

**CONFIDENTIALITY AND
NON-DISCLOSURE AGREEMENT**

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (“**Agreement**”) is made and entered into effective as of the ____ day of _____, 2016, by and between the CITY OF WICHITA, KANSAS (“**Disclosing Party**”), and _____, a _____ (“**Receiving Party**”), each of which may be referred to herein individually as “Party” and collectively as “Parties.”

WHEREAS, Disclosing Party owns and operates under a certain Hotel Management Agreement the Hyatt Regency Wichita Hotel Facility in Wichita, Kansas (the “**Property**”);

WHEREAS, Receiving Party is interested in purchasing the Property (the “**Transaction**”), and has requested Disclosing Party to make Confidential Information (hereinafter defined) available to Receiving Party for purposes of conducting due diligence;

WHEREAS, Disclosing Party is only willing to make the requested Confidential Information available if Receiving Party agrees to protect the Confidential Information from unauthorized disclosure to third parties and refrains from taking any action to make public the fact that Receiving Party is discussing a potential sale of the Property with Disclosing Party; and

WHEREAS, the Parties have entered into this Agreement in order to assure the confidentiality of all Confidential Information provided by Disclosing Party to Receiving Party in connection with the Transaction and the confidentiality of the discussions between the Parties relating to the Transaction.

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein, and with the intent to be legally bound hereby, the Parties agree as follows:

1. **Confidential Information.** The term “**Confidential Information**” as used herein shall mean all information disclosed or shared by the Disclosing Party to the Receiving Party in connection with the Transaction and Property, including, without limitation, all information included in the discussions and negotiations between the Parties and/or their Representatives (as defined below) relating to the Transaction and Property. The term “**Confidential Information**” shall also include any and all written, printed or other materials, regardless of form, provided by Disclosing Party or its Representatives to Receiving Party or its Representatives, whether prior to or after the execution of this Agreement, and the substance and content thereof, and all information ascertained by Receiving Party through the discussions between Representatives of the Parties concerning the Transaction and Property. Examples of the types of information provided by the Disclosing Party that may be included within the definition of Confidential Information are: management and operating information, pricing analysis and room rates, marketing and business plans, financial statements, financial projections, budget information, operating expenses and all information pertaining to the Disclosing Party. Confidential Information shall not include the following:

- (a) Information which at the time of disclosure by Disclosing Party is publicly available, or is subject to mandatory disclosure under the Kansas Open Records Act, K.S.A.

45-215, et seq., or information which later becomes publicly available through no act or omission of Receiving Party;

(b) Information received by Receiving Party from a third party who, to the best of Receiving Party's knowledge, did not acquire such information on a confidential basis.

2. Disclosure and Use of Confidential Information. Receiving Party agrees to protect and keep confidential all Confidential Information disclosed to it by Disclosing Party, and shall not, without Disclosing Party's prior written consent, disclose to any third-party individual, firm or corporation or other entity such Confidential Information. Receiving Party shall limit the disclosure of the Confidential Information to only those affiliates, and its and their respective directors, officers, managers, employees and agents (including attorneys, advisors and accountants) (collectively, the "**Representatives**") of Receiving Party reasonably necessary to evaluate the Transaction and all Representatives shall be informed of and comply with the provisions of this Agreement as a Receiving Party hereunder. Receiving Party shall use the Confidential Information only for the purpose of its internal evaluations of whether or not it will pursue the Transaction with Disclosing Party and make an offer to purchase the Property. Receiving Party shall not make any other use, in whole or in part, of any such Confidential Information without the prior written consent of Disclosing Party. Receiving Party agrees that, in complying with its confidentiality obligations under this Agreement, Receiving Party shall use the same means it uses to protect its own confidential proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of the Confidential Information received from Disclosing Party.

3. Required Disclosure. In the event that Receiving Party is required by a valid and effective subpoena or order issued by a court of competent jurisdiction or a federal, state or local governmental or regulatory body or pursuant to a civil investigative demand or similar judicial process: (i) to disclose any Confidential Information received pursuant to this Agreement; or (ii) to disclose the possibility of the Transaction or the discussions pertaining thereto, Receiving Party agrees that it will, to the extent legally permitted and practicable, provide immediate notice to Disclosing Party of such request(s) and will use reasonable efforts to resist disclosure, until an appropriate protective order may be sought and/or a waiver of compliance with the provisions of this Agreement is granted. If, in the absence of a protective order or the receipt of a waiver hereunder, Receiving Party is nonetheless legally required to disclose Confidential Information received pursuant to this Agreement, then, in such event Receiving Party may disclose only such information which Receiving Party is advised by legal counsel is legally required to be disclosed and exercise commercially reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such information.

4. Communications Regarding the Transaction. The Receiving Party agrees that all communications concerning the Transaction and its due diligence investigation (including requests for additional Confidential Information) shall be directed solely to Scot Rigby as the authorized representative of the Disclosing Party. Receiving Party further agrees that it shall not be permitted to conduct any on-site due diligence (including, without limit, site inspections), and shall not attempt to communicate with any personnel of the Disclosing Party, without first obtaining the written consent of the Disclosing Party, which consent shall be granted by Scott Rigby, in his sole and absolute discretion.

The Receiving Party agrees that the mere fact that discussions between the Parties relating to the Transaction and Property are taking place is Confidential Information, and Receiving Party will not make, directly or indirectly, any public comment, statement, or communication with respect to, or otherwise to disclose or to permit the disclosure of the existence of discussions regarding, the Transaction or any of the terms, conditions, or other aspects of the Transaction, without first obtaining the prior written consent of the Disclosing Party, which consent may be granted or withheld by Scott Rigby in his sole and absolute discretion.

5. Return of Documents. In the event Receiving Party elects not to pursue the Transaction with Disclosing Party, Receiving Party agrees to return, or destroy if so requested, any and all Confidential Information as well as any other information disclosed to it by Disclosing Party upon written request from Disclosing Party therefor, including all originals, copies, translations, notes or any other form of said material, without retaining any copy or duplicate thereof, and shall promptly destroy any and all written, printed or other material or information derived from the Confidential Information.

6. Survival of Obligations. Regardless of any termination of any business relationship or negotiations between the Parties, the obligations and commitments established by this Agreement relating to Confidential Information shall remain in full force and effect for two (2) years from the date hereof or until such time as the Parties have entered into an agreement providing otherwise.

7. Remedies. The Parties agree that upon a breach of this Agreement, Disclosing Party is entitled to assert all remedies available at law or equity.

8. Governing Law and Venue. The validity and interpretation of this Agreement and the legal relations of the Parties to it shall be governed by the laws of the State of Kansas applicable to contracts to be performed within that state (excluding the conflicts of law rules). Venue shall lie in any state or federal court in located in Wichita, Kansas.

9. No Other Agreement. This Agreement is to evidence Receiving Party's agreement to maintain the confidentiality of the Confidential Information, and shall not constitute any commitment or obligation on the part of either Party to enter into any specific contractual arrangement of any nature whatsoever including without limitation regarding the Transaction. This Agreement embodies the entire agreement and understanding of the Parties hereto and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein. No alteration, waiver, amendment, change or supplement hereto shall be binding or effective unless the same is set forth in writing signed by a duly authorized representative of each Party.

10. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement, and all of which when taken together, shall be deemed to constitute one and the same agreement. A signed copy of this Agreement transmitted by electronic means will be deemed to be an original.

(signature page follows)

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first herein above written.

DISCLOSING PARTY:

RECEIVING PARTY:

CITY OF WICHITA, KANSAS

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____