

NINTH AMENDMENT TO WOODSIDE VILLAGE REDEVELOPMENT AGREEMENT

THIS NINTH AMENDMENT TO WOODSIDE VILLAGE REDEVELOPMENT AGREEMENT (this “**Amendment**”) is entered into this 13th day of October, 2016 (the “**Effective Date**”), 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 the same was further amended pursuant to that certain Seventh Amendment to Woodside Village Redevelopment Agreement, dated February 13, 2014, as the same was further amended pursuant to that certain Eighth Amendment to Woodside Village Redevelopment Agreement, dated September 19, 2014, (collectively, 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); and

WHEREAS, the City has, by approval of Ordinance No. 974 on October 13, 2016 approved and adopted a new Redevelopment Project Plan for the District (the “**New Plan**”), which New Plan is hereby attached as **Exhibit 1** and terminates a portion of the prior redevelopment project plan by terminating and removing the provisions relative to the South Phase, and which New Plan includes the following Improvements for the South Phase: (i) approximately 244 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, and (ii) approximately 16,300 square feet of mixed-use commercial retail; and

WHEREAS, Section 3.3 of the Redevelopment Agreement provides the conditions for the City's release of the Released Property from the Ground Lease and the Sublease and the conveyance of such Released Property to Developer (the “**Conditions to Closing**”); and

WHEREAS, Developer now intends to finance the Club Phase and the South Phase of the Project simultaneously and has therefore requested that the City agree to modify certain of the Conditions to Closing in connection with such financing; and

WHEREAS, Section 4.4 of the Redevelopment Agreement provides for a "Public Financing Cap" of \$22,000,000; and

WHEREAS, Developer's projected costs for the Club Phase and the South Phase of the Project have increased significantly, and Developer has therefore requested an increase in the Public Financing Cap, subject to certain conditions as more particularly set forth herein; and

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. The New Plan. From and after the Effective Date, the defined term "Redevelopment Project Plan" in the Redevelopment Agreement shall be deemed to include the New Plan.

3. Revised Conditions to Closing. It is currently contemplated that the Developer will obtain financing for Developer's Private Contribution for the Club Phase and the South Phase of the Project simultaneously, which would require certain modifications to the conditions set forth in Section 3.3(a) of the Redevelopment Agreement. If the Developer does not, in its sole discretion, elect to finance the Developer's Private Contribution for the Club Phase and the South Phase simultaneously, then (i) the modifications set forth below in this Paragraph 3 shall be of no force and effect; (ii) the extension of the South Phase Commencement Date and the South Phase Completion Date as set forth in Section 6.6(c) and 6.7(c) respectively, as otherwise modified in Paragraph 5 below shall be of no force and effect; and (iii) without limiting the generality of the foregoing, the City shall not convey the Released Property to Developer until the conditions set forth in Section 3.3(a) have been fully satisfied (without the modifications described below). However, if the Developer shall at its option, obtain financing for Developer's Private Contribution for the Club Phase and the South Phase of the Project simultaneously (as currently contemplated by the Developer), then the parties hereby agree that Section 3.3(a) of the Redevelopment Agreement shall be deleted in its entirety and replaced with the following:

(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 otherwise expressly waived in writing by the City):

(i) 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 (the "Planning Commission");

(ii) each governmental permit and approval required for the commencement of the construction of the Improvements for the Club Phase, including without limitation, a final building permit;

(iii) except for and excluding a final building permit, each other governmental permit and approval required for the commencement of the construction of the Improvements for the South Phase;

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

(v) complete Plans and Specifications (as defined in Section 6.2) for the Improvements for the Club 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) 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, provided however, that for purposes of this condition, Developer is not required to have final, complete construction drawings;

(vii) an executed guaranteed maximum price construction contract for the Club Phase, a copy of which shall be delivered to the City, 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 Club Phase;

(viii) an executed guaranteed maximum price construction contract for the South Phase, a copy of which shall be delivered to the City, 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.

