

~~Draft: July 31, 2014~~

BASE LEASE AGREEMENT

Dated as of August 1, 2014

Between

**WOODSIDE REDEVELOPMENT, LLC AND WOODSIDE VILLAGE NORTH LLC.
as Lessor**

And

**CITY OF WESTWOOD, KANSAS,
as Lessee**

Relating to:

\$9,000,000

(Aggregate Maximum Principal Amount)

City of Westwood, Kansas

Taxable Industrial Revenue Bonds

(Woodside Village North Project)

Series 2014

BASE LEASE AGREEMENT

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Exhibit A – Description of the Project

BASE LEASE AGREEMENT

THIS BASE LEASE AGREEMENT dated as of August 1, 2014 (this “Base Lease Agreement”), by and between **WOODSIDE REDEVELOPMENT, LLC**, a Kansas limited liability company and **WOODSIDE VILLAGE NORTH LLC**, a Kansas limited liability company, as Lessor (collectively, the “Company”), and **CITY OF WESTWOOD, KANSAS**, a municipal corporation organized and existing under the laws of the State of Kansas, as Lessee (the “Issuer”). Capitalized terms not defined elsewhere herein shall have the meanings set forth in **Article I**.

RECITALS:

1. The Company has requested that the Issuer issue \$9,000,000 maximum principal amount of Taxable Industrial Revenue Bonds (Woodside Village North Project), Series 2014 (the “Bonds”), pursuant to the Bond Trust Indenture of even date herewith (the “Bond Indenture”) between the Issuer and UMB Bank, N.A., as trustee (the “Bond Trustee”) for the purpose of providing funds to: (a) construct, renovate, furnish and equip a commercial facility located at 4715 Rainbow Boulevard in Westwood, Kansas (collectively, the “Project”), and (b) pay certain costs related to the issuance of the Bonds.

2. In order to satisfy the requirements of the Act, the Issuer proposes to purchase and acquire a leasehold interest in the Project pursuant to this Base Lease Agreement and proposes to sublease the Project to the Company pursuant to the Lease Agreement dated as of August 1, 2014, between the Issuer, as sublessor, and the Company, as sublessee (the “Lease Agreement”), for rentals which will be sufficient to provide for the payment of the principal, redemption premium, if any, and interest on the Bonds.

3. The Company proposes to lease the Project to the Issuer and the Issuer desires to lease the Project from the Company upon the terms and conditions and for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. The terms used herein and not otherwise defined herein shall have the meanings assigned to them in the Bond Indenture.

ARTICLE II

REPRESENTATIONS

Section 2.1. Representations by Company. The Company represents and warrants that:

(a) Each Company is a limited liability company duly organized and existing under the laws of the State of Kansas, have power and authority to own their properties and carry on its business as now being conducted, and are duly qualified to do such business in the State of Kansas and wherever else such qualification is required.

(b) Neither the execution and delivery of this Base Lease Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Base Lease Agreement conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which it is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(c) The Company is the owner of the Project.

Section 2.2. Representations by Issuer. The Issuer represents and warrants that:

(a) The Issuer is a municipal corporation organized and existing under the laws of the State of Kansas. Under the provisions of the Act, the Issuer has lawful power and authority to enter into the transactions contemplated by this Base Lease Agreement and to carry out its obligations hereunder. The Issuer has been duly authorized to execute and deliver this Base Lease Agreement, acting by and through its duly authorized officers. The Issuer agrees that it will do or use its best efforts to cause to be done all things necessary to preserve and keep in full force and effect the Issuer's existence.

(b) The Issuer is authorized, and has taken all necessary action, to issue the Bonds to provide funds for the purposes set forth in the Bond Indenture, and proposes by the Lease Agreement to sublease the Project to the Company.

(c) No member of the governing body of the Issuer or any other officer of the Issuer has any significant or conflicting interest, financial, employment or otherwise, in the Company or in the transactions contemplated hereby.

