

**SEVENTH AMENDMENT TO  
WOODSIDE VILLAGE REDEVELOPMENT AGREEMENT**

THIS SEVENTH AMENDMENT TO WOODSIDE VILLAGE REDEVELOPMENT AGREEMENT (this “**Amendment**”) is entered into this 13<sup>th</sup> day of February, 2014, by and between THE CITY OF WESTWOOD, KANSAS (“**City**”), and WOODSIDE REDEVELOPMENT, LLC, a Kansas limited liability company (“**Developer**”).

**RECITALS**

WHEREAS, City and Developer entered into that certain Woodside Village Redevelopment Agreement, dated January 12, 2012, as amended pursuant to that certain First Amendment to Woodside Village Redevelopment Agreement, dated February 9, 2012, as the same was further amended pursuant to that certain Second Amendment to Redevelopment Agreement, dated March 12, 2012, as the same was further amended pursuant to that certain Third Amendment to Woodside Village Redevelopment Agreement, dated April 12, 2012, as the same was further amended pursuant to that certain Fourth Amendment to Woodside Village Redevelopment Agreement, dated May 10, 2012, as the same was further amended pursuant to that certain Fifth Amendment to Woodside Village Redevelopment Agreement, dated June 14, 2012, and as the same was further amended pursuant to that certain Sixth Amendment to Woodside Village Redevelopment Agreement, dated July 12, 2012 (as amended, the “**Redevelopment Agreement**”), pursuant to which the City and Developer set forth those rights and obligations of each party as they relate to the redevelopment of the Redevelopment District (as defined therein);

WHEREAS, Section 4.8 of the Redevelopment Agreement allows for the issuance of bonds associated with the Project;

WHEREAS, Developer has requested the City to issue bonds in a manner which necessitates amendment to some provisions of the Redevelopment Agreement;

WHEREAS, Section 8.2 and Exhibit L of the Redevelopment Agreement require Developer to provide a Guaranty to the City prior to commencement of each Phase of the Project;

WHEREAS, Developer anticipates commencement of the North Phase of the Project and accordingly, the Parties desire to enter into this Amendment to further define the Guaranty obligations;

WHEREAS, Section 6.11 of the Redevelopment Agreement requires that Developer’s General Contractor obtain payment and performance bonds as to all Phases of the Project other than the Club Phase;

WHEREAS, Developer has requested the City to waive the payment and performance bond requirements stated within Section 6.11 of the Redevelopment Agreement in the event that Neighbors Construction is contracted to provide General Contractor services relating to any Phase of the Project other than the Club Phase as Neighbors does not provide payment and performance bonds;

WHEREAS, the Parties desire to enter into this Amendment to further define the Parties' rights in the event that Neighbors is retained on this Project;

WHEREAS, on October 10, 2013, the City approved a new Redevelopment Project Plan in connection with the Project, which permits the issuance of Bonds in connection with the Project;

WHEREAS, the parties desire to revise the Redevelopment Agreement for the purposes of making the same consistent with the aforementioned new Redevelopment Project Plan, as well as updating the Total Project Budget.

NOW, THEREFORE, in consideration of the foregoing and the covenants and obligations contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and between City and Developer as follows:

1. Definitions. Capitalized terms used herein but not defined shall have the meaning given to such terms in the Redevelopment Agreement.

2. Bonds. The following revisions shall be made to the Redevelopment Agreement for the purposes of permitting the issuance of Bonds in connection with the Project:

- a. The following sentence shall be inserted at the end of Section 4.1 of the Redevelopment Agreement, Source of Funds:

“Notwithstanding any provisions of this Agreement to the contrary, in the event that Bonds are issued in connection with the Project, Developer shall not be required to advance any Redevelopment Project Costs as a prerequisite to payment of any such Redevelopment Project Costs from the proceeds of the Bonds, and Developer may request that any such Redevelopment Project Costs incurred by Developer be paid directly to any contractor, service provider, or otherwise from the proceeds of the Bonds.”

- b. The first sentence of Section 4.7(a) of the Redevelopment Agreement shall be deleted in its entirety and replaced as follows:

“In order to receive payment or reimbursement for Reimbursable Project Costs, as the case may be, 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.”

- c. Section 4.7(d) of the Redevelopment Agreement is hereby deleted in its entirety.

3. Developer's Private Contribution. Section 4.6(a) of the Redevelopment Agreement shall be deleted in its entirety and replaced as follows:

“(a) Developer’s private contribution of approximately \$65,152,500 or such 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.”

4. Payment and Performance Bonds. Section 6.11 of the Redevelopment Agreement shall be deleted in its entirety and replaced as follows:

“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 connection with: (i) the cost of any and all of the Public Improvements, and (ii) the cost of any private Improvements in connection with the Project, unless and to the extent that the General Contractor is Neighbors Construction, in which case the requirement in this subsection (ii) shall be waived by the City. Said bond 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, Developer’s construction lender, and the City.”

5. Payment of Taxes and Other Charges. The Redevelopment Agreement shall be revised such that the first sentence of Section 7.6 thereof shall be modified to read as follows:

“Developer, or its successors in title, 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. The obligations set forth in the prior sentence shall run with the land and shall not be personal to the Developer or the guarantor under the Guaranty.”

6. Direct Payment of Subcontractors. In the event that, and to the extent that, Neighbors Construction shall be the General Contractor for the North Phase of the Project, Developer hereby covenants and agrees with the City that Developer shall arrange to pay all of the subcontractors on the North Phase directly from the construction escrow or otherwise and that such payments to subcontractors shall not be made to or through the General Contractor.

7. Guaranty of North Phase. In connection with the guaranty requirements set forth in Section 8.2 of the Agreement, Developer hereby agrees that Blair Tanner shall personally guaranty the North Phase of the Project by executing the form of Guaranty attached to this Amendment as Exhibit L (North Phase), which Guaranty shall be executed and delivered to the City on or before any Bonds are issued for the North Phase. Additionally, the parties hereby understand and agree that that the Guaranty given to the City shall not be subject or subordinate to any personal guaranty given by Blair Tanner to the private lender in connection with the North Phase.

8. Definitions. The following definitions set forth in Annex 1, Definitions, to the Redevelopment Agreement shall be deleted in their entireties and replaced as follows:

- a. **“Ground Lease”** means that certain long term Ground Lease of the City Property dated as of May 1, 1981, as amended, between the City and the Foundation as set forth in Recital C.
- b. **“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 in Section 4.4 hereof, or in the event that Bonds are issued pursuant to Section 4.8 hereof, the proceeds of any such Bonds.
- c. **“Redevelopment Project Plan”** means that certain Redevelopment Project Plan adopted by the City pursuant to Ordinance No. 940 on October 10, 2013.
- d. **“Reimbursable Project Costs”** means the amount of Developer’s “redevelopment project costs”, as defined in the Act, and Developer’s “costs”, as defined in the CID Act, as the case may be, as each are certified pursuant to Section 4.7 hereof.
- e. **“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, or in the event the City issues Bonds pursuant to Section 4.8 hereof, the account into which the City deposits the proceeds of such Bonds.
- f. **“Sublease”** means that certain long-term Sublease of the City Property, dated as of December 6, 2010, as amended from time to time, between the Foundation and WRC Management, as set forth in Recital C.

9. Total Project Budget. Exhibit J to the Redevelopment Agreement is hereby deleted in its entirety and replaced with Exhibit J hereto, titled “Total Project Budget”.

10. Amendment Controls; Ratification and Affirmation. In the event that the terms of this Amendment and the Redevelopment Agreement are held to be inconsistent, the terms of this Amendment shall control. The parties each agree and warrant that, in all other respects, the Redevelopment Agreement is unmodified, in full force and effect, and each party hereby ratifies and affirms the Redevelopment Agreement and any terms contained therein not otherwise modified by this Amendment.

11. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute one and the same instrument. Each party may rely upon facsimile or electronic mail counterparts of this Amendment signed by the other party with the same effect as if such party had received an original counterpart signed by such other party.

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.



CITY:

THE CITY OF WESTWOOD, KANSAS

By:   
Mayor John M. Yé

ATTEST:

  
Frederick L. Sherman, City Clerk

APPROVED AS TO FORM:

  
Ryan Denk, City Attorney

DEVELOPER:

WOODSIDE REDEVELOPMENT, LLC

By:   
Blair Tanner, Manager

## EXHIBIT L

### Guaranty Agreement

THIS GUARANTY AGREEMENT dated as of April 18, 2014 (this "Guaranty"), between Blair Tanner ("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 January 12, 2012, as amended, 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 an individual and is the managing member of Developer;

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 an 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 North 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 North 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 North 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 he shall have and maintain not less than **\$1,550,000** of liquid net worth for the duration of the term of this Guaranty (as the same may be terminated pursuant to Section 5.4(b) below). Guarantor shall, on the North Phase Commencement Date and on each ninety (90) day interval thereafter until the completion of the North Phase, provide the City with bank statements or other evidence of such liquid net worth which is reasonably acceptable to the City. Additionally, Guarantor shall, on the North Phase Commencement Date and each year thereafter until the completion of the North Phase, provide the City with a statement from Guarantor's certified public accountant that Guarantor's total assets exceed Guarantor's liabilities in an amount of not less than \$4,000,000. Any such failure to demonstrate the minimum liquid net worth as required herein shall be a default hereunder.

**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 North 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 North 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.

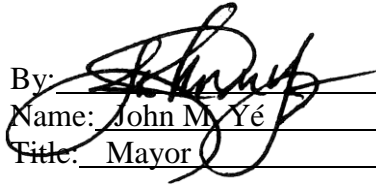
IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed in his name as of the date first above written.

A handwritten signature in black ink, appearing to read "Blair Tanner", written above a horizontal line.

Blair Tanner

ACCEPTED:

**THE CITY OF WESTWOOD, KANSAS**

By: \_\_\_\_\_  
Name: John M. Yé\_\_\_\_\_  
Title: Mayor\_\_\_\_\_