

**TOPEKA DEVELOPMENT CORPORATION  
BOARD OF DIRECTORS  
MEETING AGENDA  
April 14, 2026 – 5:00 p.m. to 6:00 p.m.  
City Council Chambers  
214 SE 8<sup>th</sup> St., 2<sup>nd</sup> Floor, Topeka, Kansas, 66603**

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Board of Directors:

Spencer L. Duncan, President	Michell Hoferer, Vice President
Karen A. Hiller, Secretary	Michelle Bradberry, Treasurer
Christina Valdivia-Alcala, Director	Sylvia E. Ortiz, Director
David Banks, Director	Brett D. Kell, Director
Marcus D.L. Miller, Director	Murray McGee, Director

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**Addressing the Board of Directors:** Public comment for the meeting will be available In-person or via Zoom. Individuals must contact the City Clerk's Office at 785-368-3940 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) by no later than 4:00 p.m. on the meeting date 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](mailto: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 at the meeting or to the City Clerk's Office located at 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) on or before the meeting date.

If you need any accommodations for the meeting, please contact the City ADA Coordinator at 785-368-4470. Kansas Relay Service at 800-766-3777. Please provide a 48 Hour Notice if possible.

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://topekadevelopmentcorporation.com/>.

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- 1. CALL TO ORDER:**
- 2. PLEDGE OF ALLEGIANCE:**
- 3. ROLL CALL:**
- 4. APPROVAL of February 10, 2026, meeting minutes.**
- 5. APPROVAL of the 2025 Topeka Development Corporation Audit Report.**
- 6. UPDATE on the status of the sale of Hotel Topeka to the Endeavor Hotel Group, LLC.**
- 7. AMENDMENT to the purchase agreement to extend the inspection period.**
- 8. EXECUTIVE SESSION:**
- 9. OTHER BUSINESS:**
- 10. PUBLIC COMMENT:**

Public comment for the meeting will be available In-person or via Zoom. Individuals must contact the City Clerk's Office at 785-368-3940 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) by no later than 4:00 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 also be considered to the extent it is submitted at the meeting or personally to the City Clerk's Office located at 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) on or before the date. View the meeting online at <https://www.topeka.gov/communications/live-stream/> or at <https://www.facebook.com/cityoftopeka/>.

- 11. ADJOURNMENT:**

**Topeka Development Corporation (TDC)**  
**April 14, 2026, Meeting**

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**Item No. 4:**

- **February 10, 2026, Meeting Minutes**

**Topeka Development Corporation Board of Directors Meeting Minutes  
February 10, 2026.**

The Topeka Development Corporation (TDC) Board of Directors met at 5:00 p.m. with the following Board of Directors present: Karen Hiller, Sylvia Ortiz, David Banks and Michelle Bradberry - 4. Mayor Spencer Duncan presided -1. Absent: Christina Valdiva-Alcala, Brett Kell, Marcus Miller and Michelle Hoferer -4. Council District No. 8 - Vacant.

Public comment for the meeting was available via Zoom or in-person. Individuals were required to contact the City Clerk's Office at 785-368-3940 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) by no later than 4:00 p.m. on February 10, 2026, after which the City Clerk's Office provided the Zoom link information and protocols prior to the meeting start time. Written public comment was also considered to the extent it was personally submitted at the meeting or to the City Clerk's Office located at 215 SE 7th Street, Room 166, Topeka, Kansas, 66603 or via email at [cclerk@topeka.org](mailto:cclerk@topeka.org) on or before February 10, 2026.

**APPROVAL of December 16 , 2025, Minutes.**

Director Banks moved to approve the minutes. The motion seconded by Director Ortiz carried unanimously on voice vote. (5-0-0)

**RATIFICATION of the 2024 and 2025 election of officers for the Topeka Development Corporation Board of Directors.**

Director Kell entered the room.

Director Duncan stated pursuant to Section 5.01 of the Topeka Development Corporation Bylaws, the Board President, Vice President, Secretary and Treasurer (officers) shall be elected annually; therefore, there is a need to ratify the officers from 2024 and 2025. In regard to the appointment of an Executive Director (City Manager), an Assistant Secretary (City Clerk), and an Assistant Treasurer (Deputy Director of Financial Services) of the Board, these are authorized pursuant to Section 2 of TDC Resolution No. 2023-01, approved October 19, 2023. He requested a motion to ratify the election of the officers for the Corporation for 2024 and 2025 as follows:

- President Michael Padilla
- Vice President Neil Dobler
- Secretary Karen Hiller
- Treasurer Michelle Hoferer

Director Duncan moved to ratify the election of the officers for the corporation for 2024 and 2025 as stated. The motion seconded by Director Kell carried unanimously on voice vote. (6-0-0)

Director Hoferer and Director Miller joined the meeting remotely.

**SELECTION of 2026 Topeka Development Corporation Board Officers.**

Director Duncan stated pursuant to the TDC Bylaws, officers of the Board shall be elected annually. Two or more offices may be held by the same person at any one time, except the offices of President and Secretary. Duties of the Officers are outlined in Section 5.02 of the Bylaws.

Director Duncan opened the floor for nominations

Director Duncan nominated himself to serve as Board President, Deputy Mayor Hoferer to serve as Board Vice President, Councilmember Hiller to serve as Board Secretary and Councilmember Bradberry to serve as Board Treasurer.

Upon hearing no other nominations, Director Duncan closed the nominations.

Director Hiller asked if it was necessary to reappoint executive staff to conduct corporate duties.

Nick Jefferson, City Attorney, reported executive staff appointments are authorized pursuant to TDC Resolution No. 2023-01; therefore, it would not be necessary to reappoint executive staff members annually.

Director Duncan moved to approve the nominations as stated. The motion seconded by Director Hiller carried unanimously on roll call vote. (8-0-0)

**ANNUAL REVIEW of conflict-of-interest statement policy.**

Board President Duncan stated the policy form was included in the agenda packet, and Deputy City Manager Copley will provide a brief overview of the policy and instructions on submitting the form.

Braxton Copley, Deputy City Manager, reported pursuant to Article VIII, Section 8.05, of the TDC Bylaws, states the conflict-of-interest policy shall be reviewed annually for the information and guidance of directors, officers and staff members. He requested that all members of the Board and the appropriate executive staff submit a Conflict-of-Interest Form to the City Clerk.

**AUTHORIZE submission of a petition to establish a Community Improvement District (CID) for Hotel Topeka.**

Braxton Copley, Deputy City Manager, reported approval would authorize the submission of a petition to the City of Topeka Governing Body to consider the establishment of a CID for Hotel Topeka, levying an additional 2% sales tax on goods and services within the hotel's property boundaries to help fund hotel renovations and recoup the City's investment. He reminded the Board that this CID proposal would be in addition to the 8% Transient Guest Tax (TGT) taxes for Hotel Topeka authorized by City Charter Ordinance 125 effective January 1, 2026.

Board President Duncan asked staff to confirm that the establishment of a 2% CID must be approved by the Governing Body.

Deputy City Manager Copley confirmed approval by the Board only provides the authorization to submit the proposal to the Governing Body for consideration to establish the CID.

Director Kell moved to approve the authorization of submission of a petition to the City of Topeka Governing Body to consider the establishment of a CID for Hotel Topeka, levying an additional 2% sales tax on goods and services within the hotel’s property boundaries. The motion seconded by Board President Duncan carried unanimously on roll call vote. (8-0-0)

**UPDATE on the status of the sale of Hotel Topeka to the Endeavor Hotel Group, LLC.**

Braxton Copley, Deputy City Manager, reported the approval of the contract to sale the hotel triggered the 4-month inspection period which is considered part of the required due diligence process. He commented on the following items:

- Endeavor Hotel Group has provided the \$100,000 earnest money that has been deposited to Lawyer’s Title of Kansas, Inc.
- The title commitment has been issued, and Staff is in the process of reviewing the title work with no exceptions being located to date that have cause for concern.
- The City has provided a wealth of documents to the Endeavor Hotel Group including the conditional assessment of the hotel, STAR report, financial reports, etc.
- Endeavor has requested Staff conduct inspections of the hotel along with performing their own inspections.
- Endeavor is currently in negotiations with Shawnee County regarding Manor Conference Center improvements.

Roy Arnold, Endeavor Hotel Group, LLC President, expressed his gratitude for having a detailed report to methodically approach the renovation of the hotel. He commented on the positive partnership they have developed with Shawnee County and highlighted the following items:

- The filing of regulatory compliance was nearly complete regarding the issuance of industrial revenue bonds.
- They are in a relatively good place as it relates to closing on schedule.
- They expect a lending term sheet soon.
- They are progressing with design plans. Preference will be given to local providers.
- An update on the project plan for the hotel exterior and interior guest room finishes was provided.
- The official “rebrand” date will be announced when the branding agreement is signed. They anticipate the agreement to be finalized in approximately 4 weeks.

Director Hiller thanked Roy Arnold for providing a comprehensive update. She asked how they plan to collaborate upgrades to the hotel in conjunction with the Manor Conference Center as

well as how they plan to work with the Stormont Vail Center to attract events that benefit both venues.

Roy Arnold stated they intend to create two improvement projects (Hotel Topeka and Manor Conference Center) and release request for proposals simultaneously for certain aspects of both projects, in order to support competitive bidding. He noted, as they finalize the management agreement with Shawnee County, they need to ratify an agreement for intended upgrades to Manor Conference Center while addressing the shortfalls of cross marketing for the entire campus (Hotel Topeka, Manor Conference Center and Stormont Vail Event Center).

Directors Hiller and Kell spoke about the importance of attracting annual events.

Director Ortiz questioned how they plan to prepare for the 2026 FIFA World Cup to be hosted by Kansas City.

Deputy City Manager Copley reported GF Hotels has already begun promoting rooms for the event.

Roy Arnold stated the Endeavor Group plans to make the most of the opportunity and confirmed they have also already begun preparations for the 2026 FIFA World Cup.

Board President Duncan thanked the Endeavor Group for the hard work and ability to work with Shawnee County and the City of Topeka.

NO FURTHER BUSINESS appearing the meeting adjourned at 5:38 p.m.

**Topeka Development Corporation (TDC)**  
**April 14, 2026, Meeting**

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**Item No. 5:**

- **2025 TDC Audit Report**

April 2, 2026

To the Management and the Board of Directors  
**Topeka Development Corporation**  
Topeka, Kansas

We have audited the financial statements of the of **Topeka Development Corporation** for the year ended December 31, 2025, and have issued our report thereon dated April 2, 2026. Professional standards require that we provide you with information about our responsibilities under generally accepted auditing standards, as well as certain information related to the planned scope and timing of our audit. We have communicated such information in our letter to you dated January 12, 2026. Professional standards also require that we communicate to you the following information related to our audit.

### **Significant Audit Matters**

#### *Qualitative Aspects of Accounting Practices*

Management is responsible for the selection and use of appropriate accounting policies. The significant accounting policies used by **Topeka Development Corporation** are described in Note 1 to the financial statements. No new accounting policies were adopted and the application of existing policies was not changed during the year ended December 31, 2025. We noted no transactions entered into by the Organization during the year for which there is a lack of authoritative guidance or consensus. All significant transactions have been recognized in the financial statements in the proper period.

Accounting estimates are an integral part of the financial statements prepared by management and are based on management's knowledge and experience about past and current events and assumptions about future events. Certain accounting estimates are particularly sensitive because of their significance to the financial statements and because of the possibility that future events affecting them may differ significantly from those expected.

The financial statement disclosures are neutral, consistent, and clear.

#### *Difficulties Encountered in Performing the Audit*

We encountered no significant difficulties in dealing with management in performing and completing our audit.

#### *Corrected and Uncorrected Misstatements*

Professional standards require us to accumulate all misstatements identified during the audit, other than those that are clearly trivial, and communicate them to the appropriate level of management. Management has corrected all such misstatements. In addition, none of the misstatements detected as a result of audit procedures and corrected by management were material, either individually or in the aggregate, to the financial statements taken as a whole. All adjustments were provided by management during the audit.

## **Topeka Development Corporation**

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April 2, 2026

### *Disagreements with Management*

For purposes of this letter, a disagreement with management is a financial accounting, reporting, or auditing matter, whether or not resolved to our satisfaction, that could be significant to the financial statements or the auditors' report. We are pleased to report that no such disagreements arose during the course of our audit.

### *Management Representations*

We have requested certain representations from management that are included in the management representation letter dated April 2, 2026.

### *Management Consultations with Other Independent Accountants*

In some cases, management may decide to consult with other accountants about auditing and accounting matters, similar to obtaining a "second opinion" on certain situations. If a consultation involves application of an accounting principle to the Organization's financial statements or a determination of the type of auditors' opinion that may be expressed on those statements, our professional standards require the consulting accountant to check with us to determine that the consultant has all the relevant facts. To our knowledge, there were no such consultations with other accountants.

### *Other Audit Findings or Issues*

We generally discuss a variety of matters, including the application of accounting principles and auditing standards, with management each year prior to retention as the Organization's auditors. However, these discussions occurred in the normal course of our professional relationship and our responses were not a condition to our retention.

- During the audit, we noted that a letter of intent to sell the primary asset of the Organization was entered into in July 2025. If the Organization were to ultimately sell the Hotel Topeka Property, it would significantly change the future financial reporting of the Organization. Information regarding the letter of intent is included in Note 5 to the financial statements.

There were no changes to our initial assessment of risks of material misstatements to the financial statements, which were communicated to you in our letter dated January 12, 2026.

## **Information Technology**

### *Information Security Governance*

Information security isn't merely a technological concern, it's a governance and management challenge. In the present landscape marked by frequent cybersecurity breaches, protecting the confidentiality, integrity and availability of critical information assets has become paramount. The involvement of owners, executive managers, and periodic sharing of summary reports with governance personnel is essential for maintaining a holistic understanding of the Organization's information security stance.

