

**TOPEKA DEVELOPMENT CORPORATION
BOARD OF DIRECTORS**

**ORGANIZATIONAL VIRTUAL MEETING AGENDA
October 19, 2023 – 3:00 p.m.
City of Topeka, Kansas**

Board of Directors:

Michael A. Padilla, Mayor
Karen A. Hiller, District No. 1
Christina Valdivia-Alcala, District No. 2
Sylvia E. Ortiz, District No. 3
Tony Emerson, District No. 4

Brett D. Kell, District No. 5
Hannah Naeger, District No. 6
Neil Dobler, District No. 7
Spencer Duncan, District No. 8
Michelle Hoferer, District No. 9

Addressing the Board of Directors: Public comment for the meeting will be available via Zoom.

Individuals must contact the City Clerk's Office at 785-368-3940 or via email at cclerk@topeka.org by no later than 3:00 p.m. on the date of the meeting, after which the City Clerk's Office will provide Zoom link information and protocols prior to the meeting.

View the meeting online at <https://www.topeka.org/communications/live-stream/> or at <https://www.facebook.com/cityoftopeka/>. If you do not have access to a viewing option, please contact the City Clerk at 785-368-3940 or email cclerk@topeka.org to make arrangements for an in person location.

Written public comment may also be considered to the extent it is personally submitted to the City Clerk's Office located at 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or via email at cclerk@topeka.org on or before the date of the meeting.

The Federal Communications Commission (FCC) has adopted use of the 711 dialing code for access to Telecommunications Relay Services (TRS). TRS permits persons with a hearing or speech disability to use the telephone system via a text telephone (TTY) or other device to call persons with or without such disabilities. To reach the City Clerk's office using the TRS, please dial 711.

Agendas are available in the City Clerk's Office, 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or on the City's website at <https://www.topeka.org>.

1. CALL TO ORDER

2. ROLL CALL

3. ACTION ITEMS: *(Action requires six (6) votes of the Board of Directors)*

A. REVIEW of the Topeka Development Corporation Board of Directors Bylaws.

(Adopted as part of the corporate resolution.)

B. SELECTION of Board Officers.

(Officers include President, Vice President, Secretary and Treasurer.)

C. APPROVAL of Corporate Resolution.

(Approval will authorize certain actions on behalf of the Board.)

4. OTHER NEW BUSINESS:

5. PUBLIC COMMENT:

(Public comment for the meeting will be available via Zoom. Individuals must contact the City Clerk's Office at 785-368-3940 or via email at cclerk@topeka.org by no later than 3:00 p.m. on the date of the meeting, after which the City Clerk's Office will provide Zoom link information and protocols prior to the meeting. Written public comment may personally be submitted to the City Clerk's Office located at 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or via email at cclerk@topeka.org on or before the date. View the meeting online at <https://www.topeka.org/communications/live-stream/> or at <https://www.facebook.com/cityoftopeka/>. If you do not have access to a viewing option, please contact the City Clerk at 785-368-3940 or email cclerk@topeka.org to make arrangements for an in person location.)

6. EXECUTIVE SESSION:

(Executive sessions will be scheduled as needed and may include topics such as personnel matters, considerations of acquisition of property for public purposes, potential or pending litigation in which the city has an interest, employer-employee negotiations and any other matter provided for in K.S.A. 75-4319.)

7. ADJOURNMENT

Topeka Development Corporation Board of Directors

AGENDA ITEM: Topeka Development Corporation Bylaws

Date: October 19, 2023

Contact Person: Amanda Stanley, City Attorney

Project Manager: Braxton Copley, Public Works Director

Document Description: Review of the proposed Topeka Development Corporation Bylaws adopted as part of the Corporate Resolution.

Staff Recommendation: Staff recommends approval of the bylaws with the passage of the Corporate Resolution.

Background: The City Manager was authorized to facilitate the creation of a single purpose entity to hold title to Hotel Topeka at the City of Topeka's Governing Body meeting on October 17, 2023 in Resolution 9478. Not for Profit Articles of Incorporation were filed with the Kansas Secretary of State on October 18, 2023 creating the Topeka Development Corporation. The next required step is the adoption of bylaws.

Budgetary Impact: Not Applicable

**BYLAWS
OF
TOPEKA DEVELOPMENT CORPORATION**

A KANSAS NOT-FOR-PROFIT CORPORATION

(as Adopted October 19, 2023)

ARTICLE I

NAME AND PURPOSES

Section 1.01. The name of the corporation shall be Topeka Development Corporation, and for designation purposes, is referred to in these Bylaws as the “Corporation,” or such name as may be adopted by amendment to the Articles of Incorporation (the “Articles”).

Section 1.02. Purposes. In accordance with the terms set forth in Section 170(b)(1)(a)(iv) of the Internal Revenue Code of 1986, as amended (the “Code”), the Corporation is organized and at all times shall be operated exclusively for the benefit of the City of Topeka, Kansas (the “City”), in particular to aid, assist and foster the planning, designing, development, supervision, acquisition, construction, furnishing, equipping, management, operation and improvement of a convention center hotel in the City of Topeka, Kansas and to engage in such activities as may be necessary or advisable in connection therewith, and any other acts or activities that may be requested of the Corporation by the City for the benefit of the City, and in connection therewith to receive, hold, invest, maintain, operate, and administer real and personal property, to borrow money, and to make expenditures to or for the benefit of the City to the extent consistent with the requirements of Section 170(b)(1)(a)(iv) of the Code. In furtherance of the foregoing, the Corporation is authorized to do the following:

(a) to engage in any lawful act or activity for which not-for-profit corporations may be organized under the Kansas general corporation code, K.S.A. 17-6001 et seq. (the “Act”); and

(b) to do everything necessary, proper, advisable, and convenient for the accomplishment of the purposes set forth above, and to do all other things incidental thereto or connected therewith which are not forbidden by the Act, the Articles or these Bylaws.

Section 1.03. The purposes set forth herein and in the Articles are subject to the condition that the City, for whose benefit the Corporation has been organized and which has benefitted from the purposes of the Corporation, shall exercise (1) organizational control over the Corporation, with authority at any and all times to alter or change the structure, organization, programs or activities of the Corporation, including the power to terminate its existence, except for possible limitations on the impairment of any contract entered into by the Corporation, and (2) supervisory control over the Corporation as may be deemed proper by the City in the administration of the activities of the Corporation as may be required from time to time by federal law in order to qualify the Corporation to issue bonds, notes or other obligations on behalf of the City.

ARTICLE II

OFFICES

Section 2.01. Business Offices. The principal office of the Corporation shall be located at 215 SE 7th St., Topeka, Kansas 66603, or such other location as determined from time to time by the Board

of Directors of the Corporation (the “Board”). The Corporation may have such other offices at such place or places within the State of Kansas as the Board may designate or as the affairs of the Corporation may require from time to time.

Section 2.02. Registered Office. The Corporation shall have and continuously maintain in the State of Kansas a registered office, and a registered agent whose office is identical with such registered office, as required by the Act. The registered office may be, but need not be, identical with the principal office in the State of Kansas, and the address of the registered office may be changed from time to time by the Board.

ARTICLE III

NO MEMBERS

Section 3.01. No Members. The Corporation shall not have members as such but, in lieu thereof, shall have a Board of Directors in which there shall be vested all of the power and authority to supervise, control, direct and manage the property, affairs and activities of the Corporation.

ARTICLE IV

BOARD OF DIRECTORS

Section 4.01. Number. The property and business of the Corporation shall be controlled and managed by a Board of Directors initially composed of up to ten (10) persons. All Board members shall be citizens of the United States and all of such members at all times shall be residents of and members of the governing body of the City (the “Governing Body”). The ten (10) members of the governing body of the City shall be members of the Board by virtue of their position on the Governing Body. All corporate powers of the Corporation shall be vested in and exercised by the Board. Each member of the Board is referred to herein as a “Director.”

Section 4.02. Term. Each Director shall hold office continuously from the time such Director becomes a member of the Governing Body until (1) death, (2) resignation, (3) termination of membership in the Governing Body or (4) removal with or without cause by a majority vote of the Governing Body, as the case may be.

Section 4.03. Powers. The Board shall manage the business of the Corporation and may exercise all powers granted to directors under the Act. The actions of the Board in exercising the corporate powers of the Corporation under the Articles and these Bylaws shall be taken at all times consistent with the intent and purpose of organizing the Corporation, which is to benefit the City, to serve the best interests of the City, and when properly authorized, to act on behalf of the City. The duties of Directors of the Corporation shall at all times be discharged in the best interests of and for the benefit of the City, as may be determined by the City; therefore, it shall not be a conflict of interest for a Director of the Corporation to also serve as a member of the Governing Body of the City.

Section 4.04. Annual and Regular Meetings. The annual meeting of the Board shall be held at such place and time as may be fixed by resolution of the Board. The Board may hold regular meetings at times and places determined by the Board with notice to each Director. All notices shall be given in accordance with the Kansas Open Meetings Act.

Section 4.05. Special Meetings. Special meetings of the Board may be called by the President, or any four (4) or more Directors, on 24 hours’ notice to each Director. Notice shall be given by the

Secretary or any Assistant Secretary appointed by the Board. All notices shall be given in accordance with the Kansas Open Meetings Act.

Section 4.06. Electronic Participation. Unless otherwise restricted by the Articles or these Bylaws, members of the Board, or any committee designated by the Board, may electronically participate in a meeting of the Board or committee provided all persons participating in the meeting can hear each other, and participation in a meeting pursuant hereto shall constitute presence in person at such meeting.

Section 4.07. Kansas Open Meetings Act. Meetings of the Board shall be held in compliance with the Kansas Open Meetings Act.

Section 4.08. Quorum. At all meetings of the Board, a majority of the then-current number of members of the Board shall constitute a quorum, but not less than a quorum may adjourn any meetings to a subsequent date without further notice, provided a quorum is present at such deferred meeting.

Section 4.09. Advisory Directors. Advisory Directors of the Corporation may be appointed or elected by the Board to serve at the pleasure of the Board and advise the Corporation in special areas as specified by the Board.

Section 4.10. Committees. The Board may, by resolution or resolutions passed by a majority of the full Board, designate one (1) or more committees, each committee to consist of one (1) or more Directors of the Corporation. The Board may designate one (1) or more Directors as alternate members of any committees who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in said resolution or resolutions or in these Bylaws, shall have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation; but no such committee shall have power or authority in reference to amending the Articles, adopting an agreement of merger or consolidation, approving the sale, lease or exchange of all or substantially all of the Corporation's property and assets, approving a dissolution of the Corporation or a revocation of a dissolution, or amending the Bylaws of the Corporation. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. All committees so appointed shall, unless otherwise provided by the Board, keep regular minutes of the transactions of their meetings and shall cause them to be recorded in books kept for that purpose in the office of the Corporation and shall report the same to the Board at its next meeting. The Secretary or any Assistant Secretary of the Corporation may act as Secretary of the committee if the committee so requests.

Section 4.11. No Compensation. Directors shall not be entitled to any compensation for the work undertaken consistent with their terms and responsibilities as members of the Board or officers of the Corporation. Directors may be reimbursed for reasonable expenses incurred in connection with attendance at Board or committee meetings or to fulfill Board responsibilities.

ARTICLE V

OFFICERS

Section 5.01. Election of Officers. The officers of the Corporation shall be Directors and there shall be a President, Vice President, Secretary, and Treasurer, and any other officer designated by the Board, all of whom shall be elected annually by the Board. Two or more offices may be held by the same person

at any one time, except the offices of President and Secretary. Each officer may delegate various duties attributable to such office, but the fulfillment of such duties shall be the exclusive responsibility of the delegating officer.

Section 5.02. Duties of Officers. The Officers of the Corporation shall have the following duties:

President - The President shall be the chief executive officer of the Corporation and shall preside at all meetings of the Board and act as official representative for the Corporation.

Vice President - The Vice President shall be vested with all the powers of and required to perform all the duties of the President in the event of the absence or disability of the President and shall perform all other duties as may be prescribed by the Board.

Secretary - The Secretary shall attend all meetings of the Board, acting as clerk thereof and recording the proceedings of such meetings. The Secretary shall give the proper notice of meeting of Directors and perform such other duties as are assigned by the President and Board. The responsibilities of the Secretary may be carried out by any Assistant Secretary appointed by the Board.

Treasurer - The Treasurer shall have custody of the funds and securities of the Corporation and shall keep full and accurate accounts of receipts and disbursements and books belonging to the Corporation and shall deposit all monies and other valuable effects to the name and credit of the Corporation in such depository as may be designed by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, take proper vouchers for such disbursements, and shall render to the President and Board, whenever they may require it, an account of all Corporation transactions and of the financial condition of the Corporation. The responsibilities of the Treasurer may be carried out by any Assistant Treasurer appointed by the Board.

Section 5.03. Removal of Officers. Any officer may be removed from office for willful neglect of office, willful failure to carry out the duties and responsibilities assigned to said officer, or willful violation of the Articles, these Bylaws, or any rules and/or regulations of the Board or the Corporation. Removal shall be by the Board, and such Board shall, in the event of the determination of liability of any officer for removal under the provisions of the preceding sentence, notify the officer subject thereto of the basis for removal proceedings, and an opportunity shall be provided said officer for a full and impartial hearing before such Board. Removal from office shall be effected by an affirmative vote of two-thirds of the remaining members of such Board present at any regular or special meeting.

Section 5.04. Executive Staff. The Board may appoint executive staff members and delegate to such executive staff members the responsibility for management of the Corporation as the Board sees fit. Executive staff may be given the necessary authority and responsibilities to operate the Corporation subject to such policies as may be issued by the President and the Board. The Board may authorize an appointed Executive Director of the Corporation or the other members of the executive staff to act as the duly authorized agent of the Corporation in matters within the ordinary course of business of the Corporation. Executive staff members may be employees of the City. Whether or not the Board appoints any executive staff members, the Board may contract with the City to provide any executive services deemed necessary by the Board.

ARTICLE VI

INDEMNIFICATION OF DIRECTORS AND OFFICERS

Section 6.01. Indemnification. Each person who is or was a director or officer of the Corporation shall be indemnified by the Corporation as of right to the full extent permitted or authorized by the laws of the State of Kansas, as now in effect and as hereafter amended, against any liability, judgment, fine, amount paid in settlement, cost and expense (including attorneys' fees) asserted or threatened against and incurred by such person in such person's capacity as or arising out of such person's status as a director or officer of the Corporation if such person (a) acted in good faith; (b) reasonably believed, in the case of conduct in an official capacity with the Corporation, that the conduct was in the best interests of the Corporation, and, in all other cases, that the conduct was at least not opposed to the best interests of the Corporation; and (c) with respect to any criminal proceeding, had no reasonable cause to believe that the conduct was unlawful. However, no person shall be entitled to indemnification under this Section 6.01 if (a) his or her acts were committed in bad faith or were the result of his or her active and deliberate dishonesty and were material to such action or proceeding or (b) he or she personally gained in fact a financial profit or other advantage to which he or she was not legally entitled. Indemnification under this Section 6.01 in connection with a proceeding brought by or in the right of the Corporation shall be limited to reasonable expenses incurred in connection with the proceeding. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not of itself be determinative that the person did not meet the standard of conduct set forth in this Section 6.01.

Section 6.02. Director or Officer Liability to Corporation. No person shall be liable to the Corporation for any loss, damage, liability or expense suffered by it on account of any action taken or omitted to be taken by such person as a director or officer of the Corporation, if such person (a) exercised the same degree of care and skill as a prudent person would have exercised under the circumstances in the conduct of such person's own affairs, or (b) took or omitted to take such action in reliance upon advice of counsel for the Corporation, or upon statements made or information furnished by directors, officers, employees or agents of the Corporation, which such person had no reasonable grounds to disbelieve.

ARTICLE VII

FINANCIAL ACTIVITIES AND REPORTING

Section 7.01. Fiscal Year. The fiscal year of the Corporation shall be the same as that of the City.

Section 7.02. Contracts. The Board may authorize any officer(s) or agent(s) to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 7.03. Loans. No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness (including bonds) shall be issued or incurred in its name unless authorized by the City. Such authority may be general or confined to specific instances.