ARTICLE III

LEASE OF THE PROJECT

Section 3.1. Lease of the Project. The Company hereby, rents, leases and lets to the Issuer the Company's interest in the Project, which Project is legally described on **Exhibit A**, attached hereto and incorporated herein, and the Issuer rents, leases and hires the Project from the Company, for rentals and upon and subject to the terms and conditions herein set forth, for a term commencing on the date hereof and ending on December 31, 2016; provided, however, this Base Lease Agreement shall remain in full force and effect so long as any obligation of the Company under the Lease Agreement shall be outstanding and so long as the Lease Agreement shall remain in effect (the "Lease Term"), unless sooner terminated in a manner provided for herein, provided that the Company shall not exercise any right so reserved in any manner that will interfere with any rights of the Issuer hereunder.

ARTICLE IV

QUIET ENJOYMENT; RENTAL PROVISIONS

Section 4.1. Quiet Enjoyment. The Company hereby covenants and agrees that it will not take any action, other than pursuant to **Article V, VII or VIII** of this Base Lease Agreement, to prevent the Issuer from having quiet and peaceable possession and enjoyment of the Project during the Lease

Term and will, at the request of the Issuer, and at the expense of the Company, cooperate with the Issuer in order that the Issuer may have quiet and peaceable possession and enjoyment of the Project and will defend the Issuer's enjoyment thereof against all parties.

Section 4.2. Consideration and Rentals. The Issuer shall deposit the proceeds from the sale of the Bonds with the Bond Trustee in accordance with the Bond Indenture. Such deposit shall constitute full and complete payment of all rentals due hereunder and following such deposit the Issuer shall not have any obligation to make any payments to any Person in connection with this Base Lease Agreement.

Section 4.3. Sublease by Issuer. It is understood and agreed by the Issuer and the Company that the Issuer will sublease the Project to the Company pursuant to the Lease Agreement. The Issuer shall at no time agree to any amendment or modification of the provisions of the Lease Agreement without the prior written consent of the Company and the Bond Trustee.

Section 4.4. Payment of Taxes. The Company covenants and agrees that it will, from time to time, promptly pay and discharge or cause to be paid and discharged when due and prior to delinquency all taxes, assessments and other governmental charges lawfully imposed upon the Project or any part thereof or upon the income and profits thereof.

ARTICLE V

SPECIAL COVENANTS

Section 5.1. Indemnification. (a) The Company releases the Issuer and Bond Trustee from, agrees that the Issuer or Bond Trustee shall not be liable for, and indemnifies the Issuer and Bond Trustee against, all liabilities, losses, damages (including reasonable attorneys' fees), causes of action, suits, claims, costs and expenses, demands and judgments of any nature imposed upon or asserted against the Issuer or Bond Trustee on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the construction, maintenance, operation and use of the Project; (ii) any breach or default on the part of the Company in the performance of any covenant or agreement of the Company under the Transaction Documents, or any related document, or arising from any act or failure to act by the Company, or any of its agents, contractors, servants, employees or licensees; (iii) violation of any law, ordinance or regulation affecting the Project or a part thereof or the ownership, occupancy or use thereof; (iv) the authorization, issuance and sale of the Bonds, and the provision of any information furnished in connection therewith concerning the Project or the Company (including, without limitation, any information furnished by the Company for inclusion in, or as a basis for preparation of, the information statements filed by the Issuer) or arising from (1) any errors or omissions of any nature whatsoever such that the Bonds, when delivered to the owners thereof, are not validly issued and binding obligations of the Issuer or (2) any fraud or misrepresentations or omissions contained in the proceedings of the Issuer furnished by or attributable to the Company relating to the issuance of the Bonds or pertaining to the financial condition of the Company which, if known to the original purchaser, might be considered a material factor in its decision to purchase the Bonds; and (v) any claim or action or proceeding with respect to the matters set forth in subsections (i), (ii), (iii) and (iv) above brought thereon; provided, however, the indemnification contained in this paragraph shall not extend to the Issuer if such loss, claim, damage, liability or expense is (a) the result of the Issuer's (or any employees or agents thereof) negligence or willful misconduct, or (b) the Issuer is not following the written instructions of the Company or the Owner of the Bonds and the indemnification contained in this paragraph shall not extend to the Bond Trustee if such loss, claim, damage, liability or expense is ~~(a) the result of the Bond Trustee's (or any employees or agents thereof) gross negligence or willful misconduct, or (b) the Bond Trustee is not following the written instructions of the Company or the Owner of the Bonds.~~

