is entered by the Guarantor for the benefit of the City.

**Section 4.4 Submission to Jurisdiction.** Guarantor covenants that it is and will remain subject to service of process in the State of Kansas so long as this Guaranty is in effect.

#### **ARTICLE V MISCELLANEOUS PROVISIONS**

**Section 5.1 Definitions of Words and Terms.** For all purposes of this Guaranty, except as otherwise provided or unless the context otherwise requires, words and terms used in this Guaranty have the same meanings as set forth in the Redevelopment Agreement.

**Section 5.2 Guaranty Binding on Successors.** The agreements obtained herein on the part of the Guarantor shall inure to and be binding upon its successors and assigns, including without limitations any successor or assign in any transaction expressly permitted by Section 4.1 hereof.

**Section 5.3 Entire Agreement.** This Guaranty constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the Guarantor and the City with respect to the subject matter hereof and may be executed simultaneously in several counterparts, each of which shall be deemed an original, and all of which together shall constitute but one and the same instrument..

**Section 5.4 Term of Guaranty.** Except as otherwise set forth herein, and as specifically set forth in Section 5.4(b) below, this Guaranty shall be continuing and there shall be no termination as respects Guarantor's liability or responsibility hereunder for or with respect to any of the Guaranteed Obligations. When the \_\_\_\_\_ Phase of the Project has been completed, Guarantor shall have the right to request that the City certify that this Guaranty is terminated, and if the City, acting reasonably, determines that the \_\_\_\_\_ Phase of the Project has been completed, it will certify to Guarantor that this Guaranty is terminated and shall return to Guarantor the original copy of this Guaranty.

**Section 5.5 Severability.** The invalidity or unenforceability of any one or more phrases, sentences, clauses or Sections in this Guaranty shall not affect the validity or enforceability of any remaining portions of this Guaranty.

**Section 5.6 Governing Law.** This Guaranty shall be governed by and be construed and interpreted in accordance with the laws of the State of Kansas.

(Signature pages to follow).

**IN WITNESS WHEREOF**, Guarantor has caused this Guaranty to be executed in his name as of the date first above written.

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ACCEPTED:

**THE CITY OF WESTWOOD, KANSAS**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT M-1**  
**Amended Funding Agreement**

**(to be attached upon completion of same)**