Section 7.04. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer(s) or agent(s) the Corporation and in such manner as shall from time to time be determined by resolution of the Board.

Section 7.05. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories, or otherwise invested, as the Board may elect.

Section 7.06. Reports. The Board shall cause the Secretary of the Corporation to file such annual reports as may be required by Federal law, state or local laws, or both.

Section 7.07. Financial Reporting. The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its Board and committees. All books and records of the Corporation may be inspected by the City or by any director, or its authorized agent or attorney, for any proper purpose at any reasonable time.

ARTICLE VIII

CONFLICTS OF INTEREST

Section 8.01. Conflict Defined. A conflict of interest may exist when the interests or concerns of any director, officer or staff member may be seen as competing with the interests or concerns of the Corporation or the City, or any such person has an interest adverse to the Corporation or City, including an interest in any contract, transaction, or other financial relationship or any interest in an entity whose best interests may be impaired by the best interests of the Corporation or City.

Section 8.02. Disclosure Required. Any possible conflict of interest shall be disclosed to the Board by the person concerned. When any conflict of interest is relevant to a matter requiring action by the Board, the interested person shall call it to the attention of the Board or its appropriate committee and such person shall not vote on the matter; provided however, any director disclosing a possible conflict of interest may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof.

Section 8.03. Absence from Discussion. The person having the conflict shall retire from the room in which the Board or its committee is meeting and shall not participate in the final deliberation or decision regarding the matter under consideration.

Section 8.04. Minutes. The minutes of the meeting of the Board or committee shall reflect that the conflict of interest was disclosed and that the interested person was not present during the final discussion or vote and did not vote. When there is uncertainty as to whether a conflict of interest exists, the matter shall be resolved by a majority vote of the Board or its committee, excluding the person concerning whose situation the uncertainty has arisen.

Section 8.05. Annual Review. A copy of this conflict of interest statement shall be furnished to each director, officer, employee, and staff member who is presently serving the Corporation, or who may hereafter become associated with the Corporation. This policy shall be reviewed annually for the information and guidance of directors, officers and staff members. Any new directors, officers or staff members shall be advised of this policy upon undertaking the duties of such office.

Section 8.06. Loans to Directors and Officers Prohibited. No loans shall be made by the Corporation to any of its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the Corporation for the amount of such loan until it is repaid.

ARTICLE IX

REPEAL, ALTERATION OR AMENDMENT

Section 9.01. Repeal, Alteration of Amendment of Bylaws. The Board, by written assent thereto of all of such Directors or by a majority vote of such Directors at a regular or special meeting called for that purpose or at any annual meeting of the Board, may repeal, alter or amend these Bylaws:

(a) in order to maintain deductibility of gifts to the Corporation for federal income, gift and estate tax purposes for donors and their estates and in order to maintain the federal tax classification of the Corporation as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision of any future United States internal revenue law;

(b) to conform to and with any provision or provisions of the laws of the State of Kansas and the United States; and

(c) in such other respects consistent with the objectives and purposes of the Corporation as such Directors may from time to time find necessary.

Section 9.02. The Corporation shall not repeal, alter or amend the Corporation's Articles or these Bylaws: (a) without the prior written consent of the City and (b) in any manner that would alter the single purpose for which the Corporation is organized.

ARTICLE X

DISSOLUTION

Section 10.01. Distribution of Property and Assets of Corporation Upon Dissolution. Upon any dissolution of this Corporation in accordance with the Act, its property and assets shall be applied and distributed as follows:

(a) All liabilities and obligations of the Corporation, shall be paid, satisfied and discharged, or adequate provision shall be made therefor.

(b) Assets held by the Corporation upon condition requiring return, transfer or conveyance, which conditions occur by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements.

(c) After complying with the provisions of paragraphs (a) and (b) aforesaid, the Board of Directors shall dispose of all remaining assets of the Corporation exclusively for the purposes for which the Corporation was organized, solely and exclusively to the City of Topeka, Kansas, for whose benefit the Corporation has been organized and which has benefited from the purposes of the Corporation, to be used for a public purpose. Provided that if, for any reason, such City is not in existence to receive such distribution, the Board of Directors shall dispose of all of the assets of the Corporation exclusively for the purposes of the Corporation in such manner or to such organization or organizations organized and operated exclusively for governmental, charitable, educational and/or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code, as the Board of Directors shall determine, any such assets not so disposed of shall be disposed of by the Shawnee County District

Court, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

ARTICLE XI

MISCELLANEOUS

Section 11.01. No part of the property and assets of the Corporation, and no part of the property, assets or net earnings of the Corporation shall inure to the benefit of, or be distributed or used for, any director, officer, or employee of the Corporation or other private person, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered.

Section 11.02. All references herein to sections of the Internal Revenue Code shall be deemed to refer to any other section or sections which may be or hereafter are enacted in lieu thereof or in substitution therefor.

[End of Bylaws; Remainder of Page Intentionally Left Blank; Signature Page Follows]

CERTIFICATION OF BYLAWS

I hereby certify that the foregoing Bylaws were adopted at a meeting of the Board of Directors of Topeka Development Corporation, a Kansas not-for-profit corporation, held on October 19, 2023.

Brenda Younger, Assistant Secretary

Topeka Development Corporation

Board of Directors

AGENDA ITEM: Selection of Board Officers

Date: October 19, 2023

Contact Person: Amanda Stanley, City Attorney

Document Description: Selection of Board Officers to include President, Vice President, Secretary and Treasurer.

Staff Recommendation: Staff is making no recommendation.

Background: Article V, Section 5.01 of the proposed Bylaws outline the selection process for officers as follows:

Section 1.01. Election of Officers. The officers of the Corporation shall be Directors and there shall be a President, Vice President, Secretary, and Treasurer, and any other officer designated by the Board, all of whom shall be elected annually by the Board. Two or more offices may be held by the same person at any one time, except the offices of President and Secretary. Each officer may delegate various duties attributable to such office, but the fulfillment of such duties shall be the exclusive responsibility of the delegating officer.

Section 1.02. Duties of Officers. The Officers of the Corporation shall have the following duties:

President - The President shall be the chief executive officer of the Corporation and shall preside at all meetings of the Board and act as official representative for the Corporation.

Vice President - The Vice President shall be vested with all the powers of and required to perform all the duties of the President in the event of the absence or disability of the President and shall perform all other duties as may be prescribed by the Board.

Secretary - The Secretary shall attend all meetings of the Board, acting as clerk thereof and recording the proceedings of such meetings. The Secretary shall give the proper notice of meeting of Directors and perform such other duties as are assigned by the President and Board. The responsibilities of the Secretary may be carried out by any Assistant Secretary appointed by the Board.

Treasurer - The Treasurer shall have custody of the funds and securities of the Corporation and shall keep full and accurate accounts of receipts and disbursements and books belonging to the Corporation and shall deposit all monies and other valuable effects to the name and credit of the Corporation in such depository as may be designed by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board, take proper vouchers for such disbursements, and shall render to the President and Board, whenever they may require it, an account of all Corporation transactions and of the financial condition of the Corporation. The responsibilities of the Treasurer may be carried out by any Assistant Treasurer appointed by the Board.

Budgetary Impact: Not Applicable

Topeka Development Corporation Board of Directors

AGENDA ITEM: Corporate Resolution

Date: October 19, 2023

Contact Person: Amanda Stanley, City Attorney

Project Manager: Braxton Copley, Public Works Director

Document Description: RESOLUTION of the Topeka Development Corporation adopting bylaws of the corporation; designating authorized representatives of the corporation; authorizing the purchase of an existing hotel; approving certain corporate matters; and approving and authorizing certain documents and actions in connection therewith.

Staff Recommendation: Staff recommends approval of the resolution which does the following (1) Approves the proposed bylaws; (2) appoints the City Manager of Topeka the Executive Director of the Topeka Development Corporation, appointing the City Clerk as the Assistant Secretary, and the Chief Finance Officer and the City Deputy Director of Administrative and Financial Services as Assistant Treasurers; (3) Designates the authorized representatives of the corporation; (4) approves purchase of the hotel; (5) authorizes documents; and (6) authorizes the executive of corporate documents including a management agreement for the Hotel.

Background: The City Manager was authorized to facilitate the creation of a single purpose entity to hold title to Hotel Topeka at the City of Topeka's Governing Body meeting on October 17, 2023 in Resolution 9478. Not for Profit Articles of Incorporation were filed with the Kansas Secretary of State on October 18, 2023 creating the Topeka Development Corporation. The next required step is the adoption of the Corporate Resolution.

Budgetary Impact: Not Applicable.

RESOLUTION NO. __

A RESOLUTION OF THE TOPEKA DEVELOPMENT CORPORATION ADOPTING BYLAWS OF THE CORPORATION; DESIGNATING AUTHORIZED REPRESENTATIVES OF THE CORPORATION; AUTHORIZING THE PURCHASE OF AN EXISTING HOTEL; APPROVING CERTAIN CORPORATE MATTERS; AND APPROVING AND AUTHORIZING CERTAIN DOCUMENTS AND ACTIONS IN CONNECTION THEREWITH.

WHEREAS, the Topeka Development Corporation (the “Corporation”) is a not-for-profit corporation and an instrumentality of the City of Topeka, Kansas (the “City”), duly organized and validly existing pursuant to the provisions of K.S.A. 17-6001 et seq., as amended (the “Act”); and

WHEREAS, bylaws (the “Bylaws”) of the Corporation have been presented to the Board of Directors of the Corporation (the “Board”) for adoption, and the Board has determined that it is necessary and prudent to adopt such Bylaws; and

WHEREAS, pursuant to the Bylaws, the Board is authorized to appoint executive staff for the Corporation and to carry out corporate matters, and the Board has determined that it is necessary and prudent to appoint the City Manager as the Executive Director of the Corporation, to appoint the City Clerk as the Assistant Secretary of the Corporation and to appoint the City Chief Financial Officer as the Assistant Treasurer of the Corporation, to designate authorized representatives of the Corporation and to authorize the carrying out of corporate matters of the Corporation; and

WHEREAS, the Corporation has been organized and at all times shall be operated exclusively for the benefit of the City, and in particular to aid, assist and foster the planning, designing, development, supervision, acquisition, construction, furnishing, equipping, management, operation and improvement of a convention center hotel in the City of Topeka and to engage in such activities as may be necessary or advisable in connection therewith; and

WHEREAS, the City previously entered into an Agreement for Sale and Purchase of Property, as amended (the “Purchase Agreement”), with respect to the property commonly known as Hotel Topeka at City Center located at 1717 Southwest Topeka Boulevard, Topeka, Kansas (the “Hotel”); and

WHEREAS, the City and the Corporation wish for the Corporation to take title to the Hotel and acquire the Hotel on behalf of the City upon the City’s payment of the purchase price set forth in the Purchase Agreement; and

WHEREAS, in furtherance of the foregoing, the Board does hereby find and determine that it is necessary and advisable to act for the benefit of the City, that the acquisition of the Hotel is a public purpose, and that it is in the public interest to authorize the acquisition of the Hotel; and

WHEREAS, the Board further hereby finds and determines that it is necessary and desirable in connection with the acquisition of the Hotel that the Corporation approve certain

agreements, that the Corporation authorize the execution of such documents upon the terms and conditions provided herein and that the Corporation take certain other actions as herein provided;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TOPEKA DEVELOPMENT CORPORATION AS FOLLOWS:

Section 1. Approval of Bylaws. The Board hereby approves the Bylaws of the Corporation substantially in the form presented to the Board, with such changes therein as shall be approved by the President of the Corporation, the certification thereof being conclusive evidence of such officer's approval thereof.

Section 2. Appointment of Executive Director, Assistant Secretary and Assistant Treasurer. The City Manager is hereby appointed as the Executive Director of the Corporation, the City Clerk is hereby appointed as the Assistant Secretary of the Corporation, and the City Chief Financial Officer and the City Deputy Director of Administrative and Financial Services are hereby appointed as the Assistant Treasurers of the Corporation. The Executive Director is authorized to engage any and all City staff members as the Executive Director may determine is necessary and prudent to assist in the performance of the Executive Director's duties.

Section 3. Designation of Authorized Representatives of the Corporation. The officers of the Board and the Executive Director are hereby designated as authorized representatives of the Corporation (the "Authorized Representatives").

Section 4. Approval of Purchase of Hotel. The Corporation hereby approves the purchase of the Hotel on behalf of the City.

Section 5. Authorization of Corporate Matters. The Authorized Representatives, and any of them, are hereby authorized to undertake and carry out all necessary and appropriate corporate activities and functions on behalf of the Corporation, including but not limited to the following:

- (a) Execute agreements and other documents on behalf of the Corporation;
- (b) Designate any bank or financial institution to establish depository accounts of the funds of the Corporation and to deal with any such bank or financial institution in connection with all financial matters of the Corporation;
- (c) Arrange for insurance for any and all property of the Corporation;
- (d) Engage employees, agents, contractors and representatives to provide services to the Corporation;
- (e) Enter into contracts for the operation, maintenance and management of the Hotel;
- (f) Make decisions and expend money for the operation, maintenance and management of the Hotel including but limited to operating and capital expenses; and

(g) Do such other acts and things, make such other agreements and execute and deliver such contracts as the Corporation may deem to be appropriate in connection with any of the foregoing.

Section 6. Authorization of Documents. The Corporation is hereby authorized to enter into each of the following agreements (whether captioned as indicated below or otherwise) (collectively, the “Corporation Documents”) (copies of such documents shall be filed in the records of the Corporation), in such form and with such changes therein as shall be approved by the Executive Director and the officers of the Corporation executing such documents, such officers’ signatures thereon being conclusive evidence of their approval thereof and the same are hereby approved in all respects:

- (a) Bill of Sale relating to the acquisition of the Hotel;
- (b) Such other documents as are necessary and appropriate to complete the acquisition of the Hotel by the Corporation; and
- (c) Hotel Management Agreement with TOKS Associates LLC or other manager named therein.

Section 7. Execution of Corporation Documents. The Corporation is hereby authorized to enter into, and any of the President, Secretary, Executive Director, Assistant Secretary and Assistant Treasurers are hereby authorized and directed to execute, attest and deliver, the Corporation Documents and such other documents, certificates and instruments as may be necessary or desirable to carry out and comply with the intent of this Resolution, including but not limited to any closing documents for the purchase of the Hotel and any contracts and agreements relating to the operations, maintenance and management of the Hotel, for and on behalf of and as the act and deed of the Corporation.

Section 8. Further Authority. The Corporation and the officers, agents and employees of the Corporation, the Executive Director, the Assistant Secretary and the Assistant Treasurers are hereby authorized and directed to take such further action as may be necessary or desirable to carry out and comply with the intent of this Resolution, and to carry out, comply with and perform the duties of the Corporation with respect to the Corporation Documents and are hereby authorized to make such additions or changes not materially inconsistent with this Resolution as they may consider to be necessary or desirable to complete, carry out or comply with the intent of this Resolution. All actions of the officers, directors, employees and agents of the Corporation in conformity with the purpose and intent of this Resolution, whether heretofore or hereafter taken, shall be and are hereby ratified, confirmed and approved.

Section 9. Separability. The provisions of this Resolution are hereby declared to be separable, and if any action, phrase or provision is for any reason declared to be invalid, such declaration does not affect the validity of the remainder of the sections, phrases and provisions.

Section 10. Effective Date. This Resolution will take effect and be in full force from and after its adoption.

THIS RESOLUTION IS HEREBY ADOPTED by the Board of Directors of the Topeka Development Corporation, this 19th day of October, 2023.

TOPEKA DEVELOPMENT
CORPORATION

By: _____
President

ATTEST:

Assistant Secretary

RESOLUTION NO. 9478

A RESOLUTION introduced by Interim City Manager Richard U. Nienstedt regarding the purchase and management of the Hotel Topeka.