While many organizations believe their security practices are adequate, unexpected vulnerabilities often manifest, leading to severe consequences. Information security demands executive stewardship for timely threat assessment and effective response mechanisms.

## **Topeka Development Corporation**

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April 2, 2026

A structured assessment is invaluable. It clarifies your security processes' strengths and weaknesses and guides you with actionable recommendations, aiming to bolster the safety of your information, infrastructure, personnel, and technology.

Connecting management with peer networking groups and other resources to stay updated with evolving IT risks and best practices allows for additional insights from others with similar backgrounds and experiences.

### *Vulnerability Assessment*

Beyond routine information system governance reviews, there's a pressing need for periodic vulnerability assessments, preferably semi-annually or annually. There are more than 100,000 known network vulnerabilities that can leave organizations open to cyber-attacks.

In an era where high-profile security breaches are regrettably frequent, many organizations remain exposed to these pitfalls. Network vulnerability assessments are a proactive measure to identify and address these vulnerabilities preemptively.

At Adams Brown, our seasoned technology professionals leverage network vulnerability assessments to uncover and analyze these flaws. By utilizing automated scanning tools combined with their judgment, they pinpoint vulnerabilities, gauge their severity, and propose actionable solutions to mitigate them. For more information, please visit <https://www.adamsbrowntech.com/>.

## **INTERNAL CONTROLS**

In planning and performing our audit of the financial statements of **Topeka Development Corporation** as of and for the year ended December 31, 2025, in accordance with auditing standards generally accepted in the United States of America, we considered **Topeka Development Corporation's** system of internal control over financial reporting (internal control) as a basis for designing auditing procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Organization's internal control. Accordingly, we do not express an opinion on the effectiveness of the Organization's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the Organization's financial statements will not be prevented, or detected and corrected, on a timely basis.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

We would like to express our appreciation for the opportunity to perform the December 31, 2025 audit for **Topeka Development Corporation** and to the employees for the cooperation and assistance given to us during the audit.

**Topeka Development Corporation**

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April 2, 2026

*Restriction on Use*

This communication is intended solely for the information and use of management, the Board of Directors, others within the organization, and is not intended to be, and should not be, used by anyone other than these specified parties.

A handwritten signature in black ink that reads "Adams Brown, LLC". The signature is written in a cursive, flowing style.

**ADAMSBROWN, LLC**

Certified Public Accountants

Wichita, Kansas

Client: **95-08485.0 - Topeka Development Corporation**  
 Engagement: **2025 Audit - Topeka Development Corporation**  
 Period Ending: **12/31/2025**  
 Trial Balance: **TB-01 - Trial Balance**  
 Workpaper: **TB-03 - Combined Journal Entries Report**

Account	Description	W/P Ref	Debit	Credit
<b>Adjusting Journal Entries</b>				
<b>Adjusting Journal Entries JE # 1001</b>				
Client provided entry to update trial balance for prior year depreciation adjustment.				
16700	Accumulated Depreciation	PBC	242,932.59	
30001	TDC Equity			242,932.59
<b>Total</b>			<b>242,932.59</b>	<b>242,932.59</b>
<b>Adjusting Journal Entries JE # 1002</b>				
Entry provided by client to adjust depreciation expense				
16700	Accumulated Depreciation	PBC	251,555.97	
58102	Depreciation			251,555.97
<b>Total</b>			<b>251,555.97</b>	<b>251,555.97</b>
<b>Total Adjusting Journal Entries</b>			<b>494,488.56</b>	<b>494,488.56</b>
<b>Total All Journal Entries</b>			<b>494,488.56</b>	<b>494,488.56</b>

**TOPEKA DEVELOPMENT CORPORATION**

Financial Statements With Independent Auditors' Report

For the Year Ended December 31, 2025

**TOPEKA DEVELOPMENT CORPORATION**  
Financial Statements With Independent Auditors' Report  
For the Year Ended December 31, 2025

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## INDEPENDENT AUDITORS' REPORT

To the Board of Directors  
**Topeka Development Corporation**  
Topeka, Kansas

### Opinion

We have audited the accompanying financial statements of **Topeka Development Corporation**, a component unit of City of Topeka, Kansas, which comprise the statement of net position as of December 31, 2025, and the related statements of revenues, expenses and change in net position and cash flows for the year then ended, and the related notes to the financial statements, which collectively comprise the Organization's basic financial statements as listed in the table of contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the net position of **Topeka Development Corporation**, as of December 31, 2025, and the changes in its net position and cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

### Basis for Opinion

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Our responsibilities under those standards are further described in the Auditors' Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of **Topeka Development Corporation**, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about **Topeka Development Corporation's** ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

### Auditors' Responsibilities for the Audit of the Financial Statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditors' report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is

## Topeka Development Corporation

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not a guarantee that an audit conducted in accordance with generally accepted auditing standards will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards, we:

- exercise professional judgment and maintain professional skepticism throughout the audit.
- identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of **Topeka Development Corporation's** internal control. Accordingly, no such opinion is expressed.
- evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about **Topeka Development Corporation's** ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

### Required Supplementary Information

Management has omitted the management, discussion, and analysis that accounting principles generally accepted in the United States of America require to be presented to supplement the basic financial statements. Such missing information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. Our opinion on the basic financial statements is not affected by this missing information.



**ADAMSBROWN, LLC**

Certified Public Accountants  
Wichita, Kansas

April 2, 2026

**TOPEKA DEVELOPMENT CORPORATION**

Statement of Net Position

December 31, 2025

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<b><u>ASSETS</u></b>	
<b>Current Assets</b>	
Cash and Cash Equivalents	\$ 531,587
Accounts Receivable, Net	42,020
Inventory	26,741
Prepaid Expenses and Other Assets	<u>111,471</u>
<b>Total Current Assets</b>	<u>711,819</u>
<b>Capital Assets</b>	
Building	7,287,977
Accumulated Depreciation	<u>(789,531)</u>
<b>Net Capital Assets</b>	<u>6,498,446</u>
<b>Total Assets</b>	<u>\$ 7,210,265</u>
<b><u>LIABILITIES</u></b>	
<b>Current Liabilities</b>	
Trade Accounts Payable	\$ 162,900
Accrued Payroll	38,611
Deposits Received	<u>4,883</u>
<b>Total Current Liabilities</b>	<u>206,394</u>
<b><u>NET POSITION</u></b>	
Invested in Capital Assets, Net of Related Debt	6,498,446
Unrestricted	<u>505,425</u>
<b>Total Net Position</b>	<u>7,003,871</u>
<b>Total Liabilities and Net Assets</b>	<u>\$ 7,210,265</u>

The accompanying notes are an integral part of the financial statements.

**TOPEKA DEVELOPMENT CORPORATION**  
Statement of Revenues, Expenses and Change in Net Position  
For the Year Ended December 31, 2025

<b><u>REVENUES</u></b>	
<b>Operating Revenues</b>	
Charges for Services	
Room	\$ 1,858,293
Restaurant	92,938
Banquet	804,456
Other	47,367
	2,803,054
<b>Total Operating Revenue</b>	
<b><u>EXPENSES</u></b>	
<b>Operating Expenses</b>	
<b>Payroll and Compensation Expense</b>	
Room	674,972
Food and Beverage	197,614
Restaurant	72,455
Banquet	167,972
Administrative and General	226,717
Sales and Marketing	161,478
Repairs and Maintenance	297,677
	1,798,885
<b>Total Payroll and Compensation Expense</b>	
<b>Professional Services</b>	
Room	123,388
Food and Beverage	55,234
Administrative and General	146,761
IT	135,077
Sales and Marketing	125,107
Repairs and Maintenance	30,010
Fixed	3,702
	619,279
<b>Total Professional Services</b>	
<b>Supplies</b>	
Room	70,020
Food and Beverage	347,133
Other	20,693
Administrative and General	20,045
IT	11,333
Sales and Marketing	2,326
Repairs and Maintenance	245,927
Utilities	462,433
Fixed	492,388
	1,672,298
<b>Total Supplies</b>	
<b>Depreciation</b>	
	364,399
<b>Total Operating Expenses</b>	
	4,454,861
<b>Net Operating Loss (carried forward)</b>	<b>\$ (1,651,807)</b>

The accompanying notes are an integral part of the financial statements.

**TOPEKA DEVELOPMENT CORPORATION**  
Statement of Revenues, Expenses and Change in Net Position  
For the Year Ended December 31, 2025

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<b>Net Operating Loss (carried forward)</b>	\$ <u>(1,651,807)</u>
<b><u>NON OPERATING REVENUES (EXPENSES)</u></b>	
Interest Income	114
Interest Expense and Finance Charges	<u>(106,258)</u>
<b>Net Nonoperating Revenues (Expenses)</b>	<u>(106,144)</u>
<b>Loss Before Contributions</b>	(1,757,951)
<b>Capital Contributions</b>	
Other Capital Contribution	<u>1,542,278</u>
<b>Change in Net Position</b>	(215,673)
<b>Net Position Beginning of Period</b>	<u>7,219,544</u>
<b>Net Position End of Period</b>	\$ <u><u>7,003,871</u></u>

The accompanying notes are an integral part of the financial statements.

**TOPEKA DEVELOPMENT CORPORATION**Statement of Cash Flows  
For the Year Ended December 31, 2025

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<b>Cash Flows From Operating Activities</b>	
Hotel Services	\$ 2,803,661
Payments to Suppliers	<u>(4,092,411)</u>
<b>Net Cash Used by Operating Activities</b>	<u>(1,288,750)</u>
<b>Cash Flows From Capital and Capital Related Financing Activities</b>	
Capital Contributions Received	1,542,278
Interest Expense and Finance Charges	<u>(106,258)</u>
<b>Net Cash Provided by Capital and Capital Related Financing Activities</b>	<u>1,436,020</u>
<b>Cash Flows from Investing Activities</b>	
Interest Income	<u>114</u>
<b>Net Increase in Cash and Cash Equivalents</b>	147,384
<b>Cash and Cash Equivalents - Beginning of Year</b>	<u>384,203</u>
<b>Cash and Cash Equivalents - End of Year</b>	\$ <u><u>531,587</u></u>

**Reconciliation of Net Operating Loss to Net Cash Used by Operating Activities**

<b>Net Operating Loss</b>	\$ (1,651,807)
<b>Adjustments to Reconcile Net Operating Loss to Net Cash Used by Operating Activities</b>	
Depreciation	364,399
(Increase) Decrease in	
Accounts Receivable	20,629
Inventory	(1,925)
Prepaid Expenses	9,104
Increase (Decrease) in	
Accounts Payable	(2,635)
Other Payables	(6,954)
Accrued Payroll and Benefits	461
Deposits Received	<u>(20,022)</u>
<b>Net Cash Used by Operating Activities</b>	\$ <u><u>(1,288,750)</u></u>

The accompanying notes are an integral part of the financial statements.

## TOPEKA DEVELOPMENT CORPORATION

Notes to Financial Statements

December 31, 2025

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### NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### Nature of Activities

**Topeka Development Corporation** (the Organization) was incorporated on October 18, 2023, as a nonprofit organization for the exclusive benefit of City of Topeka, Kansas, 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 City of Topeka, Kansas. The Organization is a blended component unit of City of Topeka, Kansas and shares the same governing body as City of Topeka, Kansas. The Organization has no component units of its own.

#### Basis of Accounting

The accounting and reporting policies of the Organization, relating to the programs included in the accompanying financial statements, conform to generally accepted accounting principles applicable to state and local governments. Generally accepted accounting principles (GAAP) for local governments include those principles prescribed by the Governmental Accounting Standards Board (GASB), the American Institute of Certified Public Accountants in the publication entitled Audits of State and Local Governments (GASB 34 Edition).

The Organization's financial statements are reported using the economic resources measurement focus and the accrual basis of accounting. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of timing of related cash flows. For financial statement reporting purposes, the Organization is considered a special-purpose government engaged only in business-type activities and consists of one proprietary fund.

#### Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

#### Cash and Cash Equivalents

Cash and cash equivalents include checking accounts.

#### Accounts Receivable, Net

Accounts receivables are recorded when services are rendered and are primarily related to credit card payments. There was no allowance for uncollectable accounts at year end.

#### Prepaid Expenses and Inventory

Payments made to vendors for goods or services that will benefit periods beyond the current year are recorded as inventory or prepaid expenses.

#### Capital Assets

Capital assets are defined by the Organization as assets with an initial, individual cost of \$5,000 or more and an estimated useful life of two years or greater. These assets are valued at historical cost, estimated historical cost if actual cost is not available, and estimated acquisition value on the date donated.

The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend asset lives are not capitalized. The sale or disposal of capital assets is recorded by removing cost and accumulated depreciation from the accounts and charging the resulting gain or loss to income.

Depreciation has been provided over the estimated useful lives using the straight-line method. The estimated useful life for the building is 20 years.

## TOPEKA DEVELOPMENT CORPORATION

Notes to Financial Statements

December 31, 2025

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### Net Position

The Organization's net position is classified as follows:

Invested in capital assets, net of related debt: This represents the Organization's total investment in capital assets, net of outstanding debt obligations related to those capital assets.

Unrestricted net position: The Organization receives various funds from organizations and hotel guests which are available for use at the discretion of the Organization.

### Hotel Service Revenue

The Organization operates a full service hotel. Hotel revenues are recognized when services or goods have been rendered and it has a legal and enforceable right to receive payment. Hotel service revenues primarily consist of room rentals and restaurant and banquet charges.

### Income Taxes

The Organization is exempt from federal income taxes on related income under Section 501(a) of the Internal Revenue Code (IRC), as an Organization described in IRC Section 501(c)(3). Further, the Organization has been classified as an Organization that is not a private foundation under IRC Section 509(a) and, as such, contributions to the Organization qualify for deduction as charitable contributions. However, income generated from activities unrelated to the Organization's exempt purpose is subject to tax under IRC Section 511. The Organization did not have any material unrelated business income tax liability for the year ended December 31, 2025.

