

COUNCIL ACTION FORM

City Attorney Report

Meeting Date: January 9, 2020

Staff Contact: Ryan Denk, City Attorney

Agenda Item: Consideration of First Amendment to the Temporary Construction Easement on Woodside Club property.

Background / Description of Item:

In 2014 the City of Westwood granted, as being the property owner of record, a Temporary Construction Easement on the Woodside Club property to help facilitate the construction of Woodside Village North building and parking structure. This easement generally covers the area of the club's western-most outdoor tennis court (Court #4 North).

Shoring, or temporary concrete and steel retaining walls was utilized adjacent to the Woodside indoor bubble courts and along 47th Place during the excavation and construction of Woodside Village. This more-expensive shoring technique allowed for the construction of the eastern and southern retaining walls of the parking structure adjacent to the Woodside Club property and adjacent 47th Place, 15 feet below street surface without disturbing the street or the indoor tennis structure. The granting of a temporary construction easement on the Woodside Club property allowed for a more cost effective open trench excavation construction technique to be utilized north of the indoor tennis court bubble.

The temporary construction easement allowed for the construction activity until December 31, 2018, at which time the tennis court was to be restored unless it is being relocated and replaced in conjunction with the Woodside Club expansion project.

The proposed First Amendment to the Temporary Construction Easement on Woodside Club property extends the deadline on when the tennis court is to be resorted. The proposed amendment aligns with the construction phasing deadline noted within the Woodside Village Redevelopment Agreement document. This amendment requires reconstruction on the earlier of: (1) January 12, 2022 if they fail to commence Club improvements as required by the Redevelopment Agreement; or, (2) by January 12, 2025 with the completion of the Club expansion project phase.

Staff Recommendation:

Staff recommends that Council authorize the Mayor to sign the First Amendment to the Temporary Construction Easement on Woodside Club property.

FIRST AMENDMENT TO TEMPORARY CONSTRUCTION EASEMENT

THIS FIRST AMENDMENT TO TEMPORARY CONSTRUCTION EASEMENT (“**Amendment**”) is made as of _____, 2019, by and among the CITY OF WESTWOOD, KANSAS, a municipal corporation of the State of Kansas, its heirs, successors and assigns (“**Grantor**”), WOODSIDE REDEVELOPMENT, LLC, a Kansas limited liability company, and WOODSIDE VILLAGE NORTH LLC, a Kansas limited liability company (collectively, “**Grantee**”), and WOODSIDE RACQUET CLUB MANAGEMENT, INC., a Kansas corporation (“**Club**”). All capitalized terms used herein shall have the same meaning as set forth in the Temporary Construction Easement (defined below).

RECITALS:

WHEREAS, Grantor, Grantee, and Club entered into that certain Temporary Construction Easement dated September 18, 2014 (the “**Temporary Construction Easement**”) for the purposes of constructing, improving, reconstructing, and maintaining that certain North Phase, as the same is defined in the Woodside Village Redevelopment Agreement, dated January 12, 2012, as the same is amended from time to time, by and between Grantor and Woodside Redevelopment, LLC (as amended, the “**Redevelopment Agreement**”); and

WHEREAS, as of the date of the Temporary Construction Easement, there existed within the Temporary Construction Easement Area a tennis court; and

WHEREAS, the Temporary Construction Easement required the Club, to the extent that no replacement tennis court had been constructed pursuant to the Redevelopment Agreement on or prior to December 31, 2018, to replace the tennis court at its own expense; and

WHEREAS, pursuant to the Redevelopment Agreement between Grantee and Grantor at Section 6.6(a), Club is to commence construction of Club Improvements as that term is defined within Section 2.3(a)(i) of the Redevelopment Agreement, within ten (10) years following the Effective Date of the Redevelopment Agreement, which ten (10) year term will lapse on January 12, 2022; and,

WHEREAS, pursuant to the Redevelopment Agreement between Grantee and Grantor at Section 6.7 the Club is required to achieve Substantial Completion of the Club Improvements three (3) years after the Club Commencement Date, which at the latest would set the Club Completion date at January 12, 2025; and,