WHEREAS, on May 30, 2023, the Governing Body approved the purchase of the Hotel Topeka (“the Hotel”) by negotiated purchase agreement; and

WHEREAS, on May 30, 2023, the Governing Body issued Resolution No. 9419 which announced the City’s intent to reimburse itself for certain capital expenditures in connection with the acquisition, renovation and equipping of the Hotel through the proceeds of tax-exempt bonds; and

WHEREAS, the City has deposited \$766,875.00 towards the purchase price of the Hotel; and

WHEREAS, the closing is set for October 31, 2023, where the City intends to pay the remainder of the purchase price in the amount of approximately \$6.9 million; and

WHEREAS, the Governing Body intends to create a single purpose entity (“SPE”) wholly owned by the City that will take title to the Hotel and contract with a management company to operate the Hotel; and

WHEREAS, the Governing Body acknowledges that the SPE will need funds to operate the Hotel; and

WHEREAS, as the Governing Body’s ultimate goal is to secure an entity that will purchase, operate and manage the Hotel, the Governing Body, on October 10, 2023, approved a contract with REVPAR to assist in that respect as well as advise on the selection of a management company to operate the Hotel.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF TOPEKA, KANSAS, that

26 Section 1. The Governing Body authorizes the City Manager to complete the
27 purchase of the Hotel by paying the remainder of the purchase price of approximately \$6.9
28 million as adjusted at closing for cash, accounts receivable, license and permit fees,
29 prepaid expenses, consumable inventory, taxes, assessments, fees, liens, utilities and
30 advance bookings.

31 Section 2. The City Manager is authorized to: (a) facilitate the process of
32 creating an SPE wholly owned by the City to take title to the Hotel; (b) provide funding to
33 the SPE not to exceed \$500,000 from operating reserves to operate and maintain the
34 Hotel; and (3) take whatever actions are necessary to achieve the ultimate goal of
35 securing an entity that will purchase, operate and manage the Hotel.

36 ADOPTED and APPROVED by the Governing Body on October 17, 2023.

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CITY OF TOPEKA, KANSAS

Michael A. Padilla, Mayor

ATTEST:

Brenda Younger, City Clerk

SCOTT SCHWAB
Secretary of State



State of Kansas

Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564

Not-for-profit corporation -- Articles of Incorporation

October 18, 2023

Topeka Development Corporation
Attn City Attorney
215 SE 7th St
Topeka, KS 66603 USA

RE: Topeka Development Corporation

Business Entity Identification Number: 8421653

Congratulations on filing articles of incorporation for the not-for-profit corporation listed above. You may print a certified copy of the articles of incorporation along with this letter for your records.

A business entity identification number is issued for all entities that file with the Secretary of State's office. The identification number for this not-for-profit corporation is listed above. Please use this number on all filings and correspondence with the Secretary of State's office regarding this corporation.

Information regarding annual reports:

- Not-for-profit corporations are required to file an annual report with the Secretary of State to maintain an active and in good standing status.
- The corporation's annual report due date is available at: www.kansas.gov/bess/. From this link, select Business Entity Database, then select search by Business Entity Name. Enter the corporation's name and select the gray View Record box next to the business name. Annual report information is at the bottom of the page, including the next annual report due date.
- The annual report does not require tax or financial information.
- Annual reports may be filed online at: sos.ks.gov.

The Secretary of State's office corresponds directly with businesses and does not use third parties to contact businesses on its behalf. Businesses are encouraged to be vigilant if they receive mailings or other communications from third parties stating the business is required to file documents with or obtain services from the Secretary of State's office. Businesses may file documents online, or access other services on the Secretary of State's website: sos.ks.gov.

If you have questions, please contact the Business Services Division at (785) 296-4564 or by email at kssos@ks.gov.

Sincerely,

Scott Schwab
Kansas Secretary of State

Not For Profit Articles of Incorporation

The name of the corporation:

Topeka Development Corporation

File date: 10/18/2023

File time: 09:56:11

Business Entity Number: 8421653

Registered office in Kansas:

215 SE 7th St
Topeka, Kansas
66603

Name of the resident agent at the registered office:

Brenda Younger

Mailing address for official mail:

Topeka Development Corporation
Attn City Attorney
215 SE 7th St
Topeka, KS
66603 USA

The nature or purpose of the business entity:

The purpose of this business entity is to engage in any lawful act or activity for which the entity may be organized under the laws of Kansas.

In accordance with the terms set forth in Section 170(b)(1)(a)(iv) of the Internal Revenue Code of 1986, as amended (the "Code"), the Corporation is organized and at all times shall be operated exclusively for the benefit of the City of Topeka, Kansas (the "City"), in particular to aid, assist and foster the planning, designing, development, supervision, acquisition, construction, furnishing, equipping, management, operation and improvement of a convention center hotel in the City of Topeka, Kansas and to engage in such activities as may be necessary or advisable in connection therewith, and any other acts or activities that may be requested of the Corporation by the City for the benefit of the City, and in connection therewith to receive, hold, invest, maintain, operate, and administer real and personal property, to borrow money, and to make expenditures to or for the benefit of the City to the extent consistent with the requirements of Section 170(b)(1)(a)(iv) of the Code. In furtherance of the foregoing, the Corporation is authorized to do the following: (a) to engage in any lawful act or activity for which not-for-profit corporations may be organized under the Kansas general corporation code; and (b) to do everything necessary, proper, advisable, and convenient for the accomplishment of the purposes set forth above, and to do all other things incidental thereto or connected therewith which are not forbidden by the Kansas general corporation code or by these Articles.

This corporation will not have the authority to issue stock. The conditions of the membership are set in the bylaws.

Will the powers of the incorporator(s) terminate upon filing the articles of incorporation?

Yes

Director(s) information:

Michael A. Padilla
215 SE 7th St
Topeka KS
66603 USA

Karen Hiller
215 SE 7th St
Topeka KS
66603 USA

Christina Valdivia-Alcala
215 SE 7th St
Topeka KS
66603 USA

Sylvia Ortiz
215 SE 7th St
Topeka KS
66603 USA

Tony Emerson
215 SE 7th St
Topeka KS
66603 USA

Brett Kell
215 SE 7th St
Topeka KS
66603 USA

Hannah Naeger
215 SE 7th St
Topeka KS
66603 USA

Neil Dobler
215 SE 7th St
Topeka KS
66603 USA

Spencer Duncan
215 SE 7th St
Topeka KS
66603 USA

Michelle Hoferer
215 SE 7th St
Topeka KS
66603 USA

Expiration date of the corporate existence:

Perpetual

Tax closing month:

December

Incorporator information:

Kathryn Peters
2300 Main St
Suite 800
Kansas City MO
64108 USA

"I declare under penalty of perjury pursuant to the laws of the state of Kansas that the foregoing is true and correct."

Execution date: 10/18/2023

The signature(s) of the incorporator(s):

Kathryn Peters
Kathryn Peters



I, Scott Schwab, Secretary of State of Kansas, do hereby certify that this is the true and correct copy of the original document filed electronically on 10/18/2023.

Scott Schwab

Kansas Secretary of State

Memorial Hall, 1st floor - 120 SW 10th Ave. - Topeka, Kansas 66612-1594
phone: (785) 296-4564 - email: kssos@ks.gov - url: <https://sos.kansas.gov/>

HOTEL MANAGEMENT AGREEMENT

Between

[SPE TBD]

and

TOKS Associates LLC

a Kansas limited liability company

Hotel Topeka at City Center
1717 Southwest Topeka Boulevard
Topeka, Kansas 66612

HOTEL MANAGEMENT AGREEMENT

THIS HOTEL MANAGEMENT AGREEMENT (this “**Agreement**”) is made as of the _____ day of _____, 2023 between [SPE TBD], a public benefit corporation organized and existing under the laws of Kansas (“**Owner**”) with its principal place of business in Topeka, KS, and TOKS Associates LLC, a limited liability company organized and existing under the laws of Kansas (“**Operator**”) with its principal place of business in Philadelphia, PA.

RECITALS

A. Owner owns the property known as Hotel Topeka at City Center and located at 1717 Southwest Topeka Boulevard, Topeka, KS 66612 (including all components identified in Section 1.1, the “**Property**”).

B. Operator is in the business of managing hotels.

C. Owner desires to engage Operator to manage and operate the Property on Owner’s behalf, and Operator desires to accept such engagement.

NOW, THEREFORE, in consideration of the promises, and other good and valuable consideration, Owner and Operator, intending to be legally bound, agree as follows:

ARTICLE I

THE HOTEL

1.1. Owner and Operator acknowledge that the Property contains:

A. A building (the “**Building**”) with 224 guest rooms, lobby, meeting space, lounge, pool and fitness center;

B. A restaurant, and a kitchen and related food and beverage facilities (all also in the Building), from which foodservice is provided to guests in the Restaurant and other parts of the Property, and as well as at Hotel-catered events outside of the Property, including at the Maner Conference Center (located at 1717 SW Topeka Blvd, Topeka, KS 66612).

C. Mechanical systems and built-in installations (the “**Installations**”) of the Building including, but not limited to, heating, ventilation, air conditioning, electrical and plumbing systems, refrigeration and kitchen equipment;

D. Furniture, furnishings, wall coverings, floor coverings, window treatments, fixtures and hotel equipment (the “**FF&E**”);

E. Glassware, linens, and other items of a similar nature (the “**Operating Equipment**”);

- F. Stock and inventories of paper supplies, cleaning materials and similar consumable items and food and beverage (the “**Operating Supplies**”);
- G. A parking lot adjacent to the Building;
- H. All right, title and interest of Owner in and to the walkway running east and west between the Property and the Maner Conference Center (located at 1717 SW Topeka Blvd, Topeka, KS 66612), it being understood that Operator shall be responsible for the maintenance and security of this walkway.

ARTICLE II
OPERATING TERM

2.1. This Agreement will commence on the date Owner takes title to the Property (the “**Commencement Date**”) and will expire on December 31, 2023 (the “**Initial Term**”). Owner shall have the option, in its sole and absolute discretion, to renew this Agreement for ~~an up to two~~ (2) additional ~~terms of six (6) month term (the months each (each a~~ “**Renewal Term**”) ~~unless~~ by providing written notice to Operator at least ~~sixty (60)~~ thirty (30) days before the expiration of the Initial Term ~~or (if applicable) the first Renewal Term~~. The Initial Term and any Renewal Term(s) are referred to collectively herein as the “**Term**.”

2.2. Promptly following the Commencement Date, the Parties agree to execute a certificate in the form attached hereto as **Exhibit “B”** specifying the Commencement Date.

ARTICLE III
GENERAL SERVICES BY OPERATOR

3.1. During the Term, Operator, as agent and for the account of Owner, subject to the Budgets (as defined in Section 9.4), this Agreement and availability of funds (or as funded by Owner in the event Total Revenues are not sufficient) will provide the following services:

- A. Recruit, train, direct, supervise, employ and dismiss on-site staff (“**Hotel Employees**”) in connection with the operation of the Property;
- B. Develop and implement advertising, marketing, promotion, publicity and other similar programs for the Property;
- C. Negotiate and present to Owner for execution, leases, licenses and concession agreements for and lobby space and office space at the Property (collectively, “**Leases**”), if any, and collect the rent under such Leases and otherwise administer the Leases;
- D. Negotiate and enter into contracts for the provision of services to the Property. Notwithstanding the foregoing, Operator shall not enter any of the following contracts without the advance written approval of Owner:
 - (i) any contract providing in whole or in part for a “barter” arrangement;

- (ii) any equipment lease, whether or not the same would be characterized as a capital lease under the Uniform System;
 - (iii) any contract with an affiliate of Operator, or any person or entity that has any equity interest in Operator or any affiliate of Operator;
 - (iv) any contract that has a term (including an initial term or an initial term plus one or more renewal terms) totaling more than one year, unless (A) any renewal after an initial term of one year or less is solely on a month-to-month basis; or (B) the contract is terminable by Owner, at any time, upon not more than thirty (30) days' notice without the payment of any fee or premium;
 - (v) any contract that requires payments totaling more than \$20,000 per year; and
 - (vi) any contract that is a loan or credit agreement (excluding trade credit incident to sales of goods or services in the ordinary course of business).
- E. Apply for, process and take all necessary steps to procure and keep in effect in Owner's name (or, if required by the licensing authority, in Operator's name or both) all Licenses;
- F. Unless otherwise specified by Owner, purchase all FF&E, Operating Equipment and Operating Supplies necessary for the operation of the Property; **OWNER CONCEDES**;
- ~~G.~~ **Provide G.** **At no additional cost to Owner unless otherwise provided in this Agreement or agreed to by the parties in advance and in writing, provide** routine accounting and purchasing services as required in the ordinary course of business and administer payroll for Hotel Employees;
- H. Maintain the Property in a good state of repair, and use commercially reasonable efforts to maintain and operate the Property in accordance with all applicable laws, statutes, ordinances, rules, regulations and orders of the local board of fire underwriters or similar body; **OWNER CONCEDES, SUBJECT TO A PROPOSED REVISION IN SECTION 3.2**;
- I. At Owner's direction and with Owner's prior written approval, institute, defend and settle any legal or administrative proceedings relating to the Property ~~over \$7,500,~~ provided that Owner's ~~prior written~~ approval ~~is~~ shall not ~~be~~ required for **Operator to settle any insurance defense matter; claim for an uninsured payment of less than Five Thousand Dollars (\$5,000) if the settlement agreement includes a general release in favor of Owner, Operator and their respective affiliates** **OWNER CONCEDES, SUBJECT TO AN ADJUSTMENT IN THE LANGUAGE AND DOLLAR AMOUNT**;
- J. Subject to Section 10.6; **OWNER CONCEDES, SUBJECT TO AN**

ADJUSTMENT TO SECTION 10.6I, at Owner's direction or with Owner's prior written approval, represent Owner in connection with the making of any Capital Improvements which are not Major Renovations, and if authorized, negotiate and enter into agreements for architectural, engineering, testing, consulting and construction services;

- K. Reasonably cooperate OWNER CONCEDES with Owner and any prospective purchasers or lenders in connection with any actual or proposed sale or refinancing of the Property; and
- L. ~~Provide such other services as are required under the terms of this Agreement~~ Provide such other services as are required under the terms of this Agreement as are customarily performed by management companies of comparable full-service hotels or are necessary for day-to-day operation, management and supervision of the Property and its business, which may include, if directed by Owner, catering functions at the adjacent Maner Conference Center, pursuant to one or more catering agreements to be negotiated by [] with the owner of the Maner Conference Center, subject to the approval of [], not to be unreasonably withheld, conditioned or delayed.
- M. Procure and maintain, in the name of Operator, the Property or Owner, as appropriate, all licenses, operating permits and other governmental authorizations that are necessary for the operation of the Property, including (without limitation) a Hotel Drinking Establishment/Caterer liquor licenses in Operator's name from the Alcohol Beverage Control (ABC) division of the Kansas Department of Revenue and a corollary license from the City of Topeka (collectively, the "Licenses"). Operator shall immediately notify Owner in writing if Operator loses a License or has a License suspended, ~~or if Operator becomes aware of any event or circumstance that may result in Operator losing a License.~~

3.2. Subject to the Budgets, the other applicable provisions of this Agreement and the availability of funds, Operator shall ~~use commercially reasonable efforts to~~ operate the Property in accordance with the terms of any applicable Major Agreements and the Operating Standards, as well as Kansas Department of Revenue Policy Memorandum 2001-4 (Revised) and the requirements of all insurance policies insuring the Property and its business.