### Management Agreement

The Organization has contracted with TOKS Associates LLC to manage the operations of Hotel Topeka at City Center. The management agreement commenced on October 31, 2023, and was renewed for an additional six months on December 31, 2023. The agreement will automatically renew for an additional six months indefinitely until either party provides notice of termination of the agreement.

The Organization will pay a management fee equal to the greater of 3% of total revenues, or \$7,500 per month, provided that the total fee for any full fiscal year is not less than \$120,000. If, at the end of any full fiscal year, the total of the monthly installments is less than \$120,000, the Organization shall pay TOKS Associates LLC an amount equal to the difference. The Organization will also pay TOKS Associates LLC an accounting fee of \$1,500 per month.

All hotel employees are employees of TOKS Associates LLC and, as such, the Organization has no direct employees and no pension obligations.

For the year ended December 31, 2025, the Organization paid base management fees of \$100,476, incentive management fees of \$33,596 and total accounting fees of \$18,000.

### Budgetary Information

The Organization is not subject to legal annual operating budget requirements and, therefore, has not included any budgetary information in these financial statements.

### NOTE 2 – CASH

#### Deposits

K.S.A. 9-1401 establishes the depositories which may be used by **Topeka Development Corporation**. The statute requires banks eligible to hold the Organization's funds have a main or branch bank in the county in which the Organization is located, or in an adjoining county if such institution has been designated as an official depository, and the banks provide an acceptable rate of return on funds. In addition, K.S.A. 9-1402

## TOPEKA DEVELOPMENT CORPORATION

Notes to Financial Statements

December 31, 2025

requires the banks to pledge securities for deposits in excess of FDIC coverage. The Organization has no other policies that would further limit interest rate risk.

K.S.A. 12-1675 limits the Organization's investments of idle funds to time deposits, open accounts, and certificates of deposit with allowable financial institutions; U.S. government securities; temporary notes; no-fund warrants; repurchase agreements; and the Kansas Municipal Investment Pool. The Organization has no investment policy that would further limit its investment choices.

### Concentration of Credit Risk

State statutes place no limit on the amount the Organization may invest in any one issuer as long as the investments are adequately secured under K.S.A. 9-1402 and K.S.A. 9-1405.

### Custodial Credit Risk – Deposits

Custodial credit risk is the risk that, in the event of a bank failure, the Organization's deposits may not be returned to it. State statutes require the Organization's deposits in financial institutions to be entirely covered by federal depository insurance or by collateral held under a joint custody receipt issued by a bank within the State of Kansas, the Federal Reserve Bank of Kansas City, or the Federal Home Loan Bank of Topeka, except during designated "peak periods" when required coverage is 50%. The Organization does not use "peak periods". All deposits were not legally secured at December 31, 2025. At December 31, 2025, the Organization's carrying amount of deposits and cash on hand was \$531,587 and the bank balance was \$513,897. Of the bank balance, \$400,273 was covered by federal depository insurance and \$113,624 was unsecured.

Cash balances at December 31, 2025 were as follows:

Demand Deposit – U.S. Bank	\$	150,273
Demand Deposit – Bank of America		376,314
Petty Cash on Hand		<u>5,000</u>
<b>Total Cash</b>	<b>\$</b>	<b><u>531,587</u></b>

### NOTE 3 – CAPITAL ASSETS

The following is a summary of changes in capital asset for the year ended December 31, 2025.

	<b>Beginning Balance</b>	<b>Increases</b>	<b>Decreases</b>	<b>Ending Balance</b>
<b>Depreciable Capital Assets</b>				
Building	\$ 7,287,977	-	-	7,287,977
<b>Less Accumulated</b>				
Depreciation	<u>(425,132)</u>	<u>(364,399)</u>	<u>-</u>	<u>(789,531)</u>
<b>Capital Assets, Net of Accumulated Depreciation</b>	<b>\$ <u>6,862,845</u></b>	<b><u>(364,399)</u></b>	<b><u>-</u></b>	<b><u>6,498,446</u></b>

The Organization incurred total depreciation expense for the year ended December 31, 2025, of \$364,399.

## TOPEKA DEVELOPMENT CORPORATION

Notes to Financial Statements

December 31, 2025

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### NOTE 4 – CAPITAL CONTRIBUTION

The Organization is a blended component unit of City of Topeka, Kansas and received capital contributions from the City of \$1,542,279 in cash, which is included in the statement of revenues, expenses and change in net position for the year ended December 31, 2025.

### NOTE 5 – LETTER OF INTENT TO SELL HOTEL PROPERTY

On July 7, 2025, the Organization entered into a non-binding Letter of Intent (“LOI”) with Endeavor Hotel Group, LLC (“Buyer”) outlining the proposed sale of the Hotel Topeka property located at 1717 SW Topeka Boulevard, Topeka, Kansas. The LOI sets forth the principal terms under which the Buyer has expressed its intent to purchase the hotel property, including the related land, improvements, furnishings, equipment, and certain assignable contracts.

Under the terms of the LOI, the proposed purchase price for the hotel property is \$1,000,000, subject to the negotiation and execution of a definitive Purchase and Sale Agreement (“PSA”). The LOI contemplates that the Buyer would undertake a comprehensive redevelopment and rebranding of the property following acquisition, including significant capital investment and the pursuit of various public financing and incentive tools. Any such incentives, including industrial revenue bonds, tax abatements, or sales tax exemptions, would require approval by applicable governmental authorities and are not obligations of the Organization.

The LOI provides for a due diligence and inspection period, during which the Buyer may terminate the proposed transaction without penalty. The LOI is non-binding with respect to the sale of the property and does not obligate either party to complete the transaction unless and until a definitive PSA is executed and all required approvals are obtained.

As of April 2, 2026, no definitive purchase and sale agreement has been executed, and the Organization continues to hold title to the Hotel Topeka property. Accordingly, no gain or loss has been recognized in the accompanying financial statements related to the proposed transaction. The Organization will evaluate the accounting and disclosure implications of the transaction in future periods should a definitive agreement be executed or the sale be completed.

### NOTE 6 – SUBSEQUENT EVENTS

Management has evaluated subsequent events through April 2, 2026, which is the date the financial statements were available to be issued.

**Topeka Development Corporation (TDC)**  
**April 14, 2026, Meeting**

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**Item No. 6:**

- **Update from Endeavor Hotel Group, LLC**

**Topeka Development Corporation (TDC)**  
**April 14, 2026, Meeting**

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**Item No. 7:**

- **Purchase Agreement Amendment – Extend Inspection Period**

**FIRST AMENDMENT TO CONTRACT NO. 2025-01 PURCHASE AND SALE AGREEMENT  
FOR HOTEL TOPEKA**

THIS **FIRST AMENDMENT TO Contract No. 2025-01 PURCHASE AND SALE AGREEMENT** ("First Amendment") is effective as of April 14, 2026, and amends that certain Contract No. 2025-01 Purchase and Sale Agreement dated December 16, 2025 ("Agreement"), by and between **ENDEAVOR HOTEL GROUP LLC**, a Delaware limited liability company ("Purchaser"), and **TOPEKA DEVELOPMENT CORPORATION**, a Kansas not-for-profit corporation and an instrumentality of the City of Topeka, Kansas duly constituted under Kansas law ("Seller").

**WHEREAS**, Purchaser is under contract to purchase from Seller that certain real property commonly known as Hotel Topeka at City Center located at 1717 Southwest Topeka Boulevard, Topeka, Kansas; and

**WHEREAS**, the parties desire to amend the Agreement for purposes of extending the inspection period until May 15, 2026, without extending the original closing date of June 14, 2026.

**NOW, THEREFORE**, in consideration of the terms hereof and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

**1. Amendment to Section 3.2 "Inspection Period".** Section 3.2 of the Agreement is hereby amended and replaced in its entirety to read as follows:

**3.2 Inspection Period.** Purchaser shall have until May 15, 2026 ("Inspection Period") to conduct due diligence on the Hotel as it deems appropriate. The Purchaser shall have the right, in its sole and absolute discretion, upon written notice, to terminate this Agreement for any reason, or no reason, at any time prior to the end of the Inspection Period, and in the event of such termination, Purchaser shall be entitled to the return of the Earnest Money Deposit.

**2. Amendment to Section 5.1 "Closing; Closing Date".** Section 5.1 of the Agreement is hereby amended and replaced in its entirety to read as follows:

**5.1 Closing; Closing Date.** The closing of the transaction contemplated by this Agreement (the "**Closing**") shall occur on or before June 14, 2026, following the satisfaction of all other conditions to Closing as may be detailed in this Agreement. The Closing shall be held at the office of the Escrow Agent (or at Purchaser's request, with notice to Seller's attorney at least seven days (7) Business Days prior to the Closing Date, at the offices of Purchaser's lender or Purchaser's lender's attorneys, provided such offices are located in Topeka, Kansas. Should all other conditions be satisfied earlier than June 14, 2026, the Parties shall work diligently to ensure a Closing Date as soon as possible. Seller shall be entitled to adjourn the Closing Date one time upon at least one (1) Business Day prior notice to Purchaser to: (a) remedy or clear any Title Objections; or (b) satisfy any other conditions to Purchaser's obligation to consummate the Closing under this Agreement. Purchaser acknowledges and agrees that **TIME SHALL BE OF THE ESSENCE** with respect to the performance by Purchaser of its obligations to purchase the Property, pay the Purchase Price and otherwise consummate the transactions contemplated in this

Agreement on the Closing Date. For the purposes of this Agreement, the actual Closing Date, as may adjust in the event Seller elects to adjourn the Closing pursuant to the terms of this Agreement, shall be deemed the "Closing Date" under the Agreement.

**3. Ratification of Contract.** The Parties hereby confirm and ratify all other provisions contained in the Agreement, which provisions shall remain in effect as initially drafted except as expressly amended hereby.

**4. Descriptive Headings, etc.** The descriptive headings of the several sections of this Amendment are inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

**5. Defined Terms.** Unless expressly defined herein, defined terms utilized in this Amendment shall be deemed to have the same meaning as set forth in the Agreement.

**6. Counterparts.** This Amendment may be executed in any number of counterparts and by different Parties on separate counterparts and all of such counterparts shall together constitute the same agreement.

**7. Modification.** No additions, modifications or amendments may be made hereto, except if stated in writing and signed by all Parties.

***[SIGNATURES APPEAR ON FOLLOWING PAGE]***

**IN WITNESS WHEREOF**, the Parties have caused this First Amendment to be executed, by their respective duly authorized officers, effective on the date and year first above written.

**PURCHASER:**

**ENDEAVOR HOTEL GROUP, LLC**

By: \_\_\_\_\_  
Roy Arnold, President

**SELLER:**

**TOPEKA DEVELOPMENT CORPORATION**

Approved By:

Approved By:

\_\_\_\_\_  
**Dr. Robert M. Perez,**  
**TDC Executive Director**

\_\_\_\_\_  
**Spencer L. Duncan**  
**TDC President**

**TOPEKA DEVELOPMENT CORPORATION**

**CONTRACT NO. 2025-01**

**Purchase and Sale Agreement for Hotel Topeka**

This Purchase and Sale Agreement (“Agreement”) is entered into as of December 16, 2025 (the “Effective Date”), between the Topeka Development Corporation, a not-for-profit corporation and an instrumentality of the City of Topeka, Kansas duly constituted under Kansas law (the “Seller”), and Endeavor Hotel Group, LLC, duly constituted under Delaware law, (the “Purchaser”), Seller and Purchaser collectively referred to as the “Parties.”

**Background**

**WHEREAS**, the City of Topeka (the “City”) previously entered into that certain Agreement for Sale and Purchase for the purchase of real property commonly known as Hotel Topeka at City Center located at 1717 Southwest Topeka Boulevard, Topeka, Kansas (the “Hotel”); and

**WHEREAS**, the Topeka Development Corporation (the “TDC”) has been organized and 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 the Hotel; and

**WHEREAS**, the TDC took title to the Hotel on behalf of the City upon the City’s payment of the purchase price for the acquisition of the Hotel on October 31, 2023 and

**WHEREAS**, the City and the TDC desire to promote economic development and enhance tourism through the renovation and operation of the Hotel; and

**WHEREAS**, the City, through the TDC has expended significant resources on the Hotel in order to preserve the economic value of the connecting Stormont Vail Event Center and Maner Conference Center (“**Maner**”); and

**WHEREAS**, to recoup its acquisition and investment costs which include the purchase price, capital expenses, and operating losses incurred by the City from the date of acquisition through the date of sale, the City has established or intends to establish a Community Improvement District (“CID”) on the Real Property and the Maner building (excluding any parking and other property associated with Maner) that will levy a 2% sales tax captured and retained by the City; and

**WHEREAS**, additionally the City also intends to capture the incremental growth from its existing levy of Transient Guest Tax (“TGT”) from the Hotel following its sale to Purchaser to recoup investment costs; and

**WHEREAS**, the Purchaser intends to acquire, renovate, and operate the Hotel as a full-service hotel by Wyndham Hotels and Resorts or comparable flag in the “Upper Upscale” classification by STR as determined by Purchaser subject to approval by the City in its sole discretion, thereby contributing to the economic growth of the City;

**Accordingly, the parties agree as follows:**

**Article I  
Definitions**

- 1.1 **“Abatement Statute”** means K.S.A. 79-201a, as amended.
- 1.2 **“Ad valorem taxes”** or **“ad valorem taxation”** means all property taxes imposed on real or personal property (including fixtures) and eligible for exemption pursuant to the Abatement Statute.
- 1.3 **“Capital Needs Assessment”** means the “Property Condition Assessment Hotel Topeka at City Center,” dated December 20, 2023, and prepared by Schwert Design Group, Inc.
- 1.4 **“City”** is defined in the Background.
- 1.5 **“City Clerk”** means the duly appointed City Clerk of the City of Topeka, Kansas.
- 1.6 **“County”** means Shawnee County, Kansas
- 1.7 **“Governing Body”** means the governing body of the City.
- 1.8 **“Hotel”** is defined in the Background.
- 1.9 **“Hotel Flag Standard”** means Wyndham by Wyndham Hotels and Resorts or other “upper upscale” branded hotel (according to the STR) as determined by Purchaser subject to approval by the City’s Governing Body in its sole discretion.
- 1.10 [INTENTIONALLY DELETED]
- 1.11 **“Maintenance Standards”** means the Hotel is maintained in such condition that it will permit the Hotel to meet the Hotel Flag Standard, and no City Code violations are uncorrected for more than 30 days.
- 1.12 **“Parties”** means, collectively, the Seller and the Purchaser.
- 1.13 **“PIP”** means Product Improvement Plan as delineated in the Franchise Agreement of Purchaser with Wyndham Hotels (or other such brand as approved by the City’s Governing Body as provided in this Agreement).
- 1.14 **“Purchaser”** is defined in the Background.