(b) In case any action or proceeding is brought against the Issuer or Bond Trustee in respect of which indemnity may be sought hereunder, the Issuer or Bond Trustee shall promptly give notice of that action or proceeding to the Company, and the Company upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of the Issuer or Bond Trustee to give that notice shall not relieve the Company from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Company. The Issuer or Bond Trustee may employ separate counsel and participate in the defense at its own expense. The Company shall not be liable for any settlement without its consent.

(c) The indemnification set forth above is intended to and shall include the indemnification of all affected members of the City Council, officials, officers, attorneys, accountants, financial advisors, staff and employees of the Issuer. Such indemnification is intended to and shall be enforceable by the Issuer to the full extent permitted by law.

Section 5.2. Granting of Easements. If no Event of Default under this Base Lease Agreement shall have happened and be continuing, the Company may, to the extent permitted under the Bond Indenture, at any time or times (a) grant easements, licenses, rights-of-way and other rights or privileges in the nature of easements with respect to any property included in the Project, or (b) release existing easements, licenses, rights-of-way and other rights or privileges, all with or without consideration and upon such terms and conditions as the Company shall determine. The Issuer agrees that it will execute and deliver or will cause and direct the Bond Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or any such agreement or other arrangement, upon receipt by the Issuer and the Bond Trustee of (i) a copy of the instrument of grant or release or of the agreement or other arrangement, (ii) a written application signed by the Company Representative requesting such instrument, and (iii) a certificate executed by the Company Representative stating that such grant or release is not detrimental to the proper conduct of the business of the Company, is permitted by the Bond Indenture, will not impair the effective use or interfere with the efficient and economical operation of the Project, and will not materially adversely affect the security intended to be given by or under the Bond Indenture.

ARTICLE VI

Section 6.1. No Assignment, Subleasing or Mortgaging of the Project by Issuer. The Issuer agrees that, except for the assignment of its interest in the Lease Agreement to the Bond Trustee pursuant to the Bond Indenture, it will not sell, assign, convey, mortgage, encumber or otherwise dispose of its interest in this Base Lease Agreement or any part of its interest in the Project except as permitted by this Base Lease Agreement and the Lease Agreement during the Lease Term.

Section 6.2. Subordination to Lender. . The Issuer agrees and acknowledges that the Company may, in its sole discretion, grant mortgages (each, a "Mortgage") on the Project to the Company's lenders (each, a "Mortgagee") during the term of this Base Lease Agreement. The Issuer agrees that in such case this Base Lease Agreement shall be subject to and subordinate to any such Mortgage, and that any such Mortgagee shall not be required to grant any rights of nondisturbance with respect to this Base Lease Agreement. Upon the request of the Company, the Issuer shall provide any additional documentation evidencing such subordination as required by the Mortgagee.

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.1. Events of Default. An “Event of Default” or “default” shall mean, wherever used in this Base Lease Agreement, any failure by the Issuer to observe and perform any covenant, condition or agreement in this Base Lease Agreement on its part to be observed or performed and the lapse of a period of 60 days after written notice, specifying such failure and requesting that it be remedied, given to the Issuer and the Bond Trustee by the Company, unless the Company shall agree in writing to an extension of such time prior to its expiration.

Section 7.2. Remedies on Default. Whenever an Event of Default specified in **Section 7.1** hereof shall have happened and be continuing, the Company shall have the option to provide for the termination of this Base Lease Agreement in the manner provided in **Article VIII**. The Issuer and the Company shall each be entitled to specific performance and injunctive or other equitable relief for any breach or threatened breach of any of the provisions of this Base Lease Agreement, notwithstanding availability of an adequate remedy at law, and each party hereby waives the right to raise such defense in any proceeding in equity; provided, however, no remedy shall be exercised against such party in any manner which may impair the payment of principal of, premium, if any, or interest on any of the Bonds.

Section 7.3. Performance by Issuer. The Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof until it shall have been requested to do so by the Company in writing, or shall have received the instrument to be executed, and at the Issuer’s option shall have received from the Company assurance or indemnity satisfactory to the Issuer that the Issuer shall be reimbursed for its reasonable expenses incurred or to be incurred in connection with taking such action or executing such instrument. Nothing in this Section is intended to imply that the Issuer must take any action or execute any instrument unless specifically required to do so by this Base Lease Agreement.

ARTICLE VIII

EARLY TERMINATION OF THIS BASE LEASE AGREEMENT

Section 8.1. Early Termination of this Base Lease Agreement.

(a) In the event the Company shall cause all of the Bonds to be paid in the manner set forth in **Article XI** of the Bond Indenture, the Company shall be entitled to terminate this Base Lease Agreement prior to the end of the Lease Term upon written notice to the Issuer and the Bond Trustee. Upon such termination the Issuer shall deliver to the Company any instruments which may be reasonably required by the Company to evidence such termination and the relinquishment of all of the Issuer’s rights and interest in the Project and in this Base Lease Agreement.

(b) In the event that any Mortgagee exercises its rights of foreclosure pursuant to the terms of any Mortgage of the Project and subsequently takes title to the Project, such Mortgagee, shall be entitled to terminate this Base Lease Agreement upon five (5) days written notice to the Issuer, provided, that if the holder of any of the Bonds is an entity other than the Mortgagee or the lessee under the Lease Agreement, the Company shall remain liable for all outstanding amounts owed to Issuer under this Base Lease Agreement or the Lease Agreement, including, but not limited to, the payment of principal, premium, if any, or interest on any of the Bonds.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given to the appropriate notice address by the methods set forth in the Bond Indenture. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Company to the other shall also be given to the Bond Trustee and to the Original Purchaser. A duplicate copy of each notice given by the Issuer or the Company or either of them to the Bond Trustee shall also be given to the other party hereto. The Issuer, the Company and the Bond Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 9.2. Binding Effect. This Base Lease Agreement shall inure to the benefit of and shall be binding upon Issuer, the Company and their respective successors and assigns. The Bond Trustee shall be third-party beneficiary of this Base Lease Agreement.

Section 9.3. Severability. In the event any provision of this Base Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 9.4. Amounts Remaining in Funds and Accounts. It is agreed by the parties hereto that any amounts remaining in the Funds and Accounts under the Bond Indenture upon (i) expiration or sooner termination of this Base Lease Agreement as provided herein or after payment in full of the Bonds (or provision for payment thereof having been made in accordance with the provisions of the Bond Indenture), and (ii) payment of fees and expenses of the Bond Trustee in accordance with the Bond Indenture, shall be paid in accordance with the provisions of the Bond Indenture.

Section 9.5. Amendments, Changes and Modifications. Subsequent to the issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of **Article X** of the Bond Indenture), this Base Lease Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the parties hereto and the Bond Trustee and the Bondowner.

Section 9.6. Execution in Counterparts. This Base Lease Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.7. Applicable Law. This Base Lease Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

Section 9.8. Electronic Storage. The parties agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files, and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 9.9. Captions. The captions or headings in this Base Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Base Lease Agreement.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Issuer has caused this Base Lease Agreement to be executed in its name and its seal to be hereunto affixed and attested by its duly authorized officers and the Company has caused this Base Lease Agreement to be executed in its name and attested by its duly authorized officers all as of the date first above written.

WOODSIDE REDEVELOPMENT, LLC, a
Kansas limited liability company,

By: _____
Name: Blair Tanner
Title: Manager & President

WOODSIDE VILLAGE NORTH LLC, a Kansas
limited liability company,

**WOODSIDE REDEVELOPMENT,
LLC**, a Kansas limited liability company,
as Manager

By: _____
Name: Blair Tanner
Title: Manager & President

CITY OF WESTWOOD, KANSAS

(Seal)

By: _____

Name: John Yé

Title: Mayor

ATTEST:

Name: Frederick L. Sherman

Title: City Clerk

EXHIBIT A

Description of the Project

All buildings, improvements, equipment, furnishings and machinery owned or leased by the Company and paid for in whole or in part with the proceeds of the Bonds and located or to be located on the following property:

LEGAL DESCRIPTION

All that part of Lot 5 Westport View, a subdivision in the City of Westwood, Johnson County, Kansas, being more particularly described as follows:

Commencing at the Southwest corner of Woodside Club Complex, a subdivision in the City of Westwood, Johnson County, Kansas; thence North 00 degrees 30 minutes 07 seconds West along the West Line of Lot 2 of said Woodside Club Complex and also along the East Right-of-Way Line of Rainbow Boulevard an now established a distance of 330.00 feet to the POINT OF BEGINNING; thence continuing North 00 degrees 30 minutes 07 seconds West along the West Line of said Lot 5 and along said East Right-of-Way Line a distance of 307.15 feet; thence North 89 degrees 59 minutes 55 seconds East a distance of 83.03 feet to a point; thence South 00 degrees 00 minutes 05 seconds East a distance of 26.76 feet to a point; thence North 89 degrees 59 minutes 55 seconds East a distance of 12.29 feet to a point; thence South 00 degrees 00 minutes 05 seconds East a distance of 193.79 feet to a point; thence North 89 degrees 59 minutes 55 seconds East a distance of 226.50 feet to a point on the West Line of Lot 1 of said Woodside Club Complex; thence South 00 degrees 00 minutes 05 seconds East along the West line of said Lot 1 a distance of 85.00 feet to a point on the North Right-of-Way Line of 47th Street Place as now established; thence South 89 degrees 42 minutes 55 seconds West along said North Right-of-Way Line a distance of 319.14 feet to the POINT OF BEGINNING, containing 47,893 Square feet or 1.099 Acres, more or less.

and

All that part of Lot 5 Westport View, a subdivision in the City of Westwood, Johnson County, Kansas, being more particularly described as follows:

Commencing at the Southwest corner of Woodside Club Complex, a subdivision in the City of Westwood, Johnson County, Kansas; thence North 00 degrees 30 minutes 07 seconds West along the West Line of Lot 2 of said Woodside Club Complex and also along the East Right-of-Way Line of Rainbow Boulevard an now established a distance of 637.15 feet to a point on the West Line of Lot 5 of said Westport View and also the POINT OF BEGINNING; thence continuing North 00 degrees 30 minutes 07 seconds West along the West Line of said Lot 5 and along said East Right-of-Way Line a distance of 24.00 feet to the Northwest corner of said Lot 5; thence North 89 degrees 49 minutes 30 seconds East along the North Line of said Lot 5 and along the Johnson and Wyandotte County Line, a distance of 322.03 feet to the Northwest corner of Lot 1 of said Woodside Club Complex; thence South 00 degrees 00 minutes 05 seconds East along the West Line of said Lot 1 a distance of 245.53 feet to a point; thence South 89 degrees 59 minutes 55 seconds West a distance of 226.50 feet to a point; thence North 00 degrees 00 minutes 05 seconds West a distance of 193.79 feet to a point; thence South 89 degrees 59 minutes 55 seconds West a distance of 12.29 feet to a point; thence North 00 degrees 00 minutes 05 seconds West a distance of 26.76 feet to a point; thence South 89 degrees 59 minutes 55 seconds West a distance of 83.03 feet to the POINT OF BEGINNING, containing 58,168 Square feet or 1.335 Acres, more or less.