~~3.3. Notwithstanding any other provision of this Agreement to the contrary, Operator's obligations with respect to any Major Agreement shall be limited to the extent that: (i) summaries of the relevant provisions, together with complete and accurate copies of the Major Agreements have been delivered to Operator sufficiently in advance of the Commencement Date to allow Operator to review and approve the terms of such Major Agreements; and (ii) the provisions thereof and/or compliance with such provisions by Operator (1) are applicable to the day to day operation, maintenance and non-capital repair and replacement of the Property or any portion thereof, (2) do not require contribution of capital by Operator or payments of Operator's own funds, (3) do not materially increase Operator's obligations hereunder or materially decrease Operator's rights hereunder, (4) do not limit or attempt to limit any corporate activity or transaction with respect to Operator or its affiliates other than in connection with the operation of the Property,~~

~~(5) are within the reasonable control of Operator by reason of its management and operation of the Property pursuant to this Agreement, and (6) are otherwise within the scope of Operator's duties under this Agreement.~~

~~Owner acknowledges and agrees, without limiting the foregoing, that any failure of Operator or the Property to comply with the provisions of any Major Agreement arising out of (A) the condition of the Property, and/or the failure of the Property to comply with the provisions of such Major Agreement prior to Operator's assuming the day-to-day management thereof, (B) construction activities at the Property, not supervised by Operator, (C) inherent limitations in the design and/or construction of, location of and/or parking at the Property, (D) instructions from Owner to operate the Property in a manner inconsistent with the Major Agreements, and/or (E) Owner's failure to approve any matter requested by Operator in Operator's reasonable good faith business judgment as necessary or appropriate to achieve compliance with any Major Agreement, shall not be deemed a breach by Operator of its obligations under this Agreement. Operator shall be entitled to rely upon the summaries of the Major Agreements (other than any franchise agreement) provided by Owner and on the copy of any future franchise agreement provided by Owner.~~

ARTICLE IV

GENERAL OPERATION OF THE HOTEL

4.1. Owner engages Operator as the exclusive operator of the Property during the Term and Operator hereby accepts such engagement. Subject to the terms of this Agreement, the applicable Budgets and availability of funds, **JOWNER CONCEDES**, Operator will have control and discretion in the operation, direction, management and supervision of the Property. Such control and discretion of Operator will include, without limitation, the determination of credit policies, terms of admittance, charges for rooms, food and beverage policies, entertainment and amusement policies, leasing, licensing and granting of concessions for commercial space at the Property, if any, and all phases of advertising, promotion and publicity relating to the Property.

4.2. Operator shall operate the Property and all of its facilities and activities in substantially the same manner as is customary and usual in the operation of similar, **JOWNER CONCEDES TO ALL REPLACEMENTS OF "FIRST CLASS" WITH SIMILAR**, full-service hotels within a sixty (60)-mile radius of the Property to the extent consistent with the Property's facilities and in accordance with the Operating Standards. **-JOWNER CONCEDES TO OPERATOR'S DELETION HERE**

4.3. Operator will be available to consult with and advise Owner, at Owner's reasonable request, concerning all policies and procedures affecting the business at the Property. Operator shall consult with Owner before implementing any material changes in policies and procedures relating to the Property.

4.4. Owner is responsible for all costs of compliance with the Americans with Disabilities Act and any applicable laws, regulations or orders related to the physical condition of the premises, improvements thereon, or any website (collectively "ADA"). Owner is also responsible for all costs of remediating any pollutants, waste and hazardous materials, including but not limited mold, legionella or other microbial substances and pollutants as defined under the Resource Conservation

and Recovery Act, as amended, 42 U.S.C. Section 6901 et. Seq. (“RCRA”) or any related, federal, state or city environmental statute or law (“Pollutants”), on or related to the Property. Notwithstanding anything to the contrary within the foregoing, Operator will promptly inform Owner if Operator becomes aware of any failures of the Property to comply with any of the aforementioned laws, and will cooperate with Owner and Owner’s contractors in their efforts to make all changes necessary to cause compliance. For the avoidance of doubt, Operator shall ~~use commercially reasonable efforts relative to be responsible for~~ day-to-day compliance with the ADA (e.g. making reasonable accommodations for guests with disabilities who request them) and state and federal environmental laws (e.g. properly storing and disposing of cleaning supplies and refrigerants).

4.5. Owner shall have the right to close the Property from time to time on a temporary basis to perform such renovations or other work in the Property as Owner may determine in its sole and absolute discretion. During any such period of closure Operator shall provide the services set forth in Section 3.1 above, to the extent applicable during such period and Owner shall ~~continue to, in lieu of any management fee, pay to~~ Operator the fees set forth in Article X herein, reasonable compensation for such services as Operator may actually render. Owner will provide Operator at least thirty (30) days’ written notice of its intent to close the Property. The parties will, in good faith, negotiate and agree in writing on terms for calculating Operator’s fees when the Property is closed. If they cannot agree on such terms within ten (10) business days after the aforementioned notice, then either party may, terminate this Agreement effective upon ten (10) business days’ further written notice to the other party, without either party having any liability to the other on account of such termination.

ARTICLE V

AGENCY; HOTEL EMPLOYEES

5.1. Operator will act as agent of Owner. The scope of Operator’s agency shall be limited to performance of its obligations under this Agreement. Without limiting the generality of the immediately preceding sentence, unless otherwise approved in writing by Owner, Operator shall have no authority to represent Owner in communications with the government of Shawnee County and/or the Stormont Vail Events Center, including its Advisory Board. Nothing in this Agreement will constitute or be construed to be or create a partnership or joint venture between Owner and Operator. Operator acknowledges and agrees that the agency granted by this Agreement is not coupled with an interest. All debts and liabilities to third persons incurred by Operator in the course of its operation and management of the Property consistent with the terms of this Agreement, and not incurred through any gross negligence, OWNER CONCEDES TO GROSS NEGLIGENCE STANDARD], intentional misconduct or fraud of Operator, are Operating Expenses.

5.2. Notwithstanding anything to the contrary within Section 5.1, all Hotel Employees will be employees of Operator or, ~~in certain cases, a staffing agency.~~ Under no if authorized in an approved Budget or otherwise approved in advance and in writing by Owner, one or more contractors of Operator. OWNER IS NOT OPPOSED TO OPERATOR USING STAFFING AGENCIES IN APPROPRIATE CIRCUMSTANCES, HOWEVER, OPERATOR’S USE OF STAFFING AGENCIES SHOULD BE SUBJECT TO OWNER’S APPROVAL DURING THE BUDGET PROCESS.] Under no circumstances will Owner or

any of Owner's affiliates employ, or be deemed to employ, any Hotel Employees. Compensation of Hotel Employees or staffing agency employees shall be Operating Expenses.

~~5.3.~~ 5.3. With Owner's prior written consent (which may not be unreasonably withheld, conditioned or delayed, and may be included in an approved Budget), Operator may enroll eligible Hotel Employees in pension, medical and health, life insurance and similar employee benefit plans substantially similar to corresponding plans implemented in full/limited-service hotels in the area of the Property. Such plans may ~~-,~~ with Owner's prior written approval (which shall not be unreasonably withheld) be joint plans for the benefit of employees at more than one property owned, leased or managed by Operator or its affiliates. Employer contributions to such plans (including any termination related liability), costs, expenses and reasonable administrative fees constitute Operating Expenses. The administrative expense of any joint plans will be equitably apportioned among properties covered by such plan. The Patient Protection and Affordable Care Act, federal or state laws (collectively, "**Health Care Laws**") may require Owner or Operator to offer a certain level of healthcare coverage or be subject to fines and/or penalties. The employer portion of premiums or costs associated with healthcare coverage offered to Hotel Employees pursuant to Health Care Laws is an Operating Expense.

5.4. Operator, in its reasonable discretion, may (A) on a space-available basis, provide reasonable lodging and use of Property facilities for Operator's executive employees visiting the Property in connection with the performance of services at the Property pursuant to this Agreement; and/or (B) with Owner's prior written approval, on a space-available basis, provide the General Manager of the Property and other Key Hotel Employees temporary living quarters within the Property and the use of all Property facilities, at a discounted price or without charge, as the case may be; provided, however, that any such use or discount shall not exceed that lesser of thirty (30) days or the time that is customary and usual in the operation of comparable full-service hotels in the State of Kansas.

5.5. Operator shall develop and implement policies, procedures and programs for the Property (collectively, the "**Employment Policies**") reasonably designed to effect compliance with the Employment Laws and to operate the Property in accordance therewith. Operator shall operate the Property in material compliance with all Employment Laws. The Employment Policies shall be consistent with industry standards from time to time for reputable companies managing similar, full-service hotels. **[OWNER CONCEDES TO ALL BUT ONE OF OPERATOR'S PROPOSED CHANGES TO THIS SECTION.]**

5.6. The parties agree that, on and after the effective date of termination or expiration of this Agreement, hotel personnel employed by Operator immediately prior to the effective date of termination will either be employed by Owner or Owner's designee, or Owner will take such other action with respect to their employment, which may include notification of the prospective termination of their employment, so as, in any case, to ensure that Operator does not incur any liability pursuant to the U.S. Work Adjustment and Retraining Notification Act, as amended and as may be further amended from time to time, or similar state statute or municipal ordinance (collectively, the "**WARN Act**"). Owner hereby agrees to defend, indemnify and hold harmless Operator from and against any and all manner of claims, actions, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) relating to or arising from Owner's breach of this covenant, including, without limitation, any liability, costs and

expenses arising out of asserted or actual violation of the requirements of the WARN Act. Further, Owner agrees to assume, pursuant to written severance agreements reasonably approved by Owner, all severance pay, accrued vacation or personal leave, COBRA and similar liabilities and obligations to the Property's personnel, which Operator shall or may incur in connection with such termination of this Agreement, and Owner hereby agrees to defend, indemnify and hold harmless Operator from and against any and all manner of claims, actions, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) relating to or resulting from Owner's breach of the foregoing covenant, including limitation, any liability, cost and expenses arising out of asserted or actual violation of the requirements of the COBRA legislation. Upon Owner's written request to Operator, Operator shall take all reasonable action prudent and proper as operator, to notify, advise and reasonably cooperate with Owner in order to assist Owner to comply with the WARN Act or COBRA legislation and to mitigate Owner's expense or liability with respect to the WARN Act and COBRA legislation. **OWNER CONCEDES TO INSERTIONS OF "REASONABLE" AND "REASONABLY" IN THIS SECTION.**

5.7. Operator may (a) participate in negotiations with toward a collective bargaining agreement for Hotel Employees, and (b) subject to Owner's prior written approval, enter into or amend any collective bargaining agreement in place for the Hotel Employees. Operator will consult with Owner regarding, and keep Owner advised of, any collective bargaining negotiations. Owner shall have an opportunity to participate in any such negotiations. Each of the parties represents and warrants to the other that, as of the date of this Agreement, it is not aware of any efforts to organize a union of any Hotel Employees.

5.8. With respect to the Property's General Manager and all Hotel Employees who report directly to the General Manager, which may include (without limitation) a Director of Sales and Marketing, a Director of Revenue Management [SUBJECT TO NOTE BELOW] and Chief Engineer (the "Key Hotel Employees"), the parties acknowledge and agree that: (i) Operator shall not hire any Key Hotel Employee without the prior written approval of Owner (after Owner has been given a reasonable opportunity to interview the candidate), which approval shall not be unreasonably withheld, conditioned or delayed, (ii) for a period of one (1) year after a Key Hotel Employee commences employment at the Property, Operator will not transfer any such Key Hotel Employee from the Property to another property managed by Operator or its affiliates without the prior written approval of Owner, which approval shall not be unreasonably withheld, conditioned or delayed, and (iii) Owner may consult directly with the General Manager ~~and~~, Director of Sales and Marketing, the Director of Revenue Management [SUBJECT TO NOTE BELOW], the Chief Engineer and a the leader of the above-property groups that provide accounting services for the Property. Except for the Key Hotel Employees, Owner shall not contact any Hotel Employee regarding the operations of the Property without the prior approval of Operator, said approval not to be unreasonably withheld or delayed. **[HAVE REVENUE MANAGEMENT SERVICES FOR THIS PROPERTY BEEN PROVIDED BY AN ON-PROPERTY DIRECTOR OF REVENUE MANAGEMENT, OR AN ABOVE-PROPERTY PERSON OR GROUP?]**

5.9 During the Term, Operator shall not enter into any employment agreement with any Hotel Employee without the prior written consent of Owner, which consent may be withheld by Owner in its sole and absolute discretion.

ARTICLE VI

PROVISION OF FUNDS

~~6.1.~~ **6.1.** Without prejudice to Owner's rights under Section 21.1, Operator will act solely as agent and on behalf of Owner in performing its obligations hereunder. Operator will not be in default of this Agreement to the extent it is unable to perform any obligation due to the lack of available funds from the operation of the Property or as otherwise provided by Owner. **OWNER ACCEPTS OPERATOR'S DELETION SUBJECT TO THE ADDITION OF A CLAUSE AT THE BEGINNING OF THIS SECTION.**

6.2. Operator shall in no event be required to advance any of its funds for the operation of the Property. **OWNER CONCEDES TO OPERATOR'S DELTIONS.**

ARTICLE VII

CENTRALIZED SERVICES

7.1. To the extent provided for in approved Budgets or otherwise approved by Owner in advance and in writing, Operator shall provide, or cause its affiliates to provide, to the Property, Hotel Employees and/or guests, network services, centralized accounting services, IT services, purchasing services, revenue management services, training, satisfaction surveys, and/or other centralized services which may be available generally to similarly situated properties (individually and collectively, "**Centralized Services**"). The Centralized Services currently provided by Operator are described in **Exhibit "A"** attached hereto. Unless otherwise agreed in advance and in writing by Owner in its sole and absolute discretion, all revenue management services shall be provided on a centralized, "above-property" basis, and there shall be no director of revenue management employed at the Property.

7.2. The cost of Centralized Services will be estimated in the Budget and reasonably allocated to the Property in a manner that does not unreasonably favor other hotels managed by Operator over the Property. **During each Budget approval process, Operator shall disclose to Owner, in writing, Operator's method of allocating to the Property and other properties operated by Operator and its affiliates, the costs of all Centralized Services.**

~~7.3.~~ Operator may in its discretion enter into certain purchasing, maintenance, service or other contracts with respect to the operation of the Property and other hotels operated by its affiliates through a multi-property purchasing plan (collectively, "**MPPP**") pursuant to which the affiliates of Operator may receive rebates, discounts, cash or other incentives, administration fees, concessions, or economic considerations (collectively, "**Rebates**") from the vendors or suppliers of goods or services. Owner acknowledges and agrees that (a) the Property is likely to receive substantial benefit from its participation in such MPPP which the Property could not obtain on its own, (b) any and all Rebates are the sole property of the purchasing affiliate and not Owner, and (c) the receipt by affiliate of any Rebates does not breach any fiduciary or other duty which Operator may have to Owner. Notwithstanding the foregoing, Operator hereby covenants to Owner that the terms of any MPPP in which the Property participates, when taken as a whole, will not be materially less favorable to the Property than the prevailing terms of contracts to provide similar

~~goods or services on a single property basis obtainable on a commercially reasonable basis from unrelated parties in the area of the Property.~~**7.3.** Operator shall promptly disclose to Owner in writing all rebates, cash incentives, administration fees, concessions, profit participations, marketing dollars, allowances, stock or stock options, investment rights or similar payments or economic consideration or financial incentives from vendors or suppliers of goods or services (collectively, “**Rebates**”) received by Operator or any of its affiliates with respect to the Property, as well as Operator’s method of allocating such rebates fairly and equitably among the Property and all other properties to which they apply. To the extent any such Rebates are applicable to Centralized Services, such Rebates shall, to the extent allocable to the Property on a fair and equitable basis and to the extent received by Operator, be credited against the Basic Fee next payable to Operator.

ARTICLE VIII

WORKING CAPITAL AND BANK ACCOUNTS

8.1. On the Commencement Date, Owner will deposit into the Agency Account initial working capital for the Property in the amount of \$150,000. Thereafter, Owner shall provide at all times to be maintained in the Agency Account, either from Total Revenues or funds otherwise provided by Owner, a minimum amount of \$150,000 (the “**Minimum Working Capital Amount**”). (For the avoidance of doubt, the immediately preceding sentence includes all of Owner’s responsibility to replenish and maintain working capital after completion of the initial \$150,000 deposit. The immediately preceding two sentences do not provide for two, separate minimum balances that must be maintained.) From time-to-time, if Operator believes there are insufficient funds in the Agency Account to permit Operator to pay all Operating Expenses as they come due pursuant to this Agreement, then Operator shall provide written notice to Owner with an explanation of the need for additional working capital together with backup substantially supporting the request. Within ~~five (5)~~**fifteen (15) [OWNER-PROPOSED COMPROMISE]** days after receiving any such notice, explanation and backup, Owner shall provide ~~such any~~ additional ~~funds and~~ working capital to the Agency Account as Owner reasonably believes is necessary to permit Operator to comply with its obligations under this Agreement.