(ix) evidence that Developer has procured and will, at Closing, close on financing transactions for Developer's Private Contribution for the Club Phase, the net proceeds of which are sufficient and available to fully fund the hard and soft costs for the Club Phase;

(x) evidence that Developer has procured and will, at Closing, close on financing transactions for Developer's Private Contribution for 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 the South Phase;

(xi) a certification from Developer evidencing the continued commitment from Developer that it agrees to commence construction of the Improvements for the Club Phase within 90 days of Closing (if such construction has not already occurred) and diligently pursue the same to completion on or before the Club Phase Completion Date subject only to delays outside of the control of the Developer;

(xii) satisfaction of all of the Phase Conditions set forth in Section 3.1(b) of this Redevelopment Agreement for both the Club Phase and the South Phase, and delivery of the Guaranty for both the Club Phase and the South Phase as required by Section 8.2 hereof; and

(xiii) a certification from Developer evidencing the continued commitment of the Developer that it agrees to commence construction of the Improvements for the South Phase within 425 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.

4. Modification of City's Reversionary Interest. In connection with the City's agreement to modify the Conditions to Closing as described above, the parties hereby agree that the Reversionary Interest shall be modified to remove the "Lender Protection Provisions" prior to commencement of construction of the South Phase Improvements and to extend the deadline for completion of construction of the South Phase Improvements for purposes of enforcement of said Reversionary Interest. Specifically, the parties hereby agree that Section 2.2(a) of the Redevelopment Agreement shall be deleted in its entirety and replaced with subsections (a), (b) and (c) below:

(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 four (4) 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 of the City.

(b) The parties hereby agree that at all times prior to Developer's commencement of construction of the Improvements on the South Phase, the City's Reversionary Interest shall not be (i) subject to or subordinate to any Private Loan of Developer, or (ii) subject to "Lender Protection Provisions" set forth in Exhibit E-1. However, following Developer's commencement of construction of the Improvements on the South Phase, the City's Reversionary Interest shall thereafter be (x) subject to and subordinate to the Private Loan of Developer, and (y) subject to "Lender Protection Provisions" set forth in Exhibit E-1.

(c) The parties hereby agree that for purposes of this Section 2.2, the term "commencement of construction" shall be deemed to mean Developer's ground breaking on the South Phase Improvements and undertaking of a diligent, continuous and uninterrupted program of significant construction activity for any such Improvements.

5. Modification of the South Phase Commencement Date and Completion Date. The parties hereby agree that Section 6.6(c) and Section 6.7(c) shall both be deleted in their entirety and replaced with the following:

6.6(c) The "South Phase Commencement Date": The South Phase Commencement Date shall be the date that is no later than four hundred twenty five (425) days following the Closing.

6.7(c) The "South Phase Completion Date": The South Phase Completion Date shall be that date that is no later than four (4) years after the Closing.

6. Modification of Public Financing Cap. Provided that Developer's aggregate Project Costs for the North Phase, the South Phase and the Club Phase of the Project (combined) -- including all hard construction costs and all reasonable soft costs and market rate fees -- shall be greater than \$105,000,000, the parties hereby agree to increase the Public Financing Cap by an additional \$5,523,705. Specifically, the parties hereby agree as follows:

- a. The parties hereby agree that the first sentence of Section 4.4(a) shall be deleted in its entirety and replaced with the following:

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) \$17,227,000 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.