WHEREAS, Grantor, Grantee and Club desire to amend the Temporary Construction Easement to provide that the deadline for constructing the replacement tennis court shall be the earlier of the Club Commencement Date of January 12, 2022 if Club fails to commence construction by this date, or the Club Completion Date of January 12, 2025 if the Club timely commences construction of the Club Improvements.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor, Grantee and Club do agree to amend the Temporary Construction Easement as follows:

1. The sixth full paragraph of the Temporary Construction Easement is hereby deleted in its entirety and shall be replaced with the following:

The parties acknowledge that, pursuant to the Redevelopment Agreement, the Property is to undergo certain improvements (defined therein as the Club Improvements)

which include the addition of, among other things, certain tennis courts upon the Property. The replacement of the tennis court located within the Temporary Construction Easement Area and to be demolished during construction of the North Phase, which replacement may be located elsewhere on the Property, is anticipated to be completed as part of said Club Improvements under the Redevelopment Agreement. To the extent that the Club Improvements have not been commenced on or before January 12, 2022, then the Club hereby agrees that it shall immediately commence replacement of said tennis court at its own expense. In the event that the Club Improvements have been commenced on or before January 12, 2022, then the Club hereby agrees to complete construction of the replacement tennis court on or before the Club Completion date of January 12, 2025.

2. This Amendment may be executed in any number of counterparts. For purposes of this Amendment, signatures by facsimile, whether scanned, "pdf'd," emailed or sent telephonically shall be binding to the same extent as original signatures.

3. Except as specifically amended hereby, the Temporary Construction Easement remains in full force and effect and is hereby ratified by the parties hereto. If any of the terms or conditions of the Temporary Construction Easement conflict with this Amendment, the terms and conditions of this Amendment shall control.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF said Grantor has hereunto set its hand and seal the day and year first above written.

GRANTOR:

CITY OF WESTWOOD, KANSAS, a municipal corporation of the State of Kansas

By: _____
John M. Yé, Mayor

STATE OF KANSAS)
)ss:
COUNTY OF JOHNSON)

On this _____ day of _____, 2019, before me, the undersigned, a notary public in and for said county and state, personally appeared John Yé, Mayor of the City of Westwood, Kansas, known to me to be the person who executed the within Temporary Construction Easement on behalf of the City of Westwood, Kansas and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have unto subscribed my name and affixed my official seal the day and year last written.

Notary Public

My commission expires:

IN WITNESS WHEREOF said Grantee has hereunto set its hand and seal the day and year first above written.

GRANTEE:

WOODSIDE REDEVELOPMENT, LLC, a Kansas limited liability company

By: _____
Blair Tanner, its Manager & President

STATE OF KANSAS)
)ss:
COUNTY OF JOHNSON)

On this _____ day of _____, 2019, before me, the undersigned, a notary public in and for said county and state, personally appeared Blair Tanner, Manager and President of Woodside Redevelopment, LLC, known to me to be the person who executed the within Temporary Construction Easement on behalf of said limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have unto subscribed my name and affixed my official seal the day and year last written.

Notary Public

My commission expires:

IN WITNESS WHEREOF said Grantee has hereunto set its hand and seal the day and year first above written.

GRANTEE:

WOODSIDE VILLAGE NORTH LLC, a Kansas limited liability company

By: Woodside Redevelopment, LLC, its Manager

By: _____
Blair Tanner, its Manager & President

STATE OF KANSAS)
)ss:
COUNTY OF JOHNSON)

On this _____ day of _____, 2019, before me, the undersigned, a notary public in and for said county and state, personally appeared Blair Tanner, Manager and President of Woodside Redevelopment, LLC, the Manager of Woodside Village North LLC, known to me to be the person who executed the within Temporary Construction Easement on behalf of said limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have unto subscribed my name and affixed my official seal the day and year last written.