8.2. Property-related funds received by Operator will be deposited in one or more account(s) in the name of Owner (the “**Agency Account**”) in a federally insured bank, savings and loan or trust company, with a branch office in Topeka, KS, selected by Operator, reasonably approved by Owner. **[OWNER CHECKING ON WHETHER BANK OF AMERICA IS OK. OWNER HAS A STRONG RELATIONSHIP WITH US BANK.]** Subject to the cash management provisions and account requirements of the Major Agreements, all cash, checks, and credit card receipts received by Operator in the operation of the Property shall be deposited in the Agency Account. Operator will pay all Operating Expenses, Fixed Charges, fees pursuant to Article X below, capital costs and other amounts required under this Agreement from the Agency Account. Interest on the Agency Account shall accrue to the benefit of Owner but shall be available to pay any Operating Expenses. **[OWNER WILL BE FINANCING THIS PROJECT WITH MUNICIPAL BONDS. OWNER IS CHECKING ON WHETHER THESE WILL BE GOVERNED BY INSTRUMENTS REQUIRING CASH MANAGEMENT. PROBABLY NOT.]**

8.3. If requested by Owner in writing, Operator will open a separate account in the name of

Owner (the “**Reserve Account**”) in a federally insured bank, savings and loan or trust company, with a branch office in Topeka, KS, selected by Owner. Operator will deposit a percentage of Total Revenues in the Reserve Account as required by any Major Agreements and otherwise in accordance with the Budget. Operator shall pay for approved capital expenses and procurement of FF&E from the Reserve Account in accordance with applicable Budgets and as otherwise approved by Owner in writing. The Agency Account and Reserve Account shall collectively be referred to herein as the “**Accounts.**”)

8.3. The Accounts shall be owned by Owner, but under the control of Operator. Owner will have online access to view all activity in the Accounts activity in real time. Checks or other documents of withdrawal will be signed by representatives of Operator, each of which will be bonded or otherwise insured. Amounts remaining in the Agency Account after paying Operating Expenses will be returned to Owner after the final accounting after the termination or expiration of the Agreement.

ARTICLE IX

BOOKS, RECORDS AND STATEMENTS; BUDGETS

9.1. Operator shall keep books of account and other records reflecting the operation of the Property in accordance with the latest edition of the *Uniform System of Accounts for the Lodging Industry* adopted by the American Hotel & Lodging Educational Institute (the “**Uniform System**”), with such exceptions as may be required by the provisions of this Agreement. Attached to this Agreement as Schedule 9.1 is a summary of all modifications to the methodology in the Uniform System that Operator implements in its standard practice as of the date of this Agreement. Owner hereby approves the modifications identified in Schedule 9.1. Operator may, with prior notice to Owner, unless the same is objected to in writing by Owner within thirty (30) days after such notice is delivered to Owner, make such additional modifications to the methodology in the Uniform System as are consistent with Operator’s standard practice in accounting for its operations under management contracts generally, so long as such modifications do not affect the determination of Total Revenues, Operating Expenses or Fixed Charges. Except for the books and records which may be kept in Operator’s home office or other suitable location pursuant to the adoption of a central billing system or other centralized service, the books of account and all other records relating to or reflecting the operation of the Property shall be kept at the Property, and shall be made available to Owner and its representatives at all reasonable times for examination and inspection. All books of account, guest records and front office records, will be the property of Owner, shall be treated by Operator as confidential and proprietary information of Owner and shall not be used by Operator in any manner which is detrimental to or in competition with Owner or its affiliates. Upon any termination of this Agreement, all of such books and records shall thereafter be available to Operator at all reasonable times for inspection, audit, examination and transcription for a period of three (3) years or, at Owner’s option, turned over to Operator. Operator shall also grant Owner access for such period to Operator’s databases and accounting records relating to the Property subject to such reasonable conditions as Operator may require for the protection of information not relating to the Property. Nothing contained in this Section 9.1 shall require Operator to disclose to Owner any employment records that Operator is required by law to hold in confidence. In addition to the Property’s books and records, Operator shall maintain guest records and data in accordance with all applicable laws, including with respect to protection of guest

privacy and the security of personal identifiable information of guests.

9.2. Operator will deliver to Owner within twenty (20) JOWNER CONCEDES days after the end of each month, the following items (collectively, the “**Monthly Reports**”):

- A. An executive summary noting highlights of operations for such month and explaining variances from Budgets and from the results of the comparable period in the prior year;
- B. A balance sheet as of the last day of such month with comparison to the last day of the prior month and the last day of the prior Fiscal Year with explanation of variances from the prior year and the prior month;
- C. A statement of cash flows for such month;
- D. An income and expense statement for such month and year-to-date with comparison to current year Budgets and the comparable periods of the prior year with explanation of variances from the prior year and from the Budgets;
- E. A report of Property operating statistics with respect to rooms and food and beverage operations for such month (including occupancy and average daily rates);
- F. A twelve-month summary and forecast of cash flow (including Total Revenues and Operating Expenses) for the current Fiscal Year including a projection of year-end net cash flow using (i) actual year-to-date figures, (ii) forecasts for the next 30, 60 and 90-day periods and (iii) budgeted amounts for the balance of the Fiscal Year;
- G. A summary of outstanding accounts receivable with aging schedule;
- H. A summary of outstanding accounts payable with aging schedule;
- I. To the extent not included in the foregoing, computations of Total Revenues, Operating Expenses, Fixed Charges, and any other amounts on which the Basic Fee may be based;
- J. A reasonably-detailed summary of Reimbursable Expenses for the previous month, with comparisons to the Budgets and the prior year, and containing a reasonably detailed explanation of variances therefrom;
- K. A summary of capital expenditures during such period;
- L. The Property’s STR, Inc (f/k/a Smith Travel Research “STAR” Report;
- M. A schedule of any and all Intercompany Invoices during the preceding month, which relate in any way to the Property or operation of the Property; and
- ~~N. Guest Survey Summary (GSS) reports, if subject to a franchise agreement; and~~
- ~~ON.~~ Such other monthly reports as Owner may reasonably request and as are

customarily provided by managers of similar, full-service hotels.

The Monthly Reports shall be (a) prepared in accordance with GAAP (including GAAP's best practices for municipal entities) and, to the extent applicable, the Uniform System (including, but not limited to, line-item descriptions), ~~and~~ (b) prepared in accordance with prevailing standards for similar, full-service hotels to the extent the Uniform System is not applicable; and (c) certified by a senior officer of Operator. In addition to the Monthly Reports, Operator shall make available to Owner via the Internet or any customarily used replacement thereof, or via Operator's internal network, simultaneously as the same become available to Operator's central or regional offices, such daily and/or "real time" operating reports and general ledger and other daily operating data with respect to the Property as the Property provides to Operator's central offices or is otherwise on Operator's computer systems. Operator represents that, as of the date of this Agreement, the following are accounting systems that Operator uses to maintain such information: [_____]. In addition to the above Monthly Reports, on a quarterly basis, Operator will cause a third party "mystery shopper" to receive services from the Hotel and report to Operator and Owner on its findings.

9.3. Year-end financial statements for the Property (including a balance sheet, income statement and statement of cash flows) shall be prepared ~~by Operator and certified by a senior officer of Operator and an independent certified public accountant selected by Owner.~~ For each full or partial Fiscal Year during which Owner is affiliated with the City of Topeka, Kansas, ~~Owner may retain an independent certified public accountant and~~ Operator shall cooperate with ~~Owner's accountant~~ Owner to perform an annual audit consistent with the procedures of the City of Topeka. Otherwise, Operator shall deliver audited financial statements to Owner within twenty (20) forty-five (45) days after the end of the Fiscal Year. The In either event, the year-end statements prepared by Operator shall include computations of Total Revenue, Operating Expenses, Fixed Charges and the Basic Fee; and Operator shall cooperate in all respects with such accountant in the preparation of such statements. Owner shall bear the cost of any audit prepared pursuant to this Section 9.3 unless (a) Gross Operating Profit (as defined in the Uniform System) for the year in question, as certified by Operator, varies by more than four percent (4.0%) from that determined by such audit, or (b) the audit discloses that Operator's reporting otherwise did not comply with reasonable requirements of the City of Topeka. In either of these events, the cost thereof shall be borne by Operator.

9.4. No later than November 1, 2023 for the Fiscal Year beginning on the Commencement Date and ending December 31, 2023, and thereafter on or before each year November 1 [OWNER-PROPOSED COMPROMISE] during the Term, Operator will submit to Owner for the next Fiscal Year (including any fraction of a calendar year at the beginning and/or end of the Term) the following items, which, upon approved by Owner as provided in Section 9.5, are collectively referred to in this Agreement as the "**Budgets**"):

- A. A proposed operating budget setting forth in reasonable line-item detail the projected income from and expenses of all aspects of the operations of the Property (when approved as provided in Section 9.5, the "**Operating Budget**");
- B. A proposed capital budget setting forth in reasonable line-item detail proposed capital projects and expenditures for the Property including but not limited to FF&E

- expenditures (when approved as provided in Section 9.5, the “**Capital Budget**”);
- C. A cash flow forecast on a monthly basis (when approved as provided in Section 9.5, the “**Cash Flow Forecast**”);
 - D. Operator’s proposed marketing plan (when approved as provided in Section 9.5, the “**Capital Budget**”);
 - E. An executive summary noting highlights of the foregoing items and commenting upon general market trends affecting the projected operations of the Property; and
 - F. Such other reports or projections as Owner may reasonably request and as are customarily provided by managers of similar, full-service hotels.

The proposed Budgets shall (a) be prepared in accordance with GAAP and, to the extent applicable, the Uniform System (including, but not limited to, line-item descriptions), and (b) be prepared in accordance with prevailing standards for similar, full-service hotels to the extent the Uniform System is not applicable.

9.5. Owner and Operator shall meet promptly after Operator submits the proposed Budgets to Owner at a mutually agreeable time. **OWNER CONCEDES** Operator shall provide any information, analysis and explanations with respect to the proposed Budgets as Owner may reasonably request and, subject to the provisions of Sections 9.6 and 9.7 below, shall revise the proposed Budgets as necessary to reflect such changes as Owner may require.

9.6. Owner shall have thirty (30) days after the date on which it receives Operator’s proposed Capital Budget (or until such later date as the Operating Budget with respect to the same Fiscal Year is finally approved) to review, approve, disapprove or to request changes in the entries and information appearing in Operator’s proposed Capital Budget. If Owner does not respond within such 30-day period, Owner will be deemed to have ~~approved~~**disapproved** of the Capital Budget. Owner shall have the right to condition its approval of Operator’s proposed Capital Budget upon the adoption of any additions, deletions or other changes to such proposed Capital Budget as may be required by Owner, which changes shall be incorporated into Operator’s proposed Capital Budget and such Capital Budget, as so revised, shall be adopted. Operator shall have no authority to make capital expenditures except as permitted by an approved Capital Budget or otherwise in this Agreement. Operator shall promptly report to Owner in writing any actual or anticipated deviation from the Capital Budget of any material or long-term consequence of which Operator is aware. Owner shall have the right in its sole discretion to amend any approved Capital Budget from time to time upon five (5) days prior written notice to Operator ~~so long as Operator has not committed or made any financial obligations relative to such budgeted item~~; provided, however, that if Owner so amends the Capital Budget, Owner and Operator shall promptly thereafter amend the Operating Budget (for the purposes of Article X only) to reflect such amendment of the Capital Budget. Notwithstanding anything to the contrary contained herein, but subject to Section 3.3 above, **OWNER CONCEDES** the parties acknowledge and agree that Owner’s lender may have certain approval rights over the Capital Budget and the response periods in the Major Agreements shall control.

9.7. Owner shall have thirty (30) days after the date on which it receives the Operating Budget

and the other items referenced in subsections 9.4 (C), (D), (E) and (F) above to review, approve, disapprove or to request changes in the entries and information appearing in the Operating Budget, Cash Flow Statement and Marketing Plan, respectively. However, Owner's failure to respond within such 30-day period shall not be deemed an approval of the applicable Operating Budget by Owner. Any notice of disapproval of the Operating Budget and/or such other items shall state with particularity the line items appearing therein which Owner disapproves and the amount Owner is willing to approve for each such line item in Owner's reasonable judgment. If Owner disapproves the Operating Budget or requests changes therein ~~within thirty (30) days, or if Owner fails to respond to the proposed Operating Budget within such 30-day period~~, then Owner and Operator shall attempt in good faith during the subsequent thirty (30) day period to resolve any disputes, which attempt shall include, if requested by either party, at least one meeting of executive-level officers of Owner and Operator. Notwithstanding anything to the contrary contained herein, but subject to Section 3.3 above, the parties acknowledge and agree that Owner's lender may have certain approval rights over the Operating Budget and the response periods in the Major Agreements shall control.

9.8. Upon Owner's written approval of the Budgets, Operator will operate the Property in accordance with the Budgets subject to the permitted variances set forth herein in this Section 9.8. [OWNER CONCEDES, WITH A MINOR ADJUSTMENT] Operator will not, without Owner's prior written approval:

- A.** Incur any expense for any line-item, in the Operating Budget which causes the aggregate expenditures for such line-item to exceed the budgeted amount by the greater of 5% or \$10,000, provided that Operator may, without Owner's approval, pay any Necessary Expenses, Emergency Expenses or any direct expenses which exceed the Budgeted amounts which are directly related to incremental increases in occupancy above the levels projected in the Budget, including but not limited to housekeeping salaries, credit card charges, franchise fees, if any, etc. and likewise reduce direct incremental expenditures from the budgeted amounts due to decreased revenues occupancy, provided that Operator shall report the same to Owner within 24 hours after incurring any Necessary Expenses or Emergency Expenses; or [OWNER CONCEDES TO OPERATOR'S ADDITIONS, SUBJECT TO THE NOTED ADJUSTMENTS]
- ~~**B.** Incur any expense for any line item in the Capital Budget if the aggregate expenditures for such line item to exceeds the budgeted amount by the greater of (i) 10%, or (ii) \$10,000 provided that Operator may, without Owner's approval, pay any Emergency Expenses which are capital in nature (any such Emergency Expenses to be promptly reported by Operator to Owner); or~~
- ~~**CB.** Perform any Capital Improvement (other than those paid for as Emergency Expenses) not provided for in the Capital Budget.~~

9.9. If any Budgets or component thereto, is not approved by Owner prior to the first day of any Fiscal Year (including any fraction of a calendar year at the beginning or end of the Term), then, Operator will cause the Property to be operated substantially in accordance with the prior approved Budgets as modified by components of such Budgets for the applicable Fiscal Year

approved by Owner, and prorated if it is for a fractional Fiscal Year.

9.10. Operator agrees to operate the Property within the parameters of the Budgets (subject only to the exceptions expressly provided for in this Agreement), and to use commercially reasonable efforts to operate the Property in a manner that maximizes Total Revenue and minimizes Operating Expenses.

9.11. Operator shall promptly provide to Owner any other information (including, but not limited to, copies of bank statements, notices of claims and legal proceedings and inventories of FF&E, Operating Equipment and Operating Supplies, space leases and hotel contracts and franchise reports) relating to the Property or its operations that Owner may reasonably request from time to time or upon a standing basis.

9.12. Operator shall at all times during the term of this Agreement, at no cost or expense to Operator, cooperate with Owner's accountants and provide them with access to all financial and other information relating to the Property, and access to Operator's accountants, work papers and to otherwise assist in minimizing the cost of the audit, and sufficient to enable the Owner to prepare audited financial statements. **OWNER CONCEDES TO OPERATOR'S DELETION.**

9.13. Operator shall permit Owner and its authorized representatives, as frequently as reasonably requested by Owner, to inspect the Property and Operator's accounts and records pertaining thereto and make copies thereof, during usual business hours upon reasonable advance notice, subject only to any business confidentiality requirements reasonably requested by Operator. In conducting such inspections, Owner shall not unreasonably interfere with the conduct of business at the Property. Operator will provide customary gratuitous accommodations, services and amenities at the Property to Owner and its authorized representatives in connection with such inspections.