- b. The parties hereby agree that Section 4.4(b)(iii) shall be deleted in its entirety and replaced with the following:

(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. Additionally, the South Phase Cap shall be reduced from \$17,227,000 to \$11,227,000 if Developer's aggregate Project Costs for the North Phase, the South Phase and the Club Phase of the Project, including all hard construction costs and all reasonable soft costs and market rate fees (combined) shall be less than \$105,000,000. The \$105,000,000 set forth in this Section 6 is comprised of \$55,015,215 for the South Phase (\$62,015,215 minus

\$7,000,000 for Land Acquisition), \$27,476,729 for the North Phase and \$22,508,056 for the Club Phase.

c. The parties further agree that a new Section 4.4(c) shall be added to the Redevelopment Agreement as follows:

(c) Notwithstanding anything set forth herein which is seemingly to the contrary, the parties agree that 100% of Incremental Real Property Taxes from the Redevelopment District, up to \$19,534,921, shall be available to the Developer for Reimbursable Project Costs, and upon collection of \$19,534,921 of Incremental Real Property Taxes from the Redevelopment District, the portion of the TIF which is attributable to Real Property Taxes shall be terminated by the City and such Real Property Taxes shall thereafter be returned to the appropriate taxing jurisdictions.

d. The parties hereby agree that the last sentence of Section 4.2(a) shall be deleted in its entirety and replaced with the following:

"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 and the limitation set forth in Section 4.4(c) below."

7. Redevelopment. The Redevelopment Agreement shall be revised such that the first sentence of Sections 2.3(a)(ii) and (iii) thereof shall be modified to read as follows:

(ii) Approximately 36,452 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-five (335) residential units, including live/work units, condominium units, and/or apartment units (collectively, the "Residential Units").

8. Phasing of the Project. The Redevelopment Agreement shall be revised such that Sections 2.4(b)(i) and (ii), and (c)(i) and (ii) thereof shall be modified to read as follows:

(b)(i) Approximately 20,152 square feet of Retail Shops;

(ii) Approximately 91 Residential Units;

(c)(i) Approximately 16,300 square feet of Retail Shops;

(ii) Approximately 244 Residential Units;.

9. Collection of TIF Revenues. The Redevelopment Agreement shall be revised such that the following sentence shall be added after the first sentence of Section 4.2 thereof:

Subject to all Applicable Laws and Requirements, with respect to the South Phase (and only the South Phase), the City shall collect Incremental Real Property Taxes and Incremental Sales Taxes as set forth below, for a period of twenty (20) years from the approval of the Redevelopment Project Plan for Project Area 2 (South), unless the TIF shall be earlier terminated pursuant to Section 4.4 or the other express terms of this Agreement.

10. Additional CID (CID #2). The Redevelopment Agreement shall be revised such that the following subparagraphs shall be added to Section 4.3 as subsections (d),(e),(f) and (g) respectively:

(d) Imposition of CID #2. Subject to the terms and conditions of this Agreement, City shall also cause imposition of an additional CID sales tax of nine-tenths percent (0.9%) on the Club Property ("CID #2"), and CID # 2 is not subject to the Public Financing Cap. The parties hereby understand and agree that CID #2 shall not be collected on the North Project Area or the South Project Area. The City shall, simultaneously with the approval and execution of this Amendment, authorize the levy of CID #2, and direct City Staff to take all actions necessary to impose such CID #2 upon Substantial Completion of the North Phase of the Project, it being understood and agreed by the parties that the City will commence collection of CID #2 on the first day of the quarter following Substantial Completion of such North 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 the North Phase of the Project on July 1st, the City will commence collection of CID # 2 on the following October 1st; however, if Developer shall Substantially Complete the North Phase on August 10th, then the City will not commence collection of CID # 2 until the following January 1st.

(e) Termination of CID Sales Tax. Subject to all Applicable Laws and Requirements, no CID Sales Taxes for CID #2 shall be collected after that date which is twenty-two (22) years from the date of implementation of CID #2.

(f) Reimbursement from CID Sales Tax. Developer understands and agrees that any CID Sales Tax and CID #2 which is applied to reimburse Developer for Project Costs on the South Phase of the Project and must be eligible costs pursuant to the CID Act.