Notary Public

My commission expires:

IN WITNESS WHEREOF said Club has hereunto set its hand and seal the day and year first above written.

CLUB:

WOODSIDE RACQUET CLUB MANAGEMENT,
INC., a Kansas corporation

By: _____
Blair Tanner, its President

STATE OF KANSAS)
)ss:
COUNTY OF JOHNSON)

On this _____ day of _____, 2019, before me, the undersigned, a notary public in and for said county and state, personally appeared Blair Tanner, President of Woodside Racquet Club Management, Inc., known to me to be the person who executed the within Temporary Construction Easement on behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have unto subscribed my name and affixed my official seal the day and year last written.

Notary Public

My commission expires:

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT (this "**Easement**") is entered into this ~~13th~~ day of September, 2014 (the "**Effective Date**"), by and among the CITY OF WESTWOOD, KANSAS, a municipal corporation of the State of Kansas, its heirs, successors and assigns, owner of the Property herein described ("**Grantor**"), WOODSIDE REDEVELOPMENT, LLC, a Kansas limited liability company, and WOODSIDE VILLAGE NORTH LLC, a Kansas limited liability company (collectively, "**Grantee**"), and WOODSIDE RACQUET CLUB MANAGEMENT, INC., a Kansas corporation ("**Club**"). Club hereby executes this Easement for the purposes of consenting to the terms hereof as tenant of the Property:

WITNESSETH:

In consideration of the sum of Ten and 00/100 Dollars (\$10.00), and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned Grantor does hereby convey and release to the Grantee a temporary construction easement (the "**Temporary Construction Easement**") over and upon that certain real property (the "**Property**") hereinafter more particularly designated and described, to wit:

SEE LEGAL DESCRIPTION OF PROPERTY ATTACHED HERETO AS EXHIBIT "A", AND DEPICTION OF TEMPORARY CONSTRUCTION EASEMENT AREA ATTACHED HERETO AS "EXHIBIT B"

For the purposes hereof, the area of the Temporary Construction Easement, as depicted on Exhibit "B" hereto, shall be defined and the "**Temporary Construction Easement Area**". For all purposes herein, the Temporary Construction Easement shall be confined to the Temporary Construction Easement Area.

The Temporary Construction Easement shall be for the purposes of constructing, improving, reconstructing, and maintaining that certain North Phase, as the same is defined in that certain Woodside Village Redevelopment Agreement, dated January 12, 2012, as the same is amended from time to time, by and between Grantor and Woodside Redevelopment, LLC (as amended, the "**Redevelopment Agreement**"). Said right of entrance, occupation, construction, and use shall commence as of the Effective Date and continue until the earlier of the completion of the construction of the North Project Area, or December 31, 2016.

The parties agree that Grantee shall be responsible for cleaning up the Temporary Construction Easement Area, including the removal of any and all construction debris, following completion of the construction of the North Phase; provided that Grantee shall have no obligation to reconstruct the tennis court or any other improvements located within the Temporary Construction Easement Area as of the Effective Date.

The parties acknowledge that, pursuant to the Redevelopment Agreement, the Property is to undergo certain improvements (defined therein as the Club Phase) which include the addition of, among other things, certain tennis courts upon the Property. The replacement of the tennis court located within the Temporary Construction Easement Area and to be demolished during construction of the North Phase, which replacement may be located elsewhere on the Property, is anticipated to be completed as part of said Club Phase under the Redevelopment Agreement. To the extent that no replacement tennis court has been constructed pursuant to the Redevelopment Agreement on or prior to December 31, 2018, the Club hereby agrees that it shall replace said tennis court at its own expense.

Grantee may record this Temporary Construction Easement with the Johnson County, Kansas Records and Tax Administration.

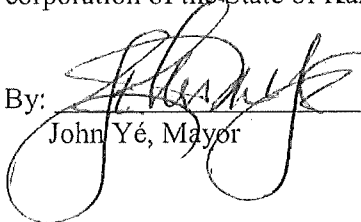
TO THESE COVENANTS, the Grantor does hereby consent and agree.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF said Grantor has hereunto set hand and seal the day and year first above written.

GRANTOR:

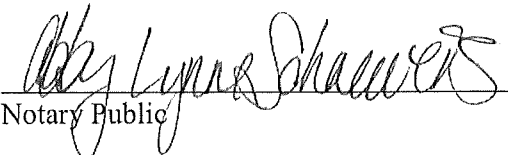
CITY OF WESTWOOD, KANSAS, a municipal corporation of the State of Kansas

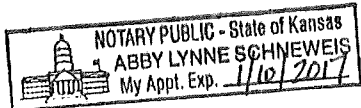
By: 
John Yé, Mayor

STATE OF KANSAS)
)ss:
COUNTY OF JOHNSON)

On this 29th day of September, 2014, before me, the undersigned, a notary public in and for said county and state, personally appeared John Yé, Mayor of the City of Westwood, Kansas, known to me to be the person who executed the within Temporary Construction Easement on behalf of the City of Westwood, Kansas and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have unto subscribed my name and affixed my official seal the day and year last written.


Notary Public



My commission expires:

January 10, 2017

IN WITNESS WHEREOF said Grantee has hereunto set hand and seal the day and year first above written.

GRANTEE:

WOODSIDE REDEVELOPMENT, LLC, a Kansas limited liability company

By: 
Blair Tanner, its Manager & President

CALIFORNIA
STATE OF KANSAS)
CALIFORNIA LOS ANGELES) ss:
COUNTY OF JOHNSON)
CALIFORNIA

On this 22 day of September, 2014, before me, the undersigned, a notary public in and for said county and state, personally appeared Blair Tanner, Manager and President of Woodside Redevelopment, LLC, known to me to be the person who executed the within Temporary Construction Easement on behalf of said limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have unto subscribed my name and affixed my official seal the day and year last written.



Notary Public

My commission expires:

02-28-2018

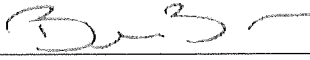


IN WITNESS WHEREOF said Grantee has hereunto set hand and seal the day and year first above written.

GRANTEE:

WOODSIDE VILLAGE NORTH LLC, a Kansas limited liability company

By: Woodside Redevelopment, LLC, its Manager

By: 
Blair Tanner, its Manager & President

~~CALIFORNIA~~
STATE OF KANSAS)
~~Los Angeles~~)
COUNTY OF JOHNSON)
~~ONE~~

On this 22 day of September, 2014, before me, the undersigned, a notary public in and for said county and state, personally appeared Blair Tanner, Manager and President of Woodside Redevelopment, LLC, the Manager of Woodside Village North LLC, known to me to be the person who executed the within Temporary Construction Easement on behalf of said limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

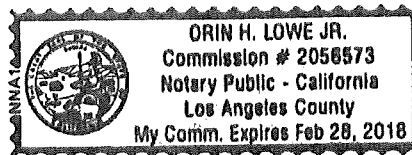
IN TESTIMONY WHEREOF, I have unto subscribed my name and affixed my official seal the day and year last written.



Notary Public

My commission expires:


02.28.2018



IN WITNESS WHEREOF said Club has hereunto set hand and seal the day and year first above written.

CLUB:

WOODSIDE RACQUET CLUB MANAGEMENT, INC., a Kansas corporation

By: 
Blair Tanner, its President

^{CAVEROTHA}
STATE OF KANSAS)
^{the} Los Angeles)ss:
COUNTY OF JOHNSON)
₀₆₂

On this 22 day of September, 2014, before me, the undersigned, a notary public in and for said county and state, personally appeared Blair Tanner, President of Woodside Racquet Club Management, Inc., known to me to be the person who executed the within Temporary Construction Easement on behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have unto subscribed my name and affixed my official seal the day and year last written.



Notary Public

My commission expires:

02.28.2018



EXHIBIT A

Legal Description

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

Exhibit A

Exhibit B

Depiction of Temporary Construction Easement Area

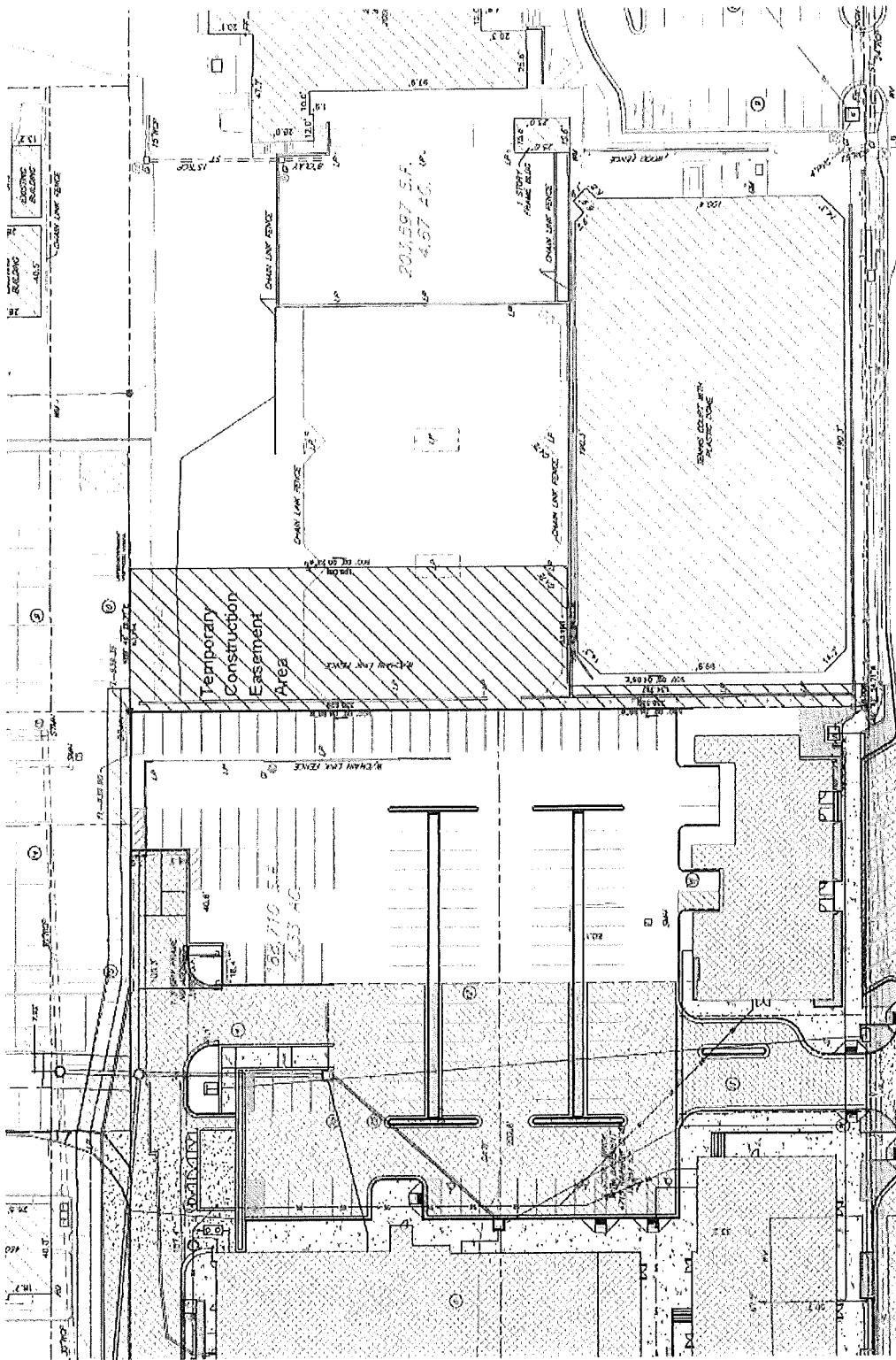


Exhibit B