ARTICLE X

MANAGEMENT FEES AND PAYMENTS TO OPERATOR AND OWNER

10.1. Owner will pay Operator a monthly management fee equal to the greater of 3% of Total Revenues (defined in Section 11.1), or \$7,500 per month ~~(the "Basic Fee")~~, **provided, however, that the total fee for any full Fiscal Year shall be no less than \$120,000 (the "Basic Fee"). If, at the end of any full Fiscal Year, the total of the monthly installments of the Basic Fee is less than \$120,000, then Owner shall, no later than January 15 of the Fiscal Year that immediately follows, pay Operator an amount equal to the difference between \$120,000 and the total of the monthly installments of the Basic Fee made during preceding Fiscal Year. [OWNER CONCEDES]** Owner will also pay Operator an Accounting Fee ("Accounting Fee") of \$1,500 per month. Upon termination or expiration of the Agreement, Operator will be paid a wind down fee ("Wind Down Fee") to compensate for operational and accounting-related issues equal the average Basic Fee for a single month earned during the immediately preceding twelve (12) full calendar months or, if Operator has not operated the Property for 12 full calendar months, the average Basic Fee for a single month based on the total time when Operator operated the Property. Unless otherwise agreed by Owner in its sole and absolute discretion, all accounting services for the Property shall be provided on a centralized, "above-property" basis, and there shall be no director of finance or

comptroller employed at the Property.

10.2. Concurrent with Operator's completion of delivery of the Monthly Reports for any month, Operator shall be entitled to withdrawal the Basic Fee and Accounting Fee from the Agency Account for such month.

10.3. On or before the twentieth (20th) **OWNER CONCEDES** day following the last day of each calendar quarter (or such other fiscal period as Owner and Operator may determine) of each Fiscal Year during the Term, after (a) payment of Operating Expenses, Fixed Charges and, to the extent the same are to be paid by Operator under this Agreement, debt service (if any), capital costs and other amounts, (b) any required payment to Operator pursuant to this Article X and (c) retention of working capital consistent with and subject to Section 8.1 hereof and the approved Budgets as further described in Article IX and amounts reasonably sufficient to assure the uninterrupted and efficient operation of the Property as required under Section 8.1 above, all remaining funds in the Agency Account shall be paid to Owner.

10.4. Following delivery of the annual financial statements referenced in Section 9.3, if any adjustment is necessary to any Basic Fee, Operator will either: (a) remit to Owner, any excess amounts Operator may have received for such fees during such calendar year or (b) be paid out of the Agency Account or by Owner, any deficiency in the amounts due Operator for the Basic Fee.

10.5. The parties acknowledge that Operator operated the Property as a court-appointed Receiver, appointed by the Shawnee County District Court in case number 2021-cv-000201, **OWNER CONCEDES** up to the Commencement Date, and that there shall not be any transition costs incident to Operator beginning the performance of its obligations under this Agreement; ~~provided that Owner will pay any Reimbursable Expenses, such as travel expenses, that are incurred by Operator as a result of the transition.~~

~~**10.6.** The Property may require~~**10.6.** Except as necessary to protect life, safety and property, Owner shall have sole and absolute discretion to determine whether the Property requires Capital Improvements, Major Renovations or other renovation or upgrade to remain competitive and preserve the asset, subject to Owner's approval on a per project basis. Operator may agree. If any Capital Improvements, Major Renovations or other renovations or upgrades are necessary, then the parties may (but shall not be required to) agree in writing for Operator to serve as project manager for services such as establishing the scope for design, materials and construction for renovation, requesting bids and securing agreements with contractors, supervising contractor work and updating the Owner on project accounting details. Any project management services will be provided pursuant to a separate written project management services signed by Owner and Operator. **OWNER CONCEDES TO THIS SECTION, SUBJECT TO THE NOTED ADJUSTMENTS.**

ARTICLE XI

DEFINITIONS

“**Capital Improvements**” shall mean improvements to the Property and replacement or refurbishing of FF&E that constitute portions of the Property which are capitalized in accordance with GAAP.

“**Emergency Expenses**” shall mean any expenses with respect to the Property, regardless of amount, which, in Operator’s good faith judgment, are immediately necessary to protect the physical integrity or lawful operation of the Property or the health or safety of its occupants or employees.

“**Employment Laws**” shall mean all federal, state, local and foreign statutes, laws, ordinances, regulations, decisions, rules, permits, judgments, orders and decrees affecting labor union activities, civil rights or employment (including but not limited to hiring and termination of employment) in the United States, including, without limitation, the Civil Rights Act of 1870, 42 U.S.C. § 1981, the Civil Rights Acts of 1871, 42 U.S.C. § 1983 the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, as amended, the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, the Rehabilitation Act, 29 U.S.C. § 701, *et seq.*, the Americans With Disabilities Act of 1990, 29 U.S.C. § 706, 42 U.S.C. § 12101, *et seq.*, the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 301, *et seq.*, the Equal Pay Act, 29 U.S.C. § 201, *et seq.*, the National Labor Relations Act, 29 U.S.C. § 151, *et seq.*, the Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*, all as amended from time to time and together with any similar laws now or hereafter enacted, and any regulations, rules or orders promulgated pursuant to such statutes.

“**Fiscal Year**” means each calendar year or partial calendar year within the Term.

“**Fixed Charges**” means the cost of the following items relating to the Property or its facilities, properly attributable under the Uniform System for the relevant period :

- (i) Real estate taxes, assessments, personal property taxes and any other ad valorem taxes imposed on or levied in connection with the Property, the Installations and the FF&E (collectively, “**Property Taxes**”), and Business Privilege and Net Profit taxes payable on the operations of the Property;
- (ii) Insurance against liability and physical damage to the Property; and
- (iii) Rental payments or payments for purchase options under leases of equipment which are capital leases under the Uniform System; and
- (iv) Any contributions into the FF&E Reserve Account (or accruals thereof).

“**Intercompany Invoice**” shall mean any invoice or billing statement sent by Operator or any of its affiliates to Operator, **OWNER CONCEDES** for purposes of assessing a charge or accommodating a transfer of funds between such entities.

“**Major Agreements**” shall mean any loan agreement; including any instruments governing municipal bonds), cash management agreement, mortgage, deed of trust, ground lease, instrument governing municipal bonds, or franchise agreement encumbering the Property or affecting the Property, ~~and the Kansas Department of Revenue Policy Memorandum 2001-4 (Revised).~~ **OWNER CONFIRMS THAT THERE IS NO CONDOMINIUM DECLARATION.**

“**Major Renovation**” shall mean any alteration or renovation or related series of alterations or

renovations of the Property which is (i) not in the ordinary course of business at the Property and (ii) a material addition of rooms or other facilities at the Property, or a material change in the layout of such rooms or other facilities at the Property having a material impact upon the Property's structure or infrastructure systems.

“**Necessary Expenses**” shall mean any Operating Expenses, regardless of amount, which are necessary for the continued operation of the Property and which are not within the reasonable control of Operator (including, but not limited to, those for franchise fees, credit card charges **OWNER CONCEDES** and utility charges).

“**Operating Expense(s)**” means costs and expenses of maintaining, conducting and supervising the operation of the Property which are properly attributable under the Uniform System for the relevant period. Subject to the exclusions set forth below in this definition, Operating Expenses will include, without limitation:

- (i) The cost of Operating Equipment and Operating Supplies;
- (ii) Salaries and wages of Hotel Employees, payroll taxes and employee benefits. The salaries or wages of off-site employees or executives of Operator are not Operating Expenses, provided that if it becomes necessary for an off-site employee or executive of Operator to temporarily perform services at the Property of a nature normally performed by a Hotel Employee, wages (including payroll taxes and employee benefits) for such period only as well as traveling expenses are Operating Expenses, in which event his or her salary (including payroll taxes and employee benefits), up to the amount of the salary of the last on-site employee who is being temporarily replaced by an off-site employee or executive, for such period only as well as his or her traveling expenses shall be both an Operating Expense and a Reimbursable Expense. If and to the extent that any employee of Operator performs services for any hotels in addition to the Property, any allocation of such employee's compensation as an Operating Expense of the Property shall be expressly set forth in the Operating Budget and shall be subject to Owner's reasonable approval;
- (iii) Cost of goods and services in connection with the operation of the Property including, without limitation, revenue management, IT, heat and utilities, laundry, landscaping, exterminating services and office supplies;
- (iv) The cost of all repairs to and maintenance of the Property;
- (v) Insurance premiums (or the allocable portion thereof in the case of blanket policies), deductibles, or self-insured retentions for insurance maintained under Article XIII (other than insurance against physical damage to the Property), including bonds, and losses incurred on any self-insured risks (including deductibles);
- (vii) Taxes, assessments, permit fees, inspection fees, and water and sewer charges and other charges (other than income or franchise taxes) payable by

or assessed against Owner with respect to the operation of the Property;

- (viii) ~~Legal~~ If approved by Owner in advance and in writing, legal fees of outside counsel for services directly related to the Property or fees of an outside independent certified public accountant for services directly related to the operation of the Property;
- (ix) Expenses for advertising the Property and all expenses of sales promotion and public relations activities;
- (xi) The Basic Fee, Accounting Fee and any other fees payable pursuant to this Agreement; or
- (xiii) Any other item specified as an Operating Expense in this Agreement or deemed an Administrative or General Expenses under the Uniform System.

Operating Expenses exclude:

- (i) Amortization and depreciation;
- (ii) The making of or repayment of any loans or any interest thereon;
- (iii) The costs of any alterations, additions or improvements which for Federal income tax purposes must be capitalized and amortized over the life of such alteration, addition or improvement;
- (iv) Any Fixed Charge; or
- (v) Payments into or out of the FF&E Reserve Account.

“Operating Standards” shall mean the operation of the Property in a manner consistent with (a) the standards, policies and programs that Operator recommends from time to time with respect to the operation, maintenance and repair of the Property (and if this Agreement requires Owner’s approval over the foregoing, to the extent such are reasonably acceptable to Owner); (b) in a manner (i) designed to optimize over the Term the financial performance of the Property and (ii) intended to protect and preserve the assets that comprise the Property; (c) the requirements and limitations set forth in this Agreement, including those relating to the approved Budget for each applicable Fiscal Year; and (d) if and when applicable, the requirements of any franchisor under any franchise or license agreement as it relates to the operation of the Property. **[OWNER CONCEDES TO OPERATOR’S CHANGES TO THIS DEFINITION.]**

“Reimbursable Expenses” shall mean all out-of-pocket expenses and disbursements reasonably incurred by Operator, pursuant to, in the course of, and directly related to, the management and operation of the Property under this Agreement ~~to the extent the same are approved by Owner~~ (either as part of an approved Budget or otherwise approved by Owner in writing) and with specificity (it not being sufficient if an expense merely falls within the limit of a category of expenses in an approved Budget). For the avoidance of doubt, Reimbursable Expenses shall not include any of the expenses of the central or branch offices maintained by Operator or any

unbudgeted **OWNER CONCEDES TO OPERATOR'S DELETIO HERE** travel (economy airfare only, with hotel stays at the Property when space is available) and entertainment expenses incurred by Operator's corporate, regional or other so called "above-property" personnel (except as set forth in clause (ii) of the definition of Operating Expenses).

"Total Revenues" means all income, revenue and proceeds resulting from the operation of the Property and all of its facilities (net of refunds and credits to guests and other items deemed "Allowances" under the Uniform System) which are properly attributable under the Uniform System to the period in question. Subject to the exclusions set forth below in this definition, Total Revenues includes, without limitation, all amounts derived from:

- (i) Rental of rooms, banquet facilities, meeting and business center facilities;
- (ii) Sale of food and beverage whether sold in a bar, lounge or restaurant, delivered to a guest room, sold through an in-room facility or owned vending machines, provided in meeting or banquet rooms or sold through catering operations;
- (iii) Charges for admittance to or the use of recreational facilities;
- (iv) Rent under Leases;
- (v) Charges for Property services or amenities, including, but not limited to, telephone service, in-room movies, and laundry services;
- (vi) Proceeds of business interruption or similar insurance;
- (vii) Service charges (less any portion thereof paid to Hotel Employees, which portion shall be Operating Expenses) or administrative charges; and
- (viii) Any rebates paid or payable to Owner with respect to the Property pursuant to Section 7.3.

Total Revenues exclude:

- (i) Sales or use taxes or similar governmental impositions collected by Owner or Operator;
- (ii) Proceeds of insurance other than business interruption or similar insurance;
- (iii) Proceeds of the sale or condemnation of the Property, any interest therein or any other asset, or the proceeds of any loans or financings;
- (iv) Capital contributed by Owner to the Property;
- (v) Repayment of any loans or interest by Owner;
- (vi) Receipts of any tenant, licensee or concessionaire under a Lease;

- (vii) Tips, service charges and other gratuities received by Hotel Employees
- (viii) The proceeds of any judgments, awards or settlements except to the extent the same represent (a) recoveries of any items expressly included in this definition of Total Revenues or (b) the recoupment of any amount paid as an Operating Expense or Fixed Charge;
- (ix) Interest earned on the Owner Account, Agency Account or the FF&E Reserve Account;
- (x) Tax credits paid or payable to Owner; or
- (xi) Security deposits under any space leases.

ARTICLE XII

FF&E RESERVE

12.1. To the extent that Owner is required by any franchisor or lender to maintain a reserve for FF&E, Operator may open a separate bank account that meets the requirements of Section 8.2 (the “**FF&E Reserve Account**”), make transfers from the Agency Account to the FF&E Reserve Account, and use funds from the FF&E Reserve Account to maintain compliance with Owner’s obligations to the franchisee or lender.

ARTICLE XIII

INSURANCE

13.1. Throughout the Term of this Agreement, and provided that funds from Total Revenues or funds otherwise provided by Owner are available, Owner shall arrange for and maintain, at Owner’s expense, the following insurance in connection with the Property:

- A. Insurance covering the Building, the Installations and the FF&E on the “Special Form” (also known as the “All Risk” form) against such risks as are customarily covered by such insurance (including coverage for earthquake, increased cost of construction, cost of debris removal, sink holes, one full year’s business interruption with 12 months extended period of indemnity and including, but not limited to, the management fees and payments to Operator provided in Article X hereof and any franchise fees as continuing expenses and extra expense to the extent available) in an amount not less than 100% of the then current full replacement cost thereof or such other amount as may be determined by Owner; provided that earthquake coverage shall be in an amount of the probable maximum loss as determined in a seismic study or such other amount as may be reasonably determined by Owner;
- B. Insurance for loss and damage (direct and indirect) from steam boilers, pressure vessels or similar apparatus, air conditioning systems, piping and machinery, and sprinklers, if any, now or hereafter installed in or about the Property, in an amount not less than 100% of the then current full replacement cost thereof or such other

amount as may be determined by Owner; and

- C. Commercial general liability insurance, with amounts not less than \$1,000,000 combined single limit for each occurrence and \$2,000,000 for the aggregate of all occurrences within each policy year, as well as excess liability (umbrella) insurance with limits of at least \$50,000,000 per occurrence, on an “occurrence” form covering each of the following with respect to Owner and Operator: bodily injury (including death) property damage, personal and advertising injury (including assault and battery, false arrest, detention or imprisonment or malicious prosecution, libel, slander, defamation or violation of the right of privacy, and wrongful entry or eviction), products and completed operations. Coverage shall be primary, non-contributory and excess to any other coverage;
- D. Comprehensive form vehicle liability insurance for owned, non-owned and hired vehicles, in the amount of \$1,000,000;
- F. Innkeeper’s legal liability insurance covering property of guests while on the Property premises for which Owner is legally responsible (other than property in a safe deposit box), with a limit of not less than \$5,000 for any one occurrence or \$25,000 in the aggregate;
- G. Safe deposit box legal liability insurance covering property of guests while in a safe deposit box at the Property for which Owner is legally responsible, with a limit of not less than \$100,000 for any one occurrence;

13.2. Throughout the Term of this Agreement, and provided that funds from Total Revenues or funds otherwise provided by Owner are available, Operator shall arrange for and maintain, at Owner’s expense, the following insurance in connection with the Property:

- A. Worker’s compensation insurance or insurance required by similar employee benefit acts, in an amount not less than that prescribed by applicable law and Employers Liability insurance having a minimum per occurrence limit of \$1,000,000 or such greater amount as ~~Operator may reasonably deem advisable~~ may be agreed upon in writing by the parties in the Budget or otherwise, against all claims which may be brought for personal injury to or death of Hotel Employees;
- B. Fidelity or Crime insurance, in such amounts and with such deductibles as ~~Operator may require~~ the parties may agree upon in the Budget or otherwise, covering Operator’s employees at the Property in job classifications normally insured under prudent hotel management practices in the United States or otherwise required by law;
- C. Employment Practices Liability Insurance with a minimum limit of \$1,000,000 per claim and annual aggregate; ~~and a deductible in an amount agreed upon in writing~~ by the parties, in the Budget or otherwise;
- D. Cyber liability insurance coverage (i) under an owner’s policy in the amount of \$2,000,000 per claim and in the aggregate, with Owner a named insured on such

coverage and (ii) under Operator's policy in the amount of \$20,000,000 per claim and in the aggregate, with Owner an additional insured on such coverage (provided, however, the insurance premium for the coverage under clause (ii) is at Operator's expense); and

- E. Such other or additional insurance or coverage as may be (i) required under the provisions of any applicable Major Agreements or (ii) customarily carried by prudent owners of similar, full-service hotels in the geographic area of the Property.