(g) CID #2 Included in Definitions of CID and CID Sales Taxes. Except for purposes of the Public Financing Cap, the parties hereby agree that CID and the sales taxes from CID #2 shall be included in the defined terms "CID" and "CID Sales Tax" as and when those terms are used in the Redevelopment Agreement.

11. Youthfront Property. The Youthfront Property legal description, attached to the Redevelopment Agreement as Exhibit A-3, shall be deleted in its entirety and replaced with Exhibit A-3 hereto.

12. Project 2 (North) Improvements. The North Phase Improvements, attached to the Redevelopment Agreement as Exhibit B-2, shall be deleted in its entirety and replaced with Exhibit B-2 hereto

13. Project 3 (South) Improvements. The South Phase Improvements, attached to the Redevelopment Agreement as Exhibit B-3, shall be deleted in its entirety and replaced with Exhibit B-3 hereto.

14. North Project Area. The North Project Area legal description, attached to the Redevelopment Agreement as Exhibit C-2, shall be deleted in its entirety and replaced with Exhibit C-2 hereto

15. Site Plan. The Site Plan, attached to the Redevelopment Agreement as Exhibit F, shall be deleted in its entirety and replaced with Exhibit F hereto.

16. Project Budget. The Total Project Budget, attached to the Redevelopment Agreement as Exhibit J, shall be deleted with respect to the South Phase and replaced with Exhibit J hereto. Notwithstanding the inclusion of \$7,000,000 for "Land Acquisition" in the South Phase Budget attached as Exhibit J hereto, the parties hereby specifically agree that this line item shall not be deemed to be a "Reimbursable Project Cost" under the terms and conditions of the Agreement.

17. Modification to Definition of Force Majeure. The parties hereby agree that the last sentence of Section 10.2 (Force Majeure) of the Redevelopment Agreement shall be deleted in its entirety and replaced with the following: "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 unless the lack of funds is due to a lender's inability to provide funds under a closed loan because of war, terrorism, national financial crisis or other similar reasons of a like nature which are not the fault of the borrower on the loan."

18. 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.


19. 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.

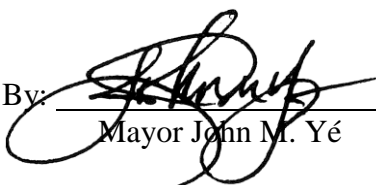


ATTEST:



Frederick L. Sherman, City Clerk

CITY:

THE CITY OF WESTWOOD, KANSAS

By: 
Mayor John M. Yé

APPROVED AS TO FORM:


Ryan Denk, City Attorney

DEVELOPER:

WOODSIDE REDEVELOPMENT, LLC

By: 
Blair Tanner, Manager

EXHIBIT A-3

Youthfront Property Legal Description

Lots 1 and 2 of WOODSIDE VILLAGE NORTH, a subdivision of land in the City of Westwood, Johnson County, Kansas.

EXHIBIT B-2

Project 2 (North) Improvements

The construction of: (i) approximately 91 residential and/or commercial/office units, including, but not limited to, live/work units, condominium units, and/or apartment units, along with the associated peripheral uses and area, including, but not limited to, lobbies, offices, parking lots, and parking garages, (ii) approximately 20,152 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 244 residential and/or commercial/office units, including, but not limited to, live/work units, condominium units, and/or apartment units, along with the associated peripheral uses and area, including, but not limited to, lobbies, offices, parking lots, and parking garages, (ii) approximately 16,300 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-2

North Project Area Legal Description

Lots 1 and 2 of WOODSIDE VILLAGE NORTH, a subdivision of land in the City of Westwood, Johnson County, Kansas.