- 1.15 “Renovation Standards”** means renovations of the Hotel sufficient to Restore all issues on the Capital Needs Assessment and implement the PIP as defined and outlined in the Franchise Agreement.
- 1.16 “State”** means the State of Kansas.
- 1.17 “Service Contracts”** means any and all service, maintenance, supply, operating, vendor, employment, travel, cable service, collective bargaining, yellow pages, barter, voucher, parking, advertising, offsite rental or equipment contracts, leases or other agreements, and any other similar agreement, however termed, written or oral, affecting the use, ownership, maintenance, or operation of all or any part of the Property.
- 1.18 “Seller”** is defined in the Background.
- 1.19 “Tenants”** means any tenant or lessee occupying any portion of the Real Property under the Leases.
- 1.20 “Topeka Development Corporation (TDC)”** as defined in the Background.

## **Article II**

### **Purchase and Sale**

- 2.1 The Property.** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller in accordance with the terms and conditions of this Agreement, all the following, regardless of whether owned by Seller, the City, or any management company acting on behalf of Seller (collectively referred to as the "**Property**"):
- a.** The real property and improvements, including all right, title, and interest therein, located at 1717 Southwest Topeka Boulevard, Topeka, Kansas, and legally described as Lot 3, Block A, Kansas Expocentre Subdivision No. 4 to the City of Topeka, Shawnee County, Kansas(Assessor's Parcel/Tax Parcel ID number 133-06-0-30-04-001-020), improved with the building commonly known as Hotel Topeka (the "**Real Property**").
  - b.** All rights, privileges, easements, and rights of way appurtenant to said Real Property, including any prior owner, including without limitation, including the easements on adjacent County property for pedestrian sidewalks to provide an ADA accessible route to the Real Property from Topeka Blvd (collectively, the "**Appurtenances**")
  - c.** All improvements and fixtures located on the Real Property, including, without limitation:
    - i.** all structures affixed to the Real Property;

- ii. all apparatus, equipment, and appliances used in connection with the operation or occupancy of the Real Property; and
  - iii. all facilities used to provide any services to the Real Property and/or the structures affixed thereto (collectively, the "Improvements"), but excluding those fixtures owned by Tenants or other occupants of the Property or vendors of the Improvements, if any (collectively, the "**Excluded Fixtures**"). Any Excluded Fixtures will be disclosed in writing at least thirty (30) days prior to the expiration of the Inspection Period.
- d. All tangible personal property located on and used in connection with the Real Property or the Improvements (collectively, the "**Personal Property**"), excluding only the personal property of Tenants or other transient occupants of the Property (collectively, the "Excluded Personal Property")
- e. All rights, title, and interest of Seller in and to any and all written agreements including, without limitation, Service Contracts, personal property leases and contracts (other than the Leases) to which Seller is a party and which affect the Property, but only to the extent Purchaser elects to assume same as determined in Purchaser's sole discretion (collectively, the "**Assumed Contracts**"). Seller shall disclose in writing all Service Contracts no later than thirty (30) days prior to expiration of the Inspection Period, and Purchaser will identify in writing the Assumed Contracts no later than the expiration of the Inspection Period.
- f. All rights, warranties, guarantees, utility contracts, approvals (governmental or otherwise), permits, certificates of occupancy, surveys, plans and specifications, trademarks or tradenames, copyrights, and any agreements, covenants, or indemnifications that Seller received from a third party, including any prior owner, and relating to the Property (collectively, the "**Intangible Property**")
- g. All rights, title, and interest of Seller in and to all Tenant leases, lease amendments, guarantees, exhibits, addenda, and riders thereto and any other documents creating a possessory interest in the Real Property or Improvements with any persons leasing, using, or occupying the Real Property or Improvements or any part of either (collectively, the "**Leases**"), but only to the extent Purchaser elects to assume same as determined in Purchaser's sole discretion. Seller shall disclose in writing all Leases no later than thirty (30) days prior to expiration of the Inspection Period, and Purchaser will identify in writing the Leases no later than the expiration of the Inspection Period
- h. Prorations as provided in Art. VIII

Notwithstanding anything in this Agreement to the contrary, "Property" does not include the Excluded Fixtures or the Excluded Personal Property.

**2.2 Purchase Price.** The Purchaser shall pay the Seller the sum of One Million Dollars (\$1,000,000) ("**Purchase Price**"), subject to such apportionments, adjustments, and credits as provided in Article VIII.

**2.3 Payment of Purchase Price.** The Purchaser shall pay the Purchase Price as follows:

- a. Within three (3) Business Days following the execution of this Agreement, the **Earnest Money Deposit** equal to the sum of one hundred thousand and 00/100 Dollars (\$100,000) shall be deposited with Lawyers Title, Topeka KS (the "**Escrow Agent**").
- b. The balance of the Purchase Price shall be paid to Seller on the Closing Date, simultaneously with the delivery of the Deed, by wire transfer of immediately available funds to an account at such bank or banks as shall be designated by Seller by notice to Purchaser at least five (5) Business Days prior to the Closing Date.

**2.4 Earnest Money Deposit**

- a. The Earnest Money Deposit shall be held by Escrow Agent and disbursed in accordance with the terms and conditions of this Agreement. Any interest earned on the principal portion of the Earnest Money Deposit shall be deemed to be part of the Earnest Money Deposit and shall be paid together with the principal portion of the Earnest Money Deposit.
- b. In the event Purchaser fails to deposit the Earnest Money Deposit with Escrow Agent in accordance with this Agreement, this Agreement shall automatically terminate, without the need for further notice or instruction.

**2.5 Sufficiency of Funds.** The Purchaser specifically agrees, and affirmatively asserts, that the funds provided by this Agreement, together with other funds available to it, will allow the Purchaser to renovate the Hotel as described in this Agreement subject to the Renovation Standards and provide the minimum operating capital as provided herein.

**2.6 No Assumption of Liabilities.** Notwithstanding anything to the contrary herein, all liabilities of Seller (other than those liabilities that are expressly required to be assumed by Purchaser pursuant to the terms of this Agreement) shall remain the sole liability of, and shall be retained, paid, performed and discharged by, Seller, including without limitation (i) any liability relating to the Property or the operation of the Property prior to Closing; (ii) any liability under any contract relating to a period prior to Closing; (iii) other than taxes which are prorated in the Closing Settlement Statements at Closing and assumed by Purchaser, any liability for taxes; (iv) any liability for any indebtedness on

the Property or the Personal Property other than as expressly contemplated herein; (v) all liabilities relating to any employees at the Property (whether employed by Seller or its manager or pursuant to a franchise or management agreement) accruing through the Closing Date and calculated as if all such employees will be terminated, including, without limitation, liability for payment of all such employees' wages, bonuses, commissions, vacation pay, paid time-off, sick time and other forms of compensation or benefits which such employees are entitled to receive and have otherwise accrued as of the Closing Date, together with F.I.C.A., unemployment and other taxes and benefits due from any employer of such employees; and (vi) any liability arising out of any legal proceeding or claim arising out of or relating to any period prior to the Closing.

### **Article III**

#### **Access; Seller's Representations and Warranties**

- 3.1 Purchaser's Access.** Subject to the provisions of Section 3.3, Purchaser and its agents, employees, consultants, inspectors, appraisers, engineers, and contractors (collectively "**Purchaser's Representatives**") shall have the right, through the Closing Date, from time to time, upon the advance notice required pursuant to Section 3.3(b), to enter upon and pass through the Property during normal business hours to examine and visually inspect the same pursuant to Section 3.3. Notwithstanding any such inspection, or anything to the contrary in this Agreement, Purchaser's obligations under this Agreement shall not be limited or otherwise affected as a result of any fact, circumstance, or other matter of any kind discovered following the Closing Date in connection with any such inspection, access, or otherwise; it being agreed that the Seller is permitting Purchaser such right of inspection and access as a courtesy to Purchaser in its preparation for taking title to the Property.
- 3.2 Inspection Period.** Purchaser shall have a period of one hundred twenty (120) days following the execution of this Agreement ("**Inspection Period**") to conduct due diligence on the Hotel as it deems appropriate. The Purchaser shall have the right, in its sole and absolute discretion, upon written notice, to terminate this Agreement for any reason, or no reason, at any time prior to the end of the Inspection Period, and in the event of such termination, Purchaser shall be entitled to the return of the Earnest Money Deposit.
- 3.3 Purchaser's Right to Inspect.**
- a. In conducting any inspection of the Property or otherwise accessing the Property, Purchaser and Purchaser's Representatives shall at all times:

- i.** comply with all laws and regulations of all applicable governmental authorities; and
- ii.** maintain insurance in the amounts and of the types as mutually agreed upon by the parties, and provide evidence of same to Seller, within ten (10) days prior to Purchaser's or Purchaser's Representatives' first entry onto the Property to conduct any inspection.

In addition, while conducting any inspection of the Property or otherwise accessing the Property, neither Purchaser nor any of Purchaser's Representatives shall: (A) contact or have any discussions with any of Seller's or Seller's affiliates', employees, agents, or representatives (other than Seller's Project Manager and Seller's attorneys), or with any guests at, or contractors providing services to, the Property, unless, in each case, Purchaser obtains the prior written consent of Seller, which consent may not be unreasonably withheld, conditioned, or delayed; (B) interfere with the business of Seller (or any of its guests) conducted at the Property or disturb the use or occupancy of any occupant of the Property other than, in each case, to a de minimis extent; or (C) subject to the provisions set forth below in Section 3.3(d), damage the Property. In conducting the foregoing inspection or otherwise accessing the Property, Purchaser and Purchaser's Representatives shall at all times comply with, and shall be subject to, the rights of the guests of the Hotel and any rights of Tenants under the Leases (and any persons claiming under or through such Tenants). Seller may from time to time establish reasonable rules of conduct for Purchaser and Purchaser's Representatives in furtherance of the foregoing.

- b.** Purchaser shall schedule and coordinate all inspections of the Property or other access thereto with the Seller and shall give the Seller at least three (3) Business Days prior notice thereof. The Seller shall be entitled to have a representative present at all times during each such inspection or other access. Purchaser agrees to pay to Seller promptly upon demand with accompanying statement the reasonable cost of repairing and restoring any damage or disturbance which Purchaser or Purchaser's Representatives shall cause to the Property. All inspection fees, appraisal fees, engineering fees, and other costs and expenses of any kind incurred by Purchaser or Purchaser's Representatives relating to such inspection and its other access shall be at the sole expense of Purchaser.

- c. In the event that the Closing does not occur for any reason whatsoever, the Purchaser shall promptly return to the Seller copies of all due diligence materials delivered by the Seller to the Purchaser and shall destroy all copies and abstracts of the materials.
- d. Purchaser and Purchaser's Representatives shall not be permitted to conduct borings of the Property or drilling in or on the Property, or any other invasive testing which may cause damage or make physical change to the Property, in connection with the preparation of an environmental audit or in connection with any other inspection of the Property without the prior written consent of the Seller, which consent may be withheld in the Seller's sole discretion (and, if such consent is given, the Purchaser shall be obligated to pay to the Seller promptly upon demand and presentment of a statement, the cost of repairing and restoring any damage as aforesaid). The provisions of this Section 3.2(d) shall survive the Closing or any termination of this Agreement.

**3.4 General Seller and City Representations and Warranties.** (a) Seller and City hereby jointly and severally represents and warrants to Purchaser, as of the date hereof and again as of Closing, as follows:

- (i) Seller a not-for-profit corporation and an instrumentality of the City of Topeka, Kansas duly constituted under Kansas law, validly existing and in good standing under the laws of the State of Kansas, and has all requisite power and authority to own the Assets and conduct the respective businesses as currently owned and conducted. The persons executing this Agreement on behalf of Seller have full power and authority to do so and to perform every act and to execute and deliver every document and instrument reasonably necessary or appropriate to consummate the transactions contemplated by this Agreement.

- (ii) Seller's execution, delivery and performance of this Agreement and the transaction documents to which it is a party, and the consummation of the transactions provided for in this Agreement and the transaction documents to which it is a party have been duly authorized by all necessary action on its part. This Agreement has been duly executed and delivered by Seller and constitutes, and the transaction documents to be executed and delivered by it, when executed and delivered at the Closing, and assuming due authorization, execution and delivery by Purchaser, will constitute, its legal, valid and binding obligation, enforceable against it in accordance with their terms.
- (iii) Seller is not a "foreign person" as defined in Section 1445 of the Code and the regulations issued thereunder.
- (iv) Neither Seller nor a partner or other beneficial owner thereof (A) is a person, group, entity or nation described in Section 1 of Executive Order 13224 - Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism - 66 Fed. Reg. 49079 (dated September 23, 2001, effective September 24, 2001), (B) is a (or is acting, directly or indirectly, for or on behalf of any) person, group, entity or nation designated by any Executive Order or the United States Treasury Department as a terrorist, a "Specially Designated National" or "Blocked Person," or other banned or blocked person, group, entity or nation pursuant to any applicable laws that are administered or enforced by the Office of Foreign Assets Control ("OFAC"), (C) is initiating, facilitating or engaging in the transaction contemplated by this Agreement, directly or indirectly, for or on behalf of any such person, group, entity or nation, and (D) to Seller's Knowledge, engages in any dealings or transactions, and is not otherwise associated, with any such person, group, entity or nation.

- (v) Seller has not (A) commenced a voluntary case, or had entered against it a petition, for relief under any federal bankruptcy act or any similar petition, order or decree under any federal or state law or statute relative to bankruptcy, insolvency or other relief for debtors, (B) caused, suffered or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator or similar official in any federal, state or foreign judicial or non-judicial proceedings, to hold, administer and/or liquidate all or substantially all of its property, or (C) made an assignment for the benefit of creditors, and no bankruptcy, insolvency, reorganization or similar action or proceeding, whether voluntary or involuntary, is pending, or, to Seller's Knowledge, threatened against it.
- (vi) Neither the execution of this Agreement nor the performance by Seller of its obligations under this Agreement will result in any breach or violation of (i) the terms of any law, rule, ordinance, or regulation; or (ii) any decree, judgment or order to which Seller or any constituent member of Seller is a party now in effect from any court or governmental body. There are no consents, waivers, authorizations or approvals from any third party necessary to be obtained by Seller in order to carry out the transactions contemplated by this Agreement. The execution and delivery of this Agreement and performance by Seller of its obligations under this Agreement will not conflict with or result in a breach or default (or constitute an event which, with the giving of notice or the passage of time, or both, would constitute a default) under Seller's organizational documents or any indenture, mortgage, lease, agreement, or other instrument to which Seller is a party or by which Seller or any of its assets may be bound. The execution and delivery of this Agreement and performance by Seller of its obligations under this Agreement will not result in the creation of any new, or the acceleration of any existing, liens, charges, or encumbrances upon the Property.

- (vii) The annual financial statements and/or financial data (collectively, the “Financial Statements”) delivered to Purchaser by Seller and relating to the Property are true and complete in all material respects and fairly represent the business and operations of the Property and Hotel for the periods described therein. Taken as a whole, the Financial Statements fairly present the financial position of Seller as of such date and the results of its operations for such fiscal year were prepared in conformity with GAAP applied consistently for the fiscal periods covered thereby and may be reconciled with the books and records of Seller. The books, accounts and records of Seller have been maintained in the usual, regular and ordinary manner, consistent with Seller’s past practices, and Seller’s tax returns (if any) were prepared in conformity with information contained in the books and records of the Seller. Any financial statements and/or financial data for a period other than a full fiscal year (the “Interim Statements”) delivered to Purchaser by Seller and relating to the Property have not been audited, and are, to the best of the Seller’s knowledge, true and complete in all material respects and fairly represent the business and operations of the Property and Hotel for the interim periods described therein.
- (viii) Seller does not have any liability for any taxes, or any interest or penalty in respect thereof, of any nature that may be assessed against Purchaser or that are or may become a lien against the Property.
- (ix) Seller has delivered or made available to, or will deliver or make available to, Purchaser true and complete copies of all Service Contracts. All Service Contracts are in full force and effect, and Seller has not given or received any written notice of any breach or default under any Service Contracts that has not been cured or otherwise satisfied. . Except as disclosed by Seller to Purchaser in writing, there are no other contracts relating to any portion of the Property or Hotel, regardless of whether entered into by Seller or its agents, or an affiliate of either, which relate to the occupancy, ownership, maintenance, construction or repair and/or operation of the Property or Hotel.
- (x) Seller has not received any written notice from any governmental authority of any material environmental claims or liabilities or violations of any environmental laws with respect to the Property.

- (xi) The listing of Personal Property provided by Seller to Purchaser are true and complete, in all material respects. All Personal Property included in this transaction is owned by Seller and at Closing shall be free and clear of all liens.
- (xii) There are no outstanding options, rights of first refusal, rights of first offer or any other rights or contracts in favor of third parties to acquire the Hotel or the Property.
- (xiii) Other than the Permitted Exceptions, Seller has good and marketable title to the Property, there are no title defects, liens, encumbrance, adverse claims, or other matters relating to the title to the Property which has not been disclosed in writing to the title company or which is not shown by the public records.

(b) The City represents and warrants to Purchaser, as of the date hereof and again as of Closing, as follows: The City is a municipal corporation and Kansas city of the first class, duly organized under the laws of the State of Kansas. The persons executing this Agreement on behalf of City have full power and authority to do so and to perform every act and to execute and deliver every document and instrument of the City reasonably necessary or appropriate to consummate the transactions contemplated by this Agreement. The execution, delivery and compliance with, and performance of the terms and provisions of, this Agreement and the transaction documents to which the City is a party does not and will not (with or without notice or lapse of time or both) conflict with or result in any violation of any provision of any City ordinance, resolution, bond, note or other instrument of indebtedness, contract, indenture, mortgage, deed of trust, loan agreement, lease or other agreement or instrument to which the City is a party or which affects the Property or Hotel, or to City's knowledge, violate any applicable law relating to the City, Property or Hotel.

## **Article IV**

### **Escrow**

**4.1 Escrow Agent.** "Escrow Agent" means Lawyers Title, Topeka KS;

**4.2 Escrow Terms.**

- a. Upon execution of this Agreement, the parties hereto shall deposit an executed counterpart of this Agreement with the Escrow Agent, and this Agreement shall

serve as the instructions to the Escrow Agent as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and Purchaser agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Escrow Agent and/or the Title Company to comply with the terms of this Agreement, provided, however, in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

- b. Escrow Agent shall hold and disburse the Earnest Money Deposit in accordance with the following provisions:
- (i) Escrow Agent shall have the right, but not the obligation, to invest the Earnest Money Deposit in savings accounts, certificates of deposit, and/or in money market instruments, or in any other investment account which is approved in advance by Purchaser.
  - (ii) If the Closing occurs, then Escrow Agent shall deliver the Earnest Money Deposit to Seller, crediting same against the Purchase Price.
  - (iii) Unless the Seller and the Escrow Agent receives written notification of termination by the Purchaser on or before the expiration of the Inspection Period as described in 3.2, the Earnest Money shall be paid to the Seller in the event of a default by the Purchaser in closing the transaction. In the event of a default by the Seller in closing the transaction, the Earnest Money shall be returned to Purchaser.

## **Article V**

### **Closing**

**5.1 Closing; Closing Date.** The closing of the transaction contemplated by this Agreement (the "**Closing**") shall occur on a mutually agreeable date and time not to exceed sixty days (60) past the expiration of the Inspection Period, following the satisfaction of all other conditions to closing as may be detailed in this Agreement. The Closing shall be held at City Hall (or at Purchaser's request, with notice to Seller's attorney at least seven days (7) Business Days prior to the Closing Date, at the offices of Purchaser's lender or Purchaser's lender's attorneys, provided such offices are located in Topeka, Kansas. Should all other conditions be satisfied earlier than 90 days from the conclusion of the Inspection Period, the Parties shall work diligently to ensure a Closing Date as soon as possible. Seller shall be entitled to adjourn the Closing Date one time upon at least one (1) Business Day prior notice to Purchaser to: (a) remedy or clear any Title Objections; or (b) satisfy any other conditions to Purchaser's obligation to consummate the Closing

under this Agreement. Purchaser acknowledges and agrees that **TIME SHALL BE OF THE ESSENCE** with respect to the performance by Purchaser of its obligations to purchase the Property, pay the Purchase Price and otherwise consummate the transactions contemplated in this Agreement on the Closing Date. For the purposes of this Agreement, the actual Closing date, as may adjust in the event Seller elects to adjourn the Closing pursuant to the terms of this Agreement, shall be deemed the "Closing Date" under the Agreement.

## **Article VI**

### **Exceptions to Title; Title Matters**

**6.1 Permitted Exceptions.** The Property shall be sold, assigned, and conveyed by Seller to Purchaser, and Purchaser shall accept and assume same, subject only to the following matters (collectively, the "Permitted Exceptions"):

- a. All presently existing and future liens for unpaid real estate taxes and water and sewer charges accrued but not yet due and payable as of the Closing Date, subject to proration and adjustment as hereinafter provided.
- b. All present and future zoning, building, environmental, and other laws, ordinances, codes, restrictions, and regulations of all governmental authorities having jurisdiction with respect to the Property, including, without limitation, landmark designations and all zoning variances and special exceptions, if any (collectively, "Laws and Regulations").
- c. All covenants, restrictions, and rights of record and all easements and agreements of record (collectively, "Rights"), but only to the extent set forth in the Title Commitment.
- d. Any CID currently in place on the Real Property as described in this Agreement.
- e. Any state of facts which would be shown on or by an accurate current survey of the Property (collectively, "Facts").
- f. All violations of building, fire, sanitary, housing, and similar laws and regulations whether or not noted or issued at the date hereof or at the Closing Date with respect to the Real Property (collectively, "Violations").
- g. Possible encroachments and/or projections of stoop areas, roof cornices, window trims, vent pipes, cellar doors, steps, columns and column bases, flue pipes, signs, piers, lintels, windowsills, fire escapes, satellite dishes, protective netting;

sidewalk sheds, ledges, fences, coping walls (including retaining walls and yard walls), air-conditioners and the like, if any, affecting the Property.

- h.** The standard conditions and exceptions to title contained in the form of title policy (“**Title Policy**”) or "marked-up" title commitment (“**Title Commitment**”) issued to Purchaser by the Title Company; provided that, Seller shall execute the Title Company’s standard owner’s affidavit at Closing and the standard exceptions which may be removed by same will be removed from the Title Policy.
- i.** [Reserved]
- j.** Any title exceptions as listed on the Title Commitment which are not objected to by Purchaser prior to expiration of the Inspection Period.
- k.** Any lien or encumbrance arising out of the acts or omissions of Purchaser.

## **Article VII**

### **Closing Deliveries**

**7.1 Purchaser’s and Deliveries Necessary On or Prior to Closing.** The Purchaser shall provide the following to Seller or an Escrow Agent on or prior to Closing Date:

- a.** A certificate issued by the Kansas Secretary of State, indicating that it is qualified to do business in, and in good standing with, the State of Kansas.
- b.** A certified copy of Corporate Resolutions indicating that it, through its designated member or officer, as appropriate, has authority to execute this Agreement as well as all associated documents.
- c.** Evidence that all contingencies in Article XII have been satisfied.
- d.** Executed documents included in the Exhibits or required by any Service Contract for purposes of assignment and/or assumption. Two executed counterparts should be provided for any such document requiring both Seller and Purchaser’s signature.
- e.** If required by the Seller, an executed assignment and assumption agreement prepared by Seller in which Seller assigns to Purchaser and Purchaser assumes any and all rights, liabilities and obligations which Seller may have pursuant to any Service Contracts, which agreement shall provide, in part, that:
  - i.** the assignment is being made "AS IS", "WHERE IS", and "WITH ALL FAULTS", without any representation or warranty whatsoever, and

- ii. Purchaser, as assignee, shall defend, indemnify and hold harmless Seller, as assignor, from and against any and all Claims asserted against or incurred by Seller as a result of any rights, liabilities or obligations assigned to Purchaser pursuant to said agreement which accrue and relate exclusively to after the date of such assignment.
- f. Copy of the signed Franchise/License Agreement with Wyndham or comparable flag in the “Upper Upscale” classification by STR.
- g. Timeline for completion of the PIP with documentation which is necessary to comply with the Wyndham PIP or other brand PIP put forth by the Purchaser. The work plan for the Hotel will be based on the PIP and cost estimate, and the City must receive, review and approve the PIP, including a cost estimate, during the Inspection Period.
- h. A pro forma operating statement for the Hotel, as operated under the license/franchise agreement referenced in Section 12.1.a of this Agreement.
- i. Evidence that Purchaser has sufficient committed equity and debt to renovate Hotel consistent with the Renovation Standards, subject to the Contingency in Section 12.1, the Operational working capital requirements in Section 10.3. This evidence may be provided to the Seller’s Financial Advisor under a non-disclosure agreement and subsection (f) to this Section.

**7.2 Seller Deliveries Necessary Prior to Closing.** The Seller shall prepare and provide the following to the Purchaser or an Escrow Agent at or before Closing the following:

- a. An executed warranty deed (“Deed”) with respect to the Real Property, in the form as mutually agreed upon by the parties, together with any State, County and local transfer tax declarations and forms required to be executed by Seller.
- b. An executed Affidavit in the form as mutually agreed upon by the parties.
- c. An executed Bill of Sale (without warranties other than warranties of title) with respect to the Personal Property, if any, in the form as mutually agreed upon by the parties.
- d. Two counterparts of an executed Assignment and Assumption Agreement with respect to the Intangible Property in the form as mutually agreed upon by the parties], together with originals or copies of any Service Contracts and Permits, to the extent in the Seller’s possession (which such Service Contracts and Permits shall be delivered at Seller’s Property manager’s office). To the extent any Service Contract requires a specific written assignment and/or assumption agreement with respect to such Service Contract, a specific executed assignment and/or

assumption agreement with respect to such Service Contract in the form required by the Service Contract or the vendor under such Service Contract.

- e. An executed form letter to advise all contractors under Service Contracts, if any, in the form as mutually agreed upon by the parties, of the sale to Purchaser ("Notice to Service Contractor").
- f. All plans, specifications, Permits and keys in Seller's actual possession with respect to the Property (which shall be delivered at Seller's Property manager's office).
- g. Payment of prorations as provided in Art. VIII.

**7.3 Costs and Expenses.** Regardless of State or local custom, Purchaser shall pay all costs of recording, all documentary stamp, transfer and similar taxes, all title and lien search, examination and out-of-pocket fees of the Title Company, the title insurance premium for the owner's title insurance policy to be issued to Purchaser by the Title Company, the cost of any extended title insurance coverage and endorsements to Purchaser's title insurance policy requested or required by Purchaser, the costs of any surveys or survey modifications or updates obtained by Purchaser. Attorneys' fees, consulting fees, and other due diligence expenses shall be borne by the party incurring such expense. The provisions of this Section shall survive the Closing.

**7.4 Other Documents.** Purchaser and Seller shall each deliver such other documents as are otherwise required by this Agreement to consummate the purchase and sale of the Property in accordance with the terms hereof. Unless the parties otherwise agree in writing, the Escrow Agent is hereby designated as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the United States Code and the regulations promulgated thereunder. If requested in writing by either party, the Escrow Agent shall confirm its status as the "Reporting Person" in writing, which such writing shall comply with the requirements of Section 6045(e) of the United States Code and the regulations promulgated thereunder.

**7.5 Possession.** Possession of the Property, subject to the rights of Hotel guests, shall be surrendered to Purchaser at the Closing, free of any and all liens and encumbrances of any kind or nature (other than the Permitted Exceptions).

**7.6 Service Contractor Notices.** Immediately after Closing, Purchaser shall deliver to all vendors under Service Contracts constituting Assumed Contracts, if any, a copy of the Notice to Service Contractor, which obligation shall survive Closing.

**7.7 Safe Deposit Boxes.** On the Closing Date Seller shall deliver to Purchaser all keys to the safe deposit boxes on the Real Property, together with all receipts and agreements relating

to such safe deposit boxes, which shall contain the name and room number of each depositor. On the Closing Date Seller shall send written notice to guests on the Real Property who have safe deposit boxes advising them of the sale of the Property to Purchaser and the procedures to be followed pursuant to this Section and requesting the removal and verification of the contents thereof within three days after the Closing Date. All such removals and certifications during said three days shall be under the supervision of a representative of Purchaser and Seller. Boxes of guests who have not responded to such written notice shall be listed at the end of such three-day period. Said boxes shall be opened in the presence of a representative of Purchaser and Seller and the contents recorded. Any such property so recorded shall thereafter be the responsibility of Purchaser and Purchaser shall indemnify and hold Seller harmless against any Claims with respect to such property (including without limitation reasonable attorneys' fees). The provisions of this Section shall survive the Closing and delivery of the Deed hereunder.

**7.8 Baggage.** All baggage checked or left in the care of Seller as of the Prorations Date shall be listed in an inventory to be prepared in duplicate and signed by Seller and Purchaser. Purchaser shall be responsible from and after the Prorations Date for all baggage listed in such inventory and for any baggage checked after the Proration Date. Purchaser shall indemnify and hold Seller harmless from any Claims with respect to such baggage. The provisions in this Section shall survive the Closing.

**7.9 Licenses.**

- a. Purchaser acknowledges that it is the responsibility of Purchaser to obtain the approval of the applicable governmental authorities for issuance of such licenses as shall be necessary or desirable in Purchaser's opinion to operate the Hotel. Purchaser may file any and all applications and supporting documents with the appropriate governmental agencies, at Purchaser's sole option, cost, and expense. Seller agrees to cooperate with Purchaser (but without cost to Seller) in the filing of such applications, to the extent such cooperation may be required by governmental agencies issuing or approving the licenses.
  - i. *Liquor License.* Purchaser shall have the right to file and diligently prosecute, at its sole cost and expense, an application with the applicable State and local alcoholic beverages licensing authorities ("**Authorities**") for approval of either a new liquor license in the name of Purchaser or its nominee or the transfer of the Liquor License (if and to the extent permitted by applicable law and without cost, expense or liability to Seller), from Seller to Purchaser or its nominee with respect to alcoholic beverage services at the Hotel ("**Purchaser's Liquor License**"). If and to

the extent permitted by applicable law, Purchaser shall use its best efforts to execute and file all necessary forms, applications, materials, documents and other required elements of such application with the Authorities prior to Closing so that the Purchaser's Liquor License (or a temporary liquor license issued by the Authorities in the name of Purchaser or its nominee) shall issue and take effect, if possible, simultaneously with the Closing on the Closing Date, but in no event prior to the Closing Date. If and to the extent permitted by applicable law, Seller agrees, upon Purchaser's written request, but without cost, expense or liability to Seller, to reasonably cooperate with Purchaser in its application process if such cooperation is required by the Authorities in order to effect the transfer of the liquor license issued in connection with the operation of the Property or issuance of the Purchaser's Liquor License. Purchaser shall be responsible for all fees, costs and expenses incurred in connection with Purchaser's applying for and obtaining Purchaser's Liquor License or the transfer of any liquor license to or for the benefit of Purchaser or any of its agents or affiliates.

- ii.** If Purchaser provides to Seller a copy of the Purchaser's Liquor License issued by the Authorities effective as of the Closing Date, Seller, to the extent permitted by law, shall deliver the liquor inventory existing as of the Closing Date to Purchaser at Closing, and Purchaser shall at Closing pay Seller for the un-opened liquor inventory. If Purchaser fails or is unable to deliver a copy of the Purchaser's Liquor License to Seller on the Closing Date, then Seller shall remove from the Property the liquor inventory and the liquor license applicable with respect to the Property or otherwise dispose of the liquor inventory on the Closing Date.
  - iii.** It shall not be a condition precedent to Purchaser's obligations under this Agreement that Purchaser obtain a Purchaser's Liquor License prior to Closing. In connection with all of the foregoing, Seller shall have no obligation to enter into an interim liquor license agreement or any similar agreement.
- b.** Purchaser hereby assumes the risk of failing to obtain any governmental licenses relating to the Hotel, and the refusal of any governmental authority to grant said licenses shall not give Purchaser any rights, remedies or causes of action against Seller for damages, for termination of this Agreement or any other relief whatsoever. The Wyndham license (or other approved "upper upscale" branded hotel according to STR) and PIP obligations are a precedent to sale. The provision of this Section shall survive the Closing of this Agreement.

**7.10 Termination of Manager.** Seller agrees to cause the existing management agreement with any manager of the Hotel to be terminated as of Closing. Purchaser shall have no responsibility or obligation with respect thereto.

**7.11 Termination of Employees.** Seller will cause the Manager of the Hotel to terminate the employment of all persons providing services at the Property ("Employees") effective as of the Closing Date. On the Closing Date, Purchaser may, but shall not be obligated to, rehire or offer (or cause Purchaser's manager to rehire or offer) employment at the Property to the Employees of Seller on such terms and conditions as Purchaser deems appropriate. Seller shall use good faith commercially reasonable efforts to deliver to Purchaser, no less than 5 Business Days after the Effective Date, an employee census report setting forth positions, wage rates or salaries, and dates of hire of the Employees. Seller shall be responsible for paying all accrued and unpaid obligations of such Property manager under its salary and employee benefits arrangements through the Prorations Date, including, any and all accrued and unpaid sick days and vacation days. Seller shall also be responsible for paying all accrued and unpaid salaries, wages (including, without limitation, severance pay, bonuses, and unclaimed wages), vacation and other benefits, sick pay, insurance, amounts payable with respect to any employee health and welfare fund or pension plan and all other amounts accrued but unpaid under any employment contract, agreement, or arrangement accrued through the Closing Date. Purchaser or Purchaser's Property manager shall be responsible for paying all salary and employee benefit obligations in connection with the employment or work of the Employees on or after the Closing Date, including any obligations under the employment acts arising after the Closing Date. Purchaser shall indemnify and hold Seller harmless for any Claims asserted against or incurred by Seller and any Claims relating to, arising from or in connection with Purchaser's failure to comply with its obligations under this Section. Seller shall indemnify and hold Purchaser harmless for any Claims asserted or incurred by Purchaser and any Claims relating to, arising from or in connection with Seller's failure to comply with its obligations under this Section. The provisions of this Section shall survive the Closing.

**7.12 Payment at Closing.** Prorations and adjustments owed to Seller by the Purchaser, subject to any prorations and adjustments owed to Purchaser by Seller, shall be paid by Purchaser by wire transfer to the Escrow Agent's account at the time of Closing, and (ii) by the Escrow Agent to Seller by wire transfer to Seller's account immediately upon Closing. Wired funds must be received in the Escrow Agent's account prior to 4:00 p.m. Central time on the Closing Date, and to the extent they are received after 4:00 p.m. Central time on any day, they shall not be deemed received until the following Business Day. If the Escrow Agent does not receive the funds within forty-eight (48) hours following the

Closing Date due to the action or inaction of Purchaser , Purchaser shall pay interest on the Purchase Price from the Closing Date until the funds are deemed to have been received by the Escrow Agent at the rate of 10% per annum.

## **Article VIII**

### **Apportionments**

**8.1 Closing Adjustments and Prorations.** Except as otherwise provided in this Section, all adjustments and prorations to the Purchase Price payable at Closing shall be computed as of 11:59 p.m. Central Time the day prior to the Closing Date (the “**Prorations Date**”).

**a. Payables. “Payables”** means all accounts payable incurred in the ordinary course of business in connection with the ownership and operation of the Hotel to the extent arising under Service Contracts which are Assumed Contracts. Seller agrees that except to the extent expressly provided to the contrary in this Agreement, between the Effective Date and the Closing Date:

- i.** all Payables shall be paid and discharged in the ordinary course of business and Seller shall be responsible for all Payables applicable to the period prior to the Prorations Date, and
- ii.** all Payables shall be prorated as of the Prorations Date. Purchaser shall pay all Payables applicable to the period after the Prorations Date as and when due and shall indemnify and hold Seller and the City harmless from all Claims with respect thereto (including without limitation all attorneys' fees and costs incurred in connection therewith). The provisions of this Section shall survive the Closing.

**b. Cash; Accounts Receivable.**

- i.** Seller shall receive a credit for all cash in the cash registers, vaults, safes, (other than that belonging to guests) and/or "petty cash boxes" and all credit card receivables less applicable discounts which represent payment for services fully performed or goods delivered, as of the Prorations Date as set forth below. “**Accounts Receivable**” means all of Seller's accounts receivable incurred in the ordinary course of business in connection with the ownership and operation of the Hotel, including net amounts subject to collection from credit card operations and other trade receivables as of the Prorations Date. It is understood that all Accounts Receivable which represent payment for services not fully performed or goods not delivered as of the Prorations Date shall be transferred to Purchaser at Closing.



- vi. it shall be Purchaser's responsibility to make any utility deposits required for the continuation of such services from and after the Closing Date. If and only if any of the utility companies will not or cannot read the meters as of the Prorations Date, the expenses for those utility companies shall be prorated as of the Prorations Date based upon the most recent bills, and assuming that utility charges were incurred uniformly during the billing period in which the Closing occurs.
- e. **Other Income.** Income from telephone, vending machines and other coin-operated devices upon the Real Property, if any, shall be adjusted and apportioned as of the Prorations Date.
- f. **Fees for Permits.** Fees paid or payable, if any, for Permits, to the extent such Permits are transferred to Purchaser, shall be adjusted and apportioned as of the Prorations Date.
- g. **Prepaid Expenses.** Prepaid advertising expenses (but only with respect to Assumed Contracts), washroom and checkroom income, commissions of credit and referral organizations, but excluding Advance Booking Deposits (as hereinafter defined), shall be adjusted and apportioned as of the Prorations Date.
- h. **Advance Booking Deposits.** The aggregate amount of deposits in connection with the Advance Booking Deposits (as hereinafter defined) and any other deposits, advances or advance payments in connection with the operation of the Hotel shall be credited to Purchaser. “**Advance Booking Deposits**” means deposits in connection with advance bookings for future occupancy, after the Prorations Date, of hotel rooms, suites, banquet and meeting rooms and convention facilities in the Hotel by any person, organization or group.
- i. **Other Prorations.** In addition to the previously stated adjustments and prorations at Closing the parties shall also make such mutually agreed upon adjustments and prorations to the Purchase Price as are customary and usual in transactions similar to the transaction contemplated by this Agreement.
- j. **Intent of Prorations Provisions.** The intent of the prorations and adjustments provided for in this Agreement is that Seller shall bear all expenses of operation of the Real Property and shall receive all income from it accruing to the Prorations Date and Purchaser shall bear all such expenses and receive all such income accruing after the Proration Date. Notwithstanding anything to the contrary set forth in this Agreement, with respect to hotel room and meeting or function room revenues it is specifically agreed that revenues allocable to the night commencing immediately prior to the Closing Date shall be for the account of Seller and

revenues commencing with the night commencing on the Closing Date shall be for the account of Purchaser. Similarly, the cost of housekeeping and similar staff attributable to the Closing Date shall be the obligation of Seller and after the Closing Date shall be the obligation of Purchaser.

- k. Credits for Seller.** Seller shall receive a credit for the value of any non-branded Consumable Inventories at the Real Property at Closing (based upon actual cost using FIFO). “**Consumable Inventory**” means all of Seller’s right, title, and interest in and to all unopened, usable, and saleable food and non-alcoholic beverages held for sale in connection with the operation of the Real Property; provided, however, that the term Consumable Inventories shall mean only such items as are owned by Seller as of the Closing Date and shall not in any event include items owned by Hotel guests or parties to Service Contracts or Seller’s Property manager or Property management company. The term Consumable Inventories shall not include liquor. Seller shall not be entitled to any credit for open containers. Seller shall not intentionally deplete the Consumable Inventories but shall continue to maintain such inventories consistent with Seller's past practices and industry standards. The provisions of this Section shall survive the Closing.
- l. Reproration and Post-Closing Adjustments.** In the event that any adjustments or prorations (other than real estate taxes, assessments and utility charges) cannot be apportioned or adjusted at Closing by reason of the fact that final or liquidated amounts have not been ascertained, or are not available as of such date, the parties to this Agreement agree to apportion or adjust such items on the basis of their best estimates of the amounts at Closing and to re-prorate any and all of such amounts promptly when the final or liquidated amounts are ascertained. In the event of any omission or mathematical error on the closing statement, or if the prorations, apportionments and computations shall prove to be incorrect for any reason, the same shall be promptly adjusted when determined and the appropriate party paid any monies owed. This provision shall survive the Closing for a period of six (6) months.
- m. Minimum Linens.** At Closing, the Property shall be stocked with a minimum of one (1.00) turn of linens and towels. In the event Seller does not stock the Property with a minimum of one (1.00) turn of linens and towels, Seller shall provide Purchaser with a credit to the Purchase Price for the difference between the actual stock of linens and towels and one (1.00) turn.

## Article IX

### AS IS

**9.1 Condition of the Property.** The following provisions shall survive the Closing and shall not be deemed to have merged into any of the documents executed or delivered at the Closing:

**a. AS-IS, WHERE-IS.** By acceptance of this Agreement and the Deed, Purchaser does hereby acknowledge, represent, warrant and agree to and with the Seller that, except as otherwise expressly provided in this Agreement and the Deed:

- i.** Purchaser is expressly purchasing the Property in its existing condition "AS IS, WHERE IS, AND WITH ALL FAULTS" whether known or unknown with respect to all facts, circumstances, conditions and defects, both patent and latent;
- ii.** Seller has no obligation to inspect for, repair or correct any such facts, circumstances, conditions or defects or to compensate Purchaser for same;
- iii.** Seller has provided Purchaser sufficient opportunity to make such independent factual, physical and legal examinations and inquiries as Purchaser deems necessary or appropriate with respect to the Property and the transaction contemplated by this Agreement;

Seller has specifically bargained for the assumption by Purchaser of all responsibility to inspect and investigate the Property and of all risk of adverse conditions and circumstances with respect to the condition of the Property;

- iv.** Purchaser has undertaken, or will prior to Closing undertake, all such inspections and investigations of the Property as Purchaser deems necessary or appropriate with respect to the Property and the suitability of the Property for Purchaser's intended use, and based upon same, Purchaser is and will be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers, Purchaser has approved the Property in all respects, and Purchaser is and shall be fully satisfied that the Purchase Price is fair and adequate consideration for the Property; and
- v.** Seller is not making and has not made any warranty or representation with respect to any materials, marketing information, offering memoranda or pamphlets listing or describing the Property or other data provided by Seller or others on behalf of Seller to Purchaser (whether prepared by or

for Seller or others) or the education, skills, competence or diligence of the preparers thereof or the physical condition or any other aspect of all or any part of the Property as an inducement to Purchaser to enter into this Agreement and after that to purchase the Property or for any other purpose.

**b. No Warranty or Other Representation.** EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER AND THE CITY BY THIS AGREEMENT DISCLAIM ALL WARRANTIES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING WARRANTIES OF HABITABILITY AND FITNESS FOR PARTICULAR PURPOSES), WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES WITH RESPECT TO: THE PROPERTY OR ITS CONSTRUCTION; DEFECTS CAUSED BY ACTS OF THE ORIGINAL OWNER, PURCHASER, OR BUILDER OF THE PROPERTY, OR ANY SUPPLIER, CONTRACTOR, SUBCONTRACTOR, OR MATERIALMAN; DEFECTS PERTAINING TO STRUCTURAL ELEMENTS, SYSTEMS, EQUIPMENT, APPLIANCES, UTILITIES, OR FIXTURES RELATED TO THE PROPERTY; TAX LIABILITIES; ZONING; LAND VALUE; AVAILABILITY OF ACCESS OR UTILITIES; INGRESS OR EGRESS; GOVERNMENTAL APPROVALS; OR THE SOIL CONDITIONS OF THE REAL PROPERTY, REGARDLESS OF WHETHER SUCH CONDITIONS CURRENTLY EXIST OR EMERGE OVER TIME. PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER IS BUYING THE PROPERTY "AS IS" AND IN ITS PRESENT CONDITION AND THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, PURCHASER IS NOT RELYING UPON ANY REPRESENTATION OF ANY KIND OR NATURE MADE BY SELLER OR CITY WITH RESPECT TO THE LAND OR PROPERTY, AND THAT, IN FACT, NO SUCH REPRESENTATIONS WERE MADE EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE DEED.

**c. Environmental Laws; Hazardous Materials.** WITHOUT IN ANY WAY LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER SELLER NOR CITY MAKE ANY WARRANTY WITH RESPECT TO THE PRESENCE OF HAZARDOUS MATERIALS ON, ABOVE, OR BENEATH THE PROPERTY (OR ANY PARCEL IN PROXIMITY THERETO) OR IN ANY WATER ON OR UNDER THE PROPERTY. As used herein, the term "**Hazardous Materials**" shall mean: (i) those substances included within the definitions of any one or more of the terms "hazardous materials," "hazardous wastes," "hazardous

substances," "industrial wastes," and "toxic pollutants," as such terms are defined under the Environmental Laws, or any of them; (ii) petroleum and petroleum products, including, without limitation, crude oil and any fractions thereof; (iii) natural gas, synthetic gas, and any mixtures thereof; (iv) asbestos and or any material which contains any hydrated mineral silicate, including, without limitation, chrysotile, amosite, crocidolite, tremolite, anthophyllite, and/or actinolite, whether friable or non-friable; (v) polychlorinated biphenyl ("PCBs") or PCB-containing materials or fluids; (vi) radon; (vii) any other hazardous or radioactive substance, material, pollutant, contaminant, or waste; and (viii) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring, or remediation. As used herein, the term "**Environmental Laws**" shall mean all federal, state, and local laws, statutes, ordinances, and regulations, now or hereafter in effect, in each case as amended or supplemented from time to time, including, without limitation, all applicable judicial or administrative orders, applicable consent decrees, and binding judgments relating to the regulation and protection of human health, safety, the environment, and natural resources (including, without limitation, ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 5101 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. §§ 136 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 et seq.), the Clean Air Act, as amended (42 U.S.C. §§ 7401 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. §§ 300f et seq.), any state or local counterpart or equivalent of any of the foregoing, and any federal, state, or local transfer of ownership notification or approval statutes.

- d. Seller and City Release.** BY ACCEPTANCE OF THIS AGREEMENT AND THE DEED, PURCHASER ACKNOWLEDGES THAT PURCHASER'S OPPORTUNITY FOR INSPECTION AND INVESTIGATION OF SUCH PROPERTY (AND OTHER PARCELS IN PROXIMITY THERETO) HAS BEEN ADEQUATE TO ENABLE PURCHASER TO MAKE PURCHASER'S OWN DETERMINATION WITH RESPECT TO THE PRESENCE ON OR BENEATH THE PROPERTY (AND OTHER PARCELS IN PROXIMITY THERETO) OF SUCH HAZARDOUS MATERIALS. Purchaser agrees that it shall, subject to the express warranties, representations, and conditions contained in this Agreement,

assume the risk that adverse matters, including but not limited to, construction defects and adverse physical and environmental conditions, may not have been revealed by Purchaser's investigations. Except as expressly set forth in this Agreement to the contrary, Purchaser releases Seller, the Seller-Related Parties and their respective successors and assigns from and against any and all claims which Purchaser or any party related to or affiliated with Purchaser (each, a "**Purchaser-Related Party**") has or may have arising from or related to any matter or thing related to or in connection with the Property except as expressly set forth in this Agreement to the contrary, including any construction defects, errors, or omissions in the design or construction and any environmental conditions and, except as expressly set forth in this Agreement to the contrary, neither Purchaser nor any Purchaser-Related Party shall look to Seller, the Seller-Related Parties, or their respective successors and assigns in connection with the foregoing for any redress or relief. This release shall be given full force and effect according to each of its express terms and provisions, including those relating to unknown and unsuspected claims, damages, and causes of action. To the extent required to be operative, the disclaimers and warranties contained herein are "conspicuous" disclaimers for purposes of any applicable law, rule, regulation, or order

- e. **Mold.** PURCHASER ACKNOWLEDGES AND AGREES THAT NEITHER THE SELLER OR CITY SHALL BE RESPONSIBLE FOR ANY CLAIMS ARISING OUT OF OR RELATING TO MOLD AND/OR OTHER MICROSCOPIC ORGANISMS AT THE PROPERTY INCLUDING BUT NOT LIMITED TO PROPERTY DAMAGES, PERSONAL INJURY, ADVERSE HEALTH EFFECTS, LOSS OF INCOME, EMOTIONAL DISTRESS, DEATH, LOSS OF USE OR LOSS OF VALUE AND BY THIS AGREEMENT RELEASES SELLER AND CITY FROM THE SAME. PURCHASER BY THIS AGREEMENT ACKNOWLEDGES THAT IT HAS READ AND UNDERSTOOD THIS DISCLOSURE AND RELEASE AND AGREES TO THE PROVISIONS CONTAINED IN THE AGREEMENT.
- f. **Release Limitations.** Notwithstanding anything to the contrary in this Agreement, in no event will Seller or City be released from any claims by Purchaser against Seller or City which involve fraud, intentional concealment, or willful misconduct.

## **Article X**

### **Renovation and Continued Operation**

**10.1 Renovation of Hotel.** Following the Closing, the Purchaser commits to renovation of the 224 guest rooms and other common spaces of the Hotel at an estimated investment of six

million and 00/100 dollars (\$6,000,000), the actual amount of such investment to be determined during the Inspection Period and such amount to be sufficient to satisfy the PIP at the sole discretion of Wyndham (or other approved “upscale” branded hotel according to the STR) to an upper upscale standard. Renovations shall be completed no later than December 31, 2027.

**10.2 Operation.** The Purchaser shall commit two million and 00/100 dollars (\$2,000,000) in working capital to the Hotel.

**10.3 Sale of the Property.** Following the Closing, Purchaser shall not sell, transfer, or assign, the Real Property for five years following the Closing Date without the written approval of the City. Notwithstanding the foregoing, any sale, assignment, or transfer to a (i) wholly owned subsidiary of Purchaser; (ii) private equity fund in which Purchaser is the general or managing partner; or (iii) any other form of entity in which Purchaser remains in control as the majority owner, shall not be considered a violation of this provision, so long as the Purchaser provides City written notice fifteen Business Days of the effective date of any such transfer. Such restriction shall be contained in the deed between the Seller and the Purchaser regarding the Real Property.

**10.4 Brand Change.** Until five years following the Closing Date, Purchaser shall not change the Hotel to brands which do not have a comparable flag in the “Upper Upscale” classification designated by STR without the express written consent of the Seller, which consent shall not be unreasonably withheld, conditioned, or delayed. This provision shall survive the Closing.

## **Article XI**

### **Remedies**

**11.1 Liquidated Damages.** THE PARTIES ACKNOWLEDGE THAT THEY HAVE DISCUSSED THE TYPE AND MAGNITUDE OF DAMAGES THAT EACH COULD SUFFER IF THIS AGREEMENT TERMINATES BECAUSE OF THE OTHER PARTY'S BREACH OR DEFAULT HEREUNDER. FURTHERMORE, EACH ACKNOWLEDGES THAT IT HAS NEGOTIATED THIS TOPIC IN GOOD FAITH WITH THE OTHER AND HAS CONCLUDED THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL TO AFFIX A DOLLAR AMOUNT TO DAMAGES FOR BREACH OR DEFAULT.

**11.2 Seller's Remedies in the Event of Purchaser's Breach or Default.** In the event of the breach of any of these terms, conditions and covenants of this Agreement prior to Closing, the Seller's sole remedies shall be as follows at the Seller's option:

- a. An Action against the Purchaser for specific performance of its obligations;
- b. An Action for damages;
- c. The termination of the Agreement;
- d. A combination of any such remedies.

**11.3 Purchaser's Remedies in the Event of Seller's Breach or Default.** THE PARTIES AGREE THAT PURCHASER'S SOLE REMEDIES, AT LAW OR IN EQUITY, IN THE EVENT OF A DEFAULT OR BREACH BY SELLER UNDER THIS AGREEMENT PRIOR TO CLOSING, IS FOR PURCHASER TO EITHER: (I) HAVE RETURNED TO IT THE EARNEST MONEY DEPOSIT AND ALL INTEREST EARNED THEREON AS LIQUIDATED DAMAGES (NOT AS A PENALTY), AND THEREAFTER THIS AGREEMENT SHALL TERMINATE AND PURCHASER SHALL HAVE NO FURTHER RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT EXCEPT THOSE THAT ARE EXPRESSLY STATED TO SURVIVE THE TERMINATION OF THIS AGREEMENT; OR (II) SEEK AN ACTION FOR SPECIFIC PERFORMANCE OF THIS AGREEMENT AGAINST SELLER. THE PARTIES AGREE THAT THE REMEDIES PROVIDED IN THIS SECTION 11.3 IS PURCHASER'S SOLE REMEDIES AND SHALL BE IN LIEU OF ANY OTHER RELIEF TO WHICH PURCHASER MIGHT BE ENTITLED BECAUSE OF SELLER'S BREACH OR DEFAULT.

**11.4 Exculpation.** [INTENTIONALLY DELETED]

**11.5 Survival.** The provisions of this Article shall survive the termination of this Agreement and the Closing.

## **Article XII Contingencies**

**12.1 Contingencies.** This Closing of this Agreement is contingent upon the satisfaction of the following:

- a. The Purchaser must submit to the City a signed license/franchise agreement with Wyndham, or a comparable upper upscale flag approved by the City as provided herein, along with a pro forma operating statement for the Hotel under such Wyndham, or a comparable upper upscale flag; and the Purchaser must commit to performing the required PIP by specific due dates as outlined in the franchise agreement.
- b. The City or the County pursuant to K.S.A. 12-1740 et seq. , as amended (the "IRB Act"), must have, following a properly noticed public hearing, (i) adopted a

Resolution of Intent to issue, Taxable Industrial Revenue Bonds (the “IRBs”) for Purchaser in the amount of approximately six million and 00/100 dollars (\$6,000,000) to fund the renovations of the Hotel (the “Project”), (ii) received a sales tax exemption certificate for the materials needed for the renovation and repositioning; and (iii) as authorized under the IRB Act and KSA 79-201a (the “Abatement Statute”), as amended, agreed to exempt from ad valorem taxation all, or any portion of, the Project financed with the proceeds of the Bonds for a period of ten years, subject to the limitations set forth in the Abatement Statute. Consistent with the IRB Act, the City or County, as issuer, shall not provide any credit support or take any repayment obligation with respect to the IRBs. Purchaser agrees to provide the necessary information, as determined by the City or County, as issuer, in its reasonable discretion, to permit the City to commission the cost-benefit analysis required by the Abatement Statute. Purchaser shall pay all costs associated with the cost-benefit analysis and the issuance and maintenance of the IRBs, consistent with City or County policy, which is estimated to be \$28,000; provided that, in no event will the City charge Purchaser with any IRB origination fee of any type.

Until the foregoing contingencies are met, neither party shall have any obligations hereunder, except as specifically set forth herein. In the event these contingencies are not met by six months from the execution of this Agreement, this Agreement shall be considered null and void and neither party shall have any further obligations under this Agreement, and in such event the Earnest Money Deposit (plus any accrued interest thereon) shall be returned to Purchaser; provided that, such six month period may be extended by mutual agreement of the parties. The parties shall acknowledge, in writing, when the contingencies have been satisfied.

In addition to the foregoing contingencies, the Purchaser and Seller acknowledge that the City will take all necessary steps to capture the increased TGT increment from the Hotel and to establish a CID with respect to the Real Property and Maner for a term not to exceed 22 years, and that the City shall retain the proceeds of the CID and the TGT.

### **Article XIII**

#### **Insurance and Indemnification**

**13.1** The Purchaser agrees to defend, indemnify and hold the Seller and City, and their respective entity’s officers, agents and employees, harmless from and against all liability for damages, costs and expenses, including attorney fees, arising out of any claim, suit, judgment or demand arising from the negligent and/or intentional acts or omissions of the Purchaser, its contractors, subcontractors, agents or employees in the performance of this Agreement. The Purchaser shall give the Seller and City immediate written notice

within five Business Days of any claim, suit or demand that may be subject to this provision. The Seller and City shall also give five Business Days' written notice to the Purchaser of any such claim, suit, or demand, and the Seller and City agree that they shall not defend, settle or otherwise resolve any such claim, suit, or demand without prior notice to the Purchaser. After receipt of such notice, the Purchaser shall defend, contest, or otherwise protect the Seller and City against any such matter, at the cost and expense of the Purchaser, utilizing counsel selected by the Purchaser. This section shall not apply to negligence or willful misconduct of the Seller, City or the entities' officers, employees, or agents.

**13.2** The Seller agrees to defend, indemnify and hold the Purchaser and its affiliates, officers, agents and employees, harmless from and against all liability for damages, costs and expenses, including attorney fees, arising out of any claim, suit, judgment or demand arising from the negligent and/or intentional acts or omissions of the Seller, and its respective contractors, subcontractors, agents or employees in the performance of this Agreement. The Seller shall give the Purchaser immediate written notice within five Business Days of any claim, suit or demand that may be subject to this provision. Purchaser shall also give prompt notice to the Seller of any such claim, suit, or demand, and Purchaser agrees that it shall not defend, settle or otherwise resolve any such claim, suit, or demand without prior notice to the Seller. After receipt of such notice, the Seller shall defend, contest, or otherwise protect the Purchaser against any such matter, at the cost and expense of the Seller, utilizing counsel selected by the Seller. This section shall not apply to negligence or willful misconduct of the Purchaser or its affiliates, officers, employees, or agents.

**13.3** The City agrees to defend, indemnify and hold the Purchaser and its affiliates, officers, agents and employees, harmless from and against all liability for damages, costs and expenses, including attorney fees, arising out of any claim, suit, judgment or demand arising from the negligent and/or intentional acts or omissions of the City, and its respective contractors, subcontractors, agents or employees in the performance of this Agreement. The City shall give the Purchaser immediate written notice within five Business Days of any claim, suit or demand that may be subject to this provision. Purchaser shall also give prompt notice to the City of any such claim, suit, or demand, and Purchaser agrees that it shall not defend, settle or otherwise resolve any such claim, suit, or demand without prior notice to the City. After receipt of such notice, the City shall defend, contest, or otherwise protect the Purchaser against any such matter, at the cost and expense of the City, utilizing counsel selected by the City. This section shall not apply to negligence or willful misconduct of the Purchaser or its affiliates, officers, employees, or agents.

**13.4** Not in derogation of the indemnification provisions set forth in this Agreement, the Purchaser shall, at its sole cost and expense, throughout the term of this Agreement and during all phases of the development described in this Agreement, to the extent Purchaser holds fee title to the Real Property, insure and keep insured the Real Property against direct loss or damage occasioned by fire, flood, extended coverage perils and any other losses covered by standard property insurance, through insurers with an AM Best rating of no less than “A” and/or a rating that is acceptable to the City without co-insurance. The insurance shall be for an amount that is not less than the full replacement cost of such structures. Purchaser shall maintain throughout the term of this Agreement business interruption insurance sufficient to protect the property in the event of a loss. In the event of destruction or damage to any vertical structure owned by the Purchaser, the Purchaser shall cause all damaged or destroyed property within the Project to be restored to a clean, safe and sanitary condition within a reasonable period of time after such damage or destruction, not to exceed One Hundred Eighty (180) days. If the Purchaser has commenced work associated with restoring the damaged or destroyed property within the Project to a clean, safe, and sanitary condition, and diligently prosecuted and completed a substantial amount of such work, within such 180 day period, but has been unable to complete this work, the Purchaser shall be entitled to an extension to continue and ultimately complete all restoration efforts within Two Hundred Seventy (270) days. Further reasonable extensions may be requested by the Purchaser, which may be approved by the City in its reasonable and good faith discretion. If the Purchaser fails to restore any damaged or destroyed vertical structure owned by the Purchaser, as prescribed in this Section, the Purchaser, to the extent permitted under loan, mortgage or other similar documents applicable to the Real Property, agrees to raze said structure and clear the site of such structure in a manner in which such site will conform to the City’s Code provisions relating to maintenance of vacant commercial lots.

**Article XIV**

**General Provisions**

**14.1 Local, State, and Federal Law.** Purchaser shall abide by, and the Project shall be completed in conformity with, all applicable federal, state and local laws and regulations.

**14.2 Sales Tax, CID Sales Tax, TGT, any other Tax.** Purchaser shall abide by all laws and regulations regarding the payment of sales tax, CID sales tax, TGT, and any other applicable tax. After Closing, the Purchaser agrees to cooperate with the City and consent, which consent will not be unreasonably withheld, to any requested modifications to the CID on the Real Property and Maner.

**14.3 Reporting.** Purchaser shall comply with any direct reporting requirements under Chapter 54 of the 2025 Session Laws of Kansas related to the Project and to provide the necessary

information and documentation to the City in order to assist the City with its reporting requirements under Chapter 54 of the 2025 Session Laws of Kansas related to the Project.

**14.4 Nondiscrimination in Construction/Rehabilitation.** The Purchaser, for itself and its successors and assigns, agrees that in the construction/rehabilitation of the Project, the Purchaser shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin or ancestry.

**14.5 Anti-assignment.** Except as provided herein, the rights under this Agreement shall not be assigned by either party without the written approval of the other party.

**14.6 Anti-delegation.** No Party may delegate this Agreement without written consent of the other Parties.

**14.7 Notice.** Any notice, request, complaint, demand or other communication required or desired to be given or filed under this Agreement by a Party shall be in writing, addressed to the following:

**To the Seller at:**

CITY OF TOPEKA, KANSAS  
Attn: City Clerk  
City Hall, Room 166  
215 SE 7th Street  
Topeka, Kansas 66603

**With a copies to:**

CITY OF TOPEKA, KANSAS  
Attn: City Manager  
City Hall, Room 355  
215 SE 7th Street  
Topeka, Kansas 66603

CITY OF TOPEKA, KANSAS  
Attn: City Attorney  
City Hall, Room 353  
215 SE 7th Street  
Topeka, Kansas 66603

**To the Purchaser:**

ENDEAVOR HOTEL GROUP, LLC  
8415 E. 21<sup>st</sup> Street North, Ste. 140  
Wichita, KS 67216

**And:**

BIGGS PAUL, LLC  
Attn. Tyler Paul  
3500 N. Rock Road. Bldg. 1100  
Wichita, KS 67226

- 14.8 Governing Law, Jurisdiction.** Without regard to its conflicts of laws principles, the laws of the Kansas govern all matters with respect to this Agreement. A party may file and maintain an action to enforce this Agreement in the District Court of Shawnee County, Kansas or, in the case of federal jurisdiction, in the Federal District Court for the District of Kansas.
- 14.9 Successors and Assigns.** This Agreement binds and benefits the parties and their respective successors and assigns.
- 14.10 Entire Agreement.** This Agreement is executed in duplicate originals, each of which shall be considered an original. This Agreement, including the Schedules and Exhibits attached to the Agreement, constitutes the entire agreement and understanding of the Parties. This Agreement supersedes all negotiations or previous agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter of this Agreement except as specifically identified in this Agreement.
- 14.11 Severability.** If any provision of this Agreement is illegal or unenforceable, that provision is severed from this Agreement and the other provisions remain in force.
- 14.12 Amendments.** This Agreement may be amended only by an agreement in writing signed by Purchaser and Seller.
- 14.13 Counterparts.** This Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement between the parties.

To evidence the parties' agreement to this Agreement, they have executed and delivered it on the date as first set forth above.

**TOPEKA DEVELOPMENT CORPORATION**

Approved By:

*Robert M. Perez*

\_\_\_\_\_  
Dr. Robert M. Perez,  
TDC Executive Director

Approved By:

*Michael A. Padilla*

\_\_\_\_\_  
Michael A. Padilla,  
TDC President

**PURCHASER**

**ENDEAVOR HOTEL GROUP, LLC**

By:

*Roy Arnold*

\_\_\_\_\_  
Roy Arnold, President

### Certificate Of Completion

Envelope Id: DE1C44C3-3F5B-4C75-B6CF-14F6970DF910 Status: Completed  
 Subject: Contract 205-01 Purchase and Sale Agreement for Hotel Topeka, Endeavor Hotel Group, LLC  
 Department: Other  
 Document Type: Contract/Agreement/Addendums/Renewals/Change Order  
 Source Envelope:  
 Document Pages: 36 Signatures: 3 Envelope Originator:  
 Certificate Pages: 5 Initials: 0 Leigha Boling  
 AutoNav: Enabled lboling@topeka.org  
 EnvelopeId Stamping: Enabled IP Address: 98.168.117.239  
 Time Zone: (UTC-06:00) Central Time (US & Canada)

### Record Tracking

Status: Original Holder: Leigha Boling Location: DocuSign  
 12/17/2025 3:15:49 PM lboling@topeka.org

### Signer Events

Roy Arnold  
 roy.arnold@endeavorhotelgroup.com  
 CEO  
 YBR Properties Little Rock LLC  
 Security Level: Email, Account Authentication (None)

### Signature

Signature Adoption: Pre-selected Style  
 Using IP Address: 70.182.251.3

### Timestamp

Sent: 12/17/2025 3:16:07 PM  
 Viewed: 12/17/2025 3:30:16 PM  
 Signed: 12/17/2025 3:32:36 PM

**Electronic Record and Signature Disclosure:**  
 Accepted: 12/17/2025 3:30:16 PM  
 ID: aa83f62b-9d65-4d4e-a4b1-7e6416e561e8

Michael A. Padilla  
 mayor@topeka.org  
 Security Level: Email, Account Authentication (None)

Signature Adoption: Uploaded Signature Image  
 Using IP Address: 98.168.117.239

Sent: 12/17/2025 3:32:38 PM  
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**Electronic Record and Signature Disclosure:**  
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 ID: 27bc7113-4ce9-433c-9dd6-22b95e4b82d1

Robert M. Perez  
 rmperez@topeka.org  
 City Manager  
 City of Topeka  
 Security Level: Email, Account Authentication (None)

Signature Adoption: Pre-selected Style  
 Using IP Address: 98.168.117.239

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 Signed: 12/17/2025 5:03:40 PM

**Electronic Record and Signature Disclosure:**  
 Not Offered via Docusign

### In Person Signer Events

### Signature

### Timestamp

### Editor Delivery Events

### Status

### Timestamp

### Agent Delivery Events

### Status

### Timestamp

### Intermediary Delivery Events

### Status

### Timestamp

### Certified Delivery Events

### Status

### Timestamp

**Carbon Copy Events****Status****Timestamp**

Braxton Copley  
 bcopley@topeka.org  
 Deputy City Manager  
 City of Topeka  
 Security Level: Email, Account Authentication  
 (None)

COPIED

Sent: 12/17/2025 5:03:42 PM

**Electronic Record and Signature Disclosure:**  
 Not Offered via DocuSign

Josh McAnarney  
 jmcanarney@topeka.org  
 J  
 Security Level: Email, Account Authentication  
 (None)

COPIED

Sent: 12/17/2025 5:03:43 PM

**Electronic Record and Signature Disclosure:**  
 Accepted: 7/31/2023 2:58:23 PM  
 ID: 97cb3ef4-d162-46bc-9c19-b25f8b122c75

Brenda Younger  
 BYounger@topeka.org  
 City Clerk  
 City of Topeka  
 Security Level: Email, Account Authentication  
 (None)

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Nick Jefferson  
 njefferson@topeka.org  
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**Witness Events****Signature****Timestamp****Notary Events****Signature****Timestamp****Envelope Summary Events****Status****Timestamps**

Envelope Sent	Hashed/Encrypted	12/17/2025 3:16:08 PM
Certified Delivered	Security Checked	12/17/2025 5:01:49 PM
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