Owner shall be responsible for the premium for any insurance coverage and shall also be responsible for any and all deductibles and self-insured retentions in connection with such coverages. Owner shall reimburse Operator promptly after demand for any premiums paid by Operator on Owner's behalf and such reimbursement shall be an Operating Expense.

13.3. All insurance policies obtained by Operator shall name Operator as the insured party and, other than with respect to Sections 13.2 (A), (B) and (D), shall name as additional insureds the Owner and such other parties as may be required with respect to such insurance by the terms of any applicable Major Agreement; provided that, Operator shall endeavor to have the Owner instead listed as a named insured. All insurance policies obtained by Owner shall name (i) Owner as the insured party, (ii) Operator as additional named insured or loss payee, as Operator's interest may appear, and (iii) as additional insured such other parties as may be required with respect to such insurance by the terms of any applicable Major Agreement.

13.4. All insurance policies shall be on forms reasonably approved in advance by Owner and shall be in such form and with such companies having a rating of A- or better by AM Best's or a similar rating by another nationally recognized rating agency as shall be required by Owner (provided with respect to Operator Insurance, any such requirement will not cause the Operator to be in breach of any loan facility entered into by Operator) and shall comply with the requirements of any Major Agreement. Insurance may (at Owner's election, with respect to insurance required to be carried by Owner under this Agreement, or with Owner's prior approval, with respect to Operator Insurance) be provided under blanket or master policies covering one or more other hotels operated by Operator or owned by Owner; provided, however, that the coverage afforded to Owner and Operator will not be reduced or diminished or otherwise be different from that which would exist under a separate policy meeting all other requirements of this Agreement by reason of the use of such blanket policy of insurance, and provided further that the requirements of this Article XIII are otherwise satisfied. The portion of the premium for any blanket or master policy which is allocated to the Property as an Operating Expense or Fixed Charge shall be determined in an equitable manner by Owner and reasonably approved by Operator (with respect to insurance carried by Owner), and by Operator and reasonably approved by Owner (with respect to Operator Insurance).

13.5. The originals of all insurance policies or certificates thereof shall be delivered to Owner and Operator on the Commencement Date and thereafter not less than ten (10) days prior to the expiration date of the policies then in force. All such policies shall specify that they cannot be canceled or modified on less than thirty (30) days prior written notice to the party carrying the insurance (or such longer period as may be required under a Major Agreement) and shall provide that claims shall be paid notwithstanding any act or negligence of Owner or Operator or their

respective agents or employees.

13.6. All insurance policies shall provide, to the extent customarily obtainable from the insurance company providing such insurance, that the insurance company will have no right of subrogation against Owner, Operator, any party to a Major Agreement or any of their respective agents, employees, partners, members, officers, directors or beneficial owners.

13.7. Owner and Operator hereby release one another from any and all liability, to the extent of the waivers of subrogation obtained under Section 13.6, associated with any damage, loss or liability with respect to which property insurance coverage is provided pursuant to this Article or otherwise.

13.8. The proceeds of any insurance claim (other than proceeds payable to third parties under the terms of the applicable policy) with respect to insurance carried by Operator shall be paid into the Owner Account to the extent of Owner's interest therein unless otherwise required by the terms of a Major Agreement, in which event the terms of such Major Agreement shall control.

13.9. Operator shall promptly investigate and make a complete and timely written report to the appropriate insurance company as to all accidents, all claims for damage relating to the ownership, operation, and maintenance of the Property, and any damage or destruction to the Property and the estimated cost of repair thereof and shall prepare any and all reports required by any insurance company in connection therewith. All such reports shall be timely filed with the insurance company as required under the terms of the insurance policy involved, and a copy of all such reports shall be made available to Owner.

13.10. Neither Owner nor Operator shall on its own initiative or pursuant to the request or requirement of any third party, take out separate insurance concurrent in form or contributing in the event of loss with that required in this Article XIII to be furnished, or increase the amount of any then-existing insurance by securing an additional policy or additional policies, unless all parties having an insurable interest in the subject matter of the insurance, including in all cases Owner, are included therein as additional insureds, and the loss is payable under such additional separate insurance in the same manner as losses are payable under this Agreement. Each party shall immediately notify the other party that it has obtained any such separate insurance or of the increasing of any of the amounts of the then existing insurance.

ARTICLE XIV

PROPERTY TAXES

14.1. If funds from Total Revenues or funds otherwise provided by Owner are available, Operator will pay all Property Taxes on behalf of Owner not less than ten (10) days prior to the applicable due dates. Operator shall promptly furnish Owner with proof of payment of Property Taxes.

14.2. Operator may from time to time advise Owner of the desirability of contesting the validity or amount of any Property Tax (a "**Tax Contest**"). Owner may, whether or not Operator so recommends, pursue a Tax Contest, and Operator agrees to cooperate with Owner in a Tax Contest and execute any documents or pleadings required for such purpose, provided that the facts set forth in such documents or pleadings are accurate and that such cooperation or execution does not

impose any liability on Operator. All costs and expenses of a Tax Contest will be an Operating Expense.

14.3. The parties acknowledge that, as an entity affiliated with the City of Topeka, Owner is exempt from property tax, and that this Article XIV and any other provisions of this Agreement applicable to Owner's payment of property taxes shall apply only if and when this Agreement is assigned to and assumed by a person or entity that is not exempt from property taxes or the City elects to add the Property to the tax rolls thereby, making property taxes applicable.

ARTICLE XV

DAMAGE OR DESTRUCTION ; CONDEMNATION

15.1. If the Property is damaged by fire or other casualty, Operator will promptly notify Owner. Operator shall cooperate with and assist Owner in evaluating the extent of the damage, filing and pursuing insurance claims, developing plans for the restoration of the Property and modifying the applicable Budgets to reflect the effect of the casualty on operations. This Agreement shall remain in full force and effect subsequent to such casualty provided that Owner may terminate this Agreement upon thirty (30) days prior notice to the other party if (a) Owner elects to close the Property as a result of such casualty (except on a temporary basis for repairs or restoration).

15.2. Operator will promptly notify Owner if all or any portion of the Property becomes the subject of a condemnation proceeding or if Operator learns of any such proceeding. Operator shall cooperate with and assist Owner in evaluating the effect of the condemnation, pursuing any negotiation, litigation, administrative action or appeal relating to the condemnation award, developing plans for the restoration of the Property and modifying the applicable Budgets to reflect the effect of the condemnation on operations.

15.3. Either party may terminate this Agreement on thirty (30) days' prior written notice to the other party if (a) all or substantially all of the Property is taken through condemnation or (b) less than all or substantially all of the Property is taken, but, in the reasonable judgment of the party giving the termination notice, the Property cannot, after giving effect to any restoration as might be reasonably accomplished through available funds from the condemnation award, be profitably operated as a similar, full-service hotel.

15.4. Any condemnation award or similar compensation shall be the property of Owner, provided that Operator may bring a separate proceeding against the condemning authority for any damages and expenses specifically incurred by Operator as a result of such condemnation.

ARTICLE XVI

EVENTS OF DEFAULT

16.1. Each of the following will constitute an event of default and give rise to a right of termination for cause (each, an "**Event of Default**"):

- A. Subject to Section 8.1, if OWNER CONCEDES either party is in default in payment of any amount required to be paid under the terms of this Agreement, and

such default continues for ten (10) **OWNER CONCEDES** days after receipt of written notice from the other party;

- B. If either party is in material default in the performance of its other obligations under this Agreement, and such default continues for thirty (30) days after receipt of written notice from the other party, provided that if such default cannot by its nature reasonably be cured within such thirty-day period, an event of default will not occur if and so long as the defaulting party promptly commences and diligently pursues the curing of such default;
- C. If either party (i) makes an assignment for the benefit of creditors, (ii) institutes any proceeding seeking relief under any federal or state bankruptcy or insolvency laws, (iii) institutes any proceeding seeking the appointment of a receiver, trustee, custodian or similar official for its business or assets or (iv) consents to the institution against it of any such proceeding by any other person or entity (an “**Involuntary Proceeding**”); or
- D. If an Involuntary Proceeding is commenced against either party and remains undismissed for sixty (60) days.
- E. If Owner fails to fund operating revenue shortfalls or working capital in accordance with the terms hereof including but not limited to Section 8.1 **and such failure prevents Operator from being able to timely fund all of its payroll expenses for Hotel Employees from the Agency Account.**

16.2. The right of termination set forth in Sections 16.1 and 17.1 are **OWNER CONCEDES** cumulative, and not in substitution for, but is in addition to, any and all rights and remedies for breach of contract available at law or in equity.

16.3. Neither party will be deemed to be in default of its obligations under this Agreement (other than a payment obligation) if and to the extent that such party is unable to perform such obligation as a result of fire or other casualty, act of God, strike or other labor unrest, unavailability of materials, war, riot or other civil commotion, invasion, insurrection, acts of terrorism, sabotage, failure of transportation, outbreak of disease, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, actions of labor unions, and governmental actions or any other cause beyond the control of such party (which does not include the inability of such party to meet its financial obligations) (each a “**Force Majeure Event**”).

ARTICLE XVII

TERMINATION

17.1. Termination By Operator for Cause. Operator may terminate this Agreement for Owner’s Event of Default upon ten (10) business days’ written notice of Operator’s intent to terminate for cause, except for a termination for an Event of Default pursuant to Section 16.1E, which shall be five (5) **business** days’ written notice. **OWNER CONCEDES WITH THE ADJUSTMENT NOTED** Owner and Operator acknowledge and agree that any Event of Default by Owner causing termination of this Agreement will cause Operator to suffer actual and substantial damage, which

would be extremely difficult or impossible to accurately quantify in a reasonable and timely manner. Operator and Owner agree that it is difficult for Operator to quantify damages and that, as reasonable compensation for damages Operator will suffer due to Owner's material breach, Owner will pay Operator, as liquidated damages and not as a penalty, the ~~amount equal to lesser of ninety (90) days' fees, or (b) the balance of fees Operator would have earned pursuant to Article X during the Term. Ninety (90) days of fees are~~ calculated as three (3) times the average of all monthly fees earned pursuant to Article X of this Agreement (not actually paid over the life of the Agreement). Payment of all monies called for under this paragraph shall be made by Owner to Operator within thirty (30) days of Owner's receipt of the notice of termination by Operator for cause.

17.2. Owner Special Termination Without Case Rights. Notwithstanding anything to the contrary set forth in this Agreement, ~~either party~~ **Owner** may terminate this Agreement at any time, without cause, upon providing at least thirty (30) days' prior written notice to ~~the other. If Owner elects to terminate in accordance with this Section 17.2, Owner shall pay to Operator a termination fee (the "Termination Fee") equal to ninety (90) days' fees, calculated as three (3) times the average of all monthly fees earned pursuant to Article X of this Agreement (not actually paid over the life of the Agreement).~~ **Operator, without any termination fee or other liability on account of such termination.**

17.3. Termination on Sale. Notwithstanding anything to the contrary set forth within this Agreement, Owner may terminate this Agreement incident to sale of the Property upon at least ~~sixty (60)~~ **forty-five (45) [OWNER-PROPOSED COMPROMISE]** days' prior written notice, without any termination fee or other liability on account of such termination. ~~If the Property is sold during the Initial Term, then Owner shall pay to Operator the Termination Fee (as defined in Section 17.2 above).~~

17.4. Final Accounting. Within five (5) days after any notice of termination (irrespective of the party providing such notice), Operator shall provide Owner a list of all payments that are or will be owed by the Property to Operator, Hotel Employees and all other persons between the date of the termination notice and the effective date of termination. Provided Owner is not in default, and Owner has paid all sums required under the Agreement, following expiration or termination of the Agreement, Operator will complete the necessary final accounting work for the Property within thirty (30) days of the effective date of termination. It is understood and agreed that the Wind Down Fee is partially in consideration of this service, and that no additional fee shall be payable for this service. Operator will deliver to Owner all records, books, accounts, contracts, leases, receipts for deposits, unpaid bills and other papers or documents which pertain to the Property with the exception of employee records, which must be retained by Operator according to law. **[OWNER CONCEDES TO DELETION]** Operator may keep and maintain copies of any records that it delivers to Owner, provided that the same be kept in confidence by Operator. Upon such termination or withdrawal, Owner will assume responsibility for payment of all approved or authorized unpaid bills of the Property; ~~provided that Operator may use Agency Account funds or retain sufficient funds, to be determined in Operator's sole discretion, to pay all amounts due for Operating Expenses including final bills and expenses.~~

17.5. Final Payment of Taxes. Upon termination of this Agreement for any reason, Operator will provide Owner with an estimate of all accrued taxes as of the date of termination for which

the Operator may be held legally responsible for nonpayment such as sales and use tax and taxes specific to the sale and/or consumption of liquor. 17.6. Upon the expiration or earlier termination of this Agreement, Operator shall reasonably cooperate with Owner **OWNER CONCEDES** in transferring management of the Property to Owner or another management company with as little hindrance to the operations of the Property as practicable. Without limiting the generality of the foregoing, Operator shall:

~~A. use commercially reasonable~~ A. provided that Operator is not terminating this Agreement pursuant to Section 17.1, at Owner's written request, continue to manage the Property under this Agreement for such period (not to exceed 60 days) **OWNER PROPOSES COMPROMISE** as Owner may request after the date of such expiration or termination upon all of the terms and conditions of this Agreement;

B. use commercially reasonable **OWNER CONCEDES** efforts (i) to transfer to Owner or Owner's nominee all Licenses or (ii) if such transfer is prohibited by law or Owner otherwise elects, to cooperate with Owner or Owner's nominee in connection with the processing by Owner or Owner's nominee of any applications for all Licenses, including, to the extent allowed by law, Operator continuing to operate, while such applications are pending, the liquor operations under its Licenses pursuant to an interim agreement in a form agreeable to Operator **OWNER CONCEDES** (in which case Owner shall indemnify and hold Operator harmless against any liability arising as a result of Operator's continuation of such operation, except for the gross negligence or willful misconduct of Operator); provided, in either case, that the costs and expense of any such transfer or the processing of any such application shall be paid by Owner or Owner's nominee; and

BC. assign to Owner or Owner's nominee simultaneously with the termination of this Agreement, and the assignee shall assume, all space leases, contracts, concessions agreements and agreements in effect with respect to the Property then in Operator's name; provided, however, that Owner need not assume any space leases, contracts, concessions agreements and agreements entered into without Owner's consent in violation of this Agreement.

17.7. Upon any termination of this Agreement, Owner shall pay to Operator any Reimbursable Expenses supported an expense report that includes copies of receipts.