EXHIBIT F

Site Plan

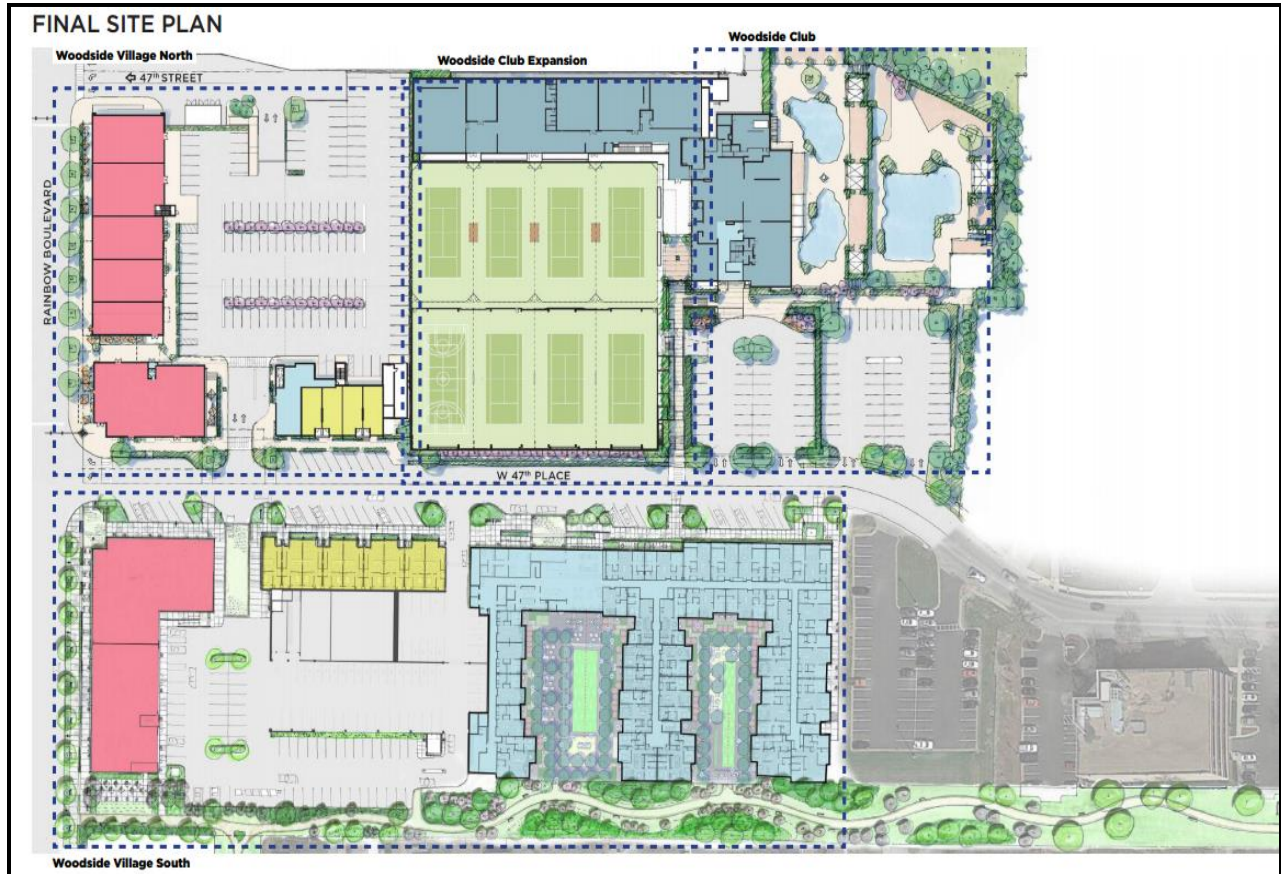


EXHIBIT J

South Phase Project Budget

CATEGORY	PROJECT 2 AMOUNT
Land Acquisition	\$7,000,000
Sitework, Parking & Infrastructure Construction	\$10,000,000
Vertical Building Construction	\$37,369,179
Soft Costs	\$6,961,821
TIF Eligible Soft Costs	\$4,873,274
Non-TIF Eligible Soft Costs	\$2,088,547
TOTAL	\$61,331,000