ARTICLE XVIII

ASSIGNMENT

18.1. Operator shall not assign this Agreement or any of its obligations hereunder without the prior written consent of Owner; provided that, Operator may assign this Agreement or the proceeds of this Agreement to any entity controlling, controlled by or under common control with Operator (control being deemed to mean the ownership of 50% or more of the stock or other beneficial

interest in such entity and/or the power to direct the day-to-day operations of such entity and/or possessing common management). Nothing in this Agreement shall prohibit or be deemed to prohibit any pledge by Operator of the Base Fee, Accounting Fee or any other amounts received by Operator under this Agreement to any lender as collateral security for debt of Operator and/or Operator's affiliates. **[OWNER CONCEDES]**

18.2. Owner shall not assign this Agreement without the prior consent of Operator, provided that Owner may assign this Agreement without Operator's consent to (a) a single-purpose entity controlled by Owner, or (b) the Topeka Public Building Commission. **[OWNER CONCEDES]**

18.3. Upon any permitted assignment of this Agreement and the assumption of this Agreement by the assignee, the assignor shall be relieved of any obligation or liability under this Agreement arising after the effective date of the assignment.

ARTICLE XIX

NOTICES

19.1. Any notice, statement or demand required to be given under this Agreement must be in writing, sent by postage prepaid, return receipt requested, or by a nationally recognized express courier (e.g. FedEx), receipt confirmed, addressed if to:

Operator: TOKS Associates LLC
c/o G.F. Management, LLC
Attn: Jeff Kolessar
Eight Penn Center, 23rd Floor
1628 JFK Boulevard
Philadelphia, PA 19103

with a copy to: Ashley Kazman Price, Esquire
AHP Law Group LLC
1628 JFK Boulevard, Ste. 2300
Philadelphia, PA 19103

Owner: [SPE TBD]
c/o City Clerk
215 S.E. 7th Street
Topeka, KS 66603

with copies to: City of Topeka Public Works Department
620 S.E. Madison
Topeka, KS 66607
Attn: Mr. Braxton Copley

and

Lannan Legal PLLC
1717 K Street, N.W., Suite 900

or to such other addresses as Operator and Owner designate in the manner provided in this Section 19.1. Any notice or other communication is deemed given on the date when delivery is made to the recipient or rejected by the recipient.

ARTICLE XX

SUBORDINATION; ESTOPPELS

20.1. Operator acknowledges and agrees that its rights under this Agreement may be subject and subordinate to the lien of any first mortgage or deed of trust loan, or any junior mortgage or deed of trust loan or mezzanine equity pledge held by an institutional investor or under municipal bonds, encumbering the Property whether now or hereafter existing. The provisions of this Section 20.1 shall be self-operative, but Operator agrees to execute and deliver a subordination or assignment agreement containing customary and reasonable terms as the holder of any such lien may reasonably request. **[OWNER CONCEDES]**

20.3. Owner and Operator agree that from time to time upon the request of the other party or a party to a Major Agreement, it shall execute and deliver within ten (10) days after the request a certificate confirming that this Agreement is in full force and effect, stating whether this Agreement has been modified and supplying such other information as the requesting party may reasonably require.

ARTICLE XXI

INDEMNIFICATION

21.1. Operator shall indemnify and hold Owner (and Owner's agents, principals, shareholders, partners, members, officers, directors and employees) harmless from and against all liabilities, losses, claims, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) that may be incurred by or asserted against any such party from any third-party claim **[OWNER CONCEDES]** and that arise from (a) the fraud, willful misconduct or gross negligence of the executive or off-site employees of Operator (which for purposes of this Section 21.1 shall include the General Manager of the Property), or (b) the material breach by Operator of any provision of this Agreement. **[OWNER CONCEDES]** Owner shall promptly provide Operator with written notice of any claim or suit brought against it by a third party which might result in such indemnification and Operator shall have the option of defending any claim or suit brought against the Owner with counsel selected by Operator and reasonably approved by Owner. Owner shall cooperate with the Operator or its counsel in the preparation and conduct of any defense to any such claim or suit and shall have the right to reasonably participate in such defense.

21.2. Except as provided in Section 21.1, Owner shall indemnify and hold Operator (and Operator's agents, principals, shareholders, partners, members, officers, directors and employees) harmless from and against all liabilities, losses, claims, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses) that may be incurred by or asserted against such party and that arise from or in connection with (a) the performance of Operator's services under this Agreement, (b) any act or omission of Owner or any third party that is not an

affiliate of Operator or (c) or any other occurrence related to the Property whether arising before, during or after the Term. Operator shall promptly provide Owner with written notice of any claim or suit brought against it by a third party which might result in such indemnification and Owner shall have the option of defending any claim or suit brought against Operator with counsel selected by Owner and reasonably satisfactory to Operator. Operator shall cooperate with the Owner or its counsel in the preparation and conduct of any defense to any such claim or suit and shall have the right to reasonably participate in such defense.

21.3. If any claim is made against Owner and/or Operator which is based upon a violation or alleged violation of the Employment Laws (an “**Employment Claim**”), then the Employment Claim shall fall within Owner’s indemnification obligations under Section 21.1 unless it is based upon the willful misconduct or gross negligence of Operator’s executive employees, including the General Manager of the Property (including such willful misconduct or negligence as may arise in the hiring, supervision or dismissal of any Property Employee). **OWNER CONCEDES**

~~21.4. Notwithstanding any contrary provision of this Agreement, Operator will be excused from its obligations to operate the Property and from its other obligations under this Agreement, to the extent and whenever Operator’s compliance with such obligations is prevented or restricted by (i) the occurrence of a Force Majeure Event (as defined in Section 16.3), (ii) an insufficiency of funds available to Operator in the Agency Account; (iii) the revocation of or refusal to grant licenses or permits by the applicable governmental entity, where such revocation or refusal is not due to any act or failure to act by Operator, or (iv) any material breach by Owner of its obligations under this Agreement, (v) to the extent and whenever there is herein provided a limitation upon Operator’s ability to expend funds in respect of the Property (for example, the limitations contained in this Agreement respecting Owner’s rights to approve budget line items and modifications thereto and monies available for variances from the Budgets)~~

~~21.5. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE SERVICES CONTEMPLATED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOSS OF PROFIT OR DIMINUTION IN VALUE CLAIMS. Except for amount paid as proceeds of insurance, Operator’s liability is limited to the value of management fees paid by Owner in the six (6) months prior to the event giving rise to the claim.~~

21.6~~21.4.~~ The provisions of this Article shall survive the termination of this Agreement with respect to acts, omissions and occurrences arising during the Term.

21.7~~5.~~ Neither party shall enter into any settlement of any claim for which it is entitled to indemnification of the other party without the other party’s prior written consent, which shall not be unreasonably withheld or delayed.

ARTICLE XXII

MISCELLANEOUS

22.1. Owner and Operator will execute and deliver all other appropriate supplemental agreements

and other instruments, and take any other action necessary to make this Agreement fully and legally effective, binding, and enforceable as between them and as against third parties.

22.2. Owner acknowledges and agrees that the terms of this Agreement and all exhibits, attachments or addenda or other agreements ancillary to, or executed in connection with this Agreement, and any amendments of the foregoing (the “**Confidential Terms**”) are strictly confidential and Owner will not disclose such Confidential Terms to any third party or entity (including the press) without the prior written consent of Operator; provided, however, (i) Owner may disclose Confidential Terms, without Operator’s prior consent, when required (a) to obtain the advice of professionals or consultants, (b) to obtain financing for the Property from a lender or potential lender or as required under any loan or financing agreement to which any of Owner or its affiliates is or becomes a party, (c) to those of Owner’s managers, members, shareholders, partners, officers, directors or employees as is necessary for the ownership or operation of the Property, (d) in connection with the sale or other transfer of the Property or a leasehold interest in the Property, (e) as required or requested by any governmental authority or representative thereof or pursuant to legal process in connection with any legal proceedings, or as required by the Kansas Open Records Act, K.S.A. 45-215 *et seq.* or any similar applicable law, ~~(e)~~**[OWNER CONCEDES TO DELETION]** (f) as may be necessary or appropriate to disclose, in such party’s judgment, in connection with a proposed equity offering to be made by Owner or its respective affiliates or (f) by any applicable laws; and (ii) Operator may disclose Confidential Terms, without Owner’s prior consent, when required (a) to obtain the advice of professionals or consultants, or (b) to those of Operator’s members, shareholders, partners, officers, directors or employees as is necessary for the operation of the Property, ~~or (c) in order to perform the services contemplated herein and in connection with engaging such vendors and providers to provide goods and/or services for Hotel operations.~~ **[OWNER MOSTLY CONCEDES]** The obligations set forth in this Section 22.3 shall survive any termination or expiration of this Agreement.

22.4. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, superseding all prior agreements or undertakings, oral or written. Owner acknowledges that in entering into this Agreement Owner has not relied on any projection of earnings, statements as to the possibility of future success or other similar matter which may have been prepared by Operator.

22.5. The headings of the titles to the several articles of this Agreement are inserted for convenience only.

22.6. A waiver of any of the terms and conditions of this Agreement may be made only in writing and not be deemed a waiver of such terms and conditions on any future occasion.

22.7. This Agreement is binding upon and inure to the benefit of Owner and Operator and their respective successors and permitted assigns.

22.8. This Agreement is governed by, and be construed and enforced in accordance with, the laws of the State of Kansas, without giving effect to any conflict of law rule or principle of such laws that would result in application of any other state’s laws.

22.9. If any provision of this Agreement is declared invalid or unenforceable, such provision

shall be deemed modified to the minimum extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

22.10. EACH PARTY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY DISPUTE IN CONNECTION WITH OR RELATING TO THIS AGREEMENT OR ANY MATTERS DESCRIBED OR CONTEMPLATED HEREIN OR THEREIN, AND AGREE TO TAKE ANY AND ALL ACTION NECESSARY OR APPROPRIATE TO AFFECT SUCH WAIVER.

22.11. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute a single instrument. This Agreement may be signed and/or transmitted by e-mail of a .pdf document or using electronic signature technology (e.g., via DocuSign, AdobeSign or similar electronic signature technology), and such signed electronic record shall be valid and as effective to bind the party so signing as a paper copy bearing such party's handwritten signature. The Parties further consent and agree that (1) to the extent a party signs this Agreement using electronic signature technology, by clicking "SIGN", such party is signing this Agreement electronically, and (2) the electronic signatures appearing on this Agreement shall be treated, for purposes of validity, enforceability and admissibility, the same as handwritten signatures.

22.12. Any action brought by either party against the other arising under or related to this Agreement shall be brought exclusively within the United States District Court for the District Kansas (Topeka Division) or, if federal subject matter jurisdiction is lacking, in a state court of competent jurisdiction in Shawnee County, Kansas. Each of the parties hereby consents to the personal jurisdiction of such courts and waives any objection based on venue or the doctrine of *forum non conveniens* to any such action being adjudicated in any such court.

22.13. Any reference in this Agreement to a "loan" or "debt" shall be deemed to include municipal bonds, and any reference to a "lender" shall be deemed to include the municipality that issued such bonds, its manager or agent with respect to the bonds, or any successor-in-interest to any of the foregoing.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Operator and Owner have duly executed this Agreement as of the day and year first above written.

OWNER:

[SPE TBD]

By: _____

Name: Richard U. Nienstedt

Title: Interim City Manager

Attest:

Brenda Younger, City Clerk

OPERATOR:

TOKS ASSOCIATES LLC

By: _____

Name:

Title:

Exhibit “A”

Centralized Services

Fees	Description
Information Technology Services \$350 / month plus \$1,520 / year	To reimburse for costs related to installation, integration, and ongoing support of IT related systems at the Property.
Revenue Management Services \$1, 699 499 / month	To reimburse for costs related to resources and tools focused on delivering topline revenue and market share information.
HR/Benefits Administration Fee \$1,045 / year plus \$80 per hired employee / year	Services including recruiting system, performance management, hot line, benefits administration.
Recruiting Services \$225 / hired hourly position and \$3,500 / hired salaried position	Services for recruiting Hotel Employees as needed to fill vacant positions.

Note: These charges will be modified on an annual basis in connection with the review and approval of the Budgets.

Exhibit “B”

Commencement Date Certificate

Pursuant to that certain Hotel Management Agreement (the “**Management Agreement**”) dated as of _____, 2023 between the [SPE TBD] (“**Owner**”) and TOKS Associates LLC (“**Operator**”), Owner and Operator hereby acknowledge and agree that the Commencement Date under the Management Agreement is _____, 2023.

IN WITNESS WHEREOF, the undersigned have executed this Commencement Date Certificate to be effective as of the date first written above.

OWNER:

[SPE TBD]

By: _____
Name:
Title:

OPERATOR:

TOKS Associates LLC

By: _____
Name:
Title:

SCHEDULE 9.1

Modifications to the Methodology in the Uniform System that Operator Implements in its Standard Practice as of the Date of this Agreement

[insert]

DRAFT

GUARANTY OF MANAGEMENT AGREEMENT

G.F. Management, LLC, a limited liability company organized and existing under the laws of Pennsylvania (“Guarantor”), with a registered office in Wayne, PA and its principal place of business in Philadelphia, PA, executes this Guaranty of Management (this “Guaranty”) in favor of [SBE TBD], a public benefit corporation organized and existing under the laws of Kansas (“Owner”).

RECITALS:

Owner and TOKS Associates LLC (“Manager”) are parties to that certain Hotel Management Agreement, dated [] (the “Agreement”).

As an inducement to Owner entering into the Management Agreement, Guarantor has agreed to execute this Guaranty in connection with the Agreement.

AGREEMENT:

In consideration of, and as an inducement to, Manager entering into Management Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor does hereby unconditionally and irrevocably guarantee to Owner the punctual performance of all obligations of Manager under the Agreement (the “Guaranteed Obligations”), and Guarantor agrees that Guarantor shall be jointly and severally liable with Manager for any damages arising out of any breach by Manager of the Agreement.

The maintenance of any action or proceeding by Owner against Guarantor to enforce the Guaranteed Obligations shall not preclude Owner from thereafter instituting and maintaining subsequent actions or proceedings for any subsequent default or defaults of Manager under the Management Agreement. Guarantor agrees that Owner may avail itself of or exercise any or all of the rights and remedies against Manager provided by law or by the Management Agreement, and may proceed either against Manager alone or jointly against Manager and Guarantor, or against Guarantor alone, without first prosecuting or exhausting any remedy or claim against Manager. Guarantor hereby further consents to any subsequent change, modification or amendment of the Management Agreement in any of its terms, covenants or conditions, or in the monies payable thereunder or obligations to be performed thereunder, or in the term thereof, and to any assignment or assignments of the Management Agreement in accordance with its terms, and to any renewals or extensions thereof, all of which may be made without notice to or consent of Guarantor and without in any manner releasing or relieving Guarantor from liability under this Guaranty.

Guarantor hereby agrees that the bankruptcy of Manager shall have no effect on the obligations of Guarantor hereunder. Guarantor hereby further agrees that in respect of any payments made by Guarantor hereunder, Guarantor shall not have any rights based on suretyship, subrogation or otherwise to stand in the Owner of Owner so as to compete with Owner as a creditor of Manager, unless and until all claims of Manager under the Management Agreement shall have been fully paid and satisfied.

Neither this Guaranty nor any of the provisions hereof can be modified, waived or terminated, except by a written instrument signed by Owner. The provisions of this Guaranty shall apply to, bind and inure to the benefit of Guarantor and Owner and their respective heirs, legal representatives, successors and assigns. This Guaranty shall not be revoked or impaired as to Guarantor by the release of any obligations hereunder of any other party. This Guaranty shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to any conflict-of-law principles thereof that would result in the application of any other state's laws.

All notices, requests, demands or other communications required or permitted under this Guaranty shall be in writing and delivered in accordance with the notice provisions of the Management Agreement.

Guarantor hereby agrees that all actions or proceedings arising out of or relating to this Guaranty shall be litigated in state or federal court in New Orleans, Louisiana, hereby consents to the personal jurisdiction of the federal and state courts within the State of Louisiana for any such action, and hereby waives any objection based on venue or inconvenient forum to any such action being adjudicated in any such court.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty as of the date of the Management Agreement.

GUARANTOR:

G.F. MANAGEMENT, LLC

By:

Name:

Title: