SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT (this “Second Amendment”) is made and entered into as of October 8, 2019, by and between the CITY OF WICHITA, KANSAS, a municipal corporation duly organized under the laws of the State of Kansas (the “City”), and EPC REAL ESTATE GROUP, LLC, a Kansas limited liability company (the “Developer”) (collectively, the “Parties” and each a “Party”).

RECITALS

A. The City and the Developer entered into that certain Development Agreement, dated as of December 12, 2017 (the “Development Agreement”) for the purpose of formalizing the construction and financing of the Project (as defined therein). Capitalized terms used and not otherwise defined in this Amendment will have the meanings provided in the Development Agreement.

B. Subsequent to the negotiation of the Development Agreement, certain federal tax incentives became available that may be utilized to enhance the Project and the Parties entered into a First Amendment to Development Agreement, dated as of January 15, 2019 (the “First Amendment”) to permit the Developer to assign all or a portion of the Developer’s rights and duties under the Development Agreement with respect to the Hotel, the Apartments, and the Commercial Space, including the right to receive a portion of the TIF Bonds proceeds, CID Sales Tax revenues and the IRBs, and to sell, transfer and convey the portion of the Property on which each is to be located, all as more particularly described therein.

C. Subsequent to the negotiation of the Development Agreement and First Amendment, the Developer has acquired certain property on which a portion of the Project will be constructed and has contracted to sell other property not need for Project construction and operation.

D. The City and the Developer now desire to further amend the Development Agreement to conform such legal descriptions as set forth below and to modify certain terms of Exhibit L to the Development Agreement.

E. The City has heretofore approved partial assignments of portions of the rights and responsibilities of the Developer under the Development Agreement to Delano Hotel QOZB, LLC, a Kansas limited liability company, and to Delano Apartments L.L.C., a Delaware limited liability company (collectively, the “Assignees”).

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:
1. **Exhibit A.** *Exhibit A* to the Development Agreement is replaced in its entirety as set forth on *Exhibit A* hereto.


3. **Amendment Controls; Ratification and Affirmation.** Any and all references to the Development Agreement contained therein, in the First Amendment and in this Second Amendment, shall mean the Development Agreement, as amended by the First Amendment and this Second Amendment. In the event that the terms of this Second Amendment and the Development Agreement, as previously amendment, are held to be inconsistent, the terms of this Second Amendment will control. The Parties each agree and warrant that, in all other respects, the Development Agreement is unmodified, in full force in effect, and each Party hereby ratifies and affirms the Development Agreement, as previously amended, and any terms contained therein not otherwise modified by this Amendment.

4. **Assignees’ Consent.** By execution of the counterpart signatures attached hereto, the Assignees consent to the provisions of this Second Amendment.

5. **Counterparts.** This Second Amendment may be executed in counterparts, each of which will be deemed an original and all of which will constitute one and the same instrument. Hand signatures transmitted in PDF or similar format are also permitted as binding signatures to this Second Amendment.

[Remainder of Page Intentionally Blank]
IN WITNESS WHEREOF, the City and the Developer have duly executed this Second Amendment pursuant to all requisite authorizations as of the date first above written.

CITY OF WICHITA, KANSAS

By: __________________________
    Jeff Longwell, Mayor

ATTEST:

_________________________
Karen Sublett, City Clerk

STATE OF KANSAS   )
) ss.
COUNTY OF SEDGWICK )

On this ____ day of October, 2019, before me personally appeared Jeff Longwell, personally known, who being by me duly sworn did say that he is the Mayor of the City of Wichita, Kansas, and that said instrument was signed and delivered on behalf of said municipal corporation and acknowledged to me that he executed the same as the free act and deed of said municipal corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL]

Notary Public

APPROVED AS TO FORM:

_________________________
Jennifer Magaña, Director of Law
    and City Attorney
EPC REAL ESTATE GROUP, LLC

By: __________________________
   Michael J. McKeen, President

STATE OF KANSAS    )
   ) ss.
COUNTY OF JOHNSON  )

This instrument was acknowledged before me on this _______ day of October, 2019, by Michael J. McKeen as the President of EPC Real Estate Group, LLC, a Kansas limited liability company.

__________________________
Notary Public

[SEAL]
APPROVED:

DELANO HOTEL QOZB, LLC,
A Kansas limited liability company

By: ___________________________________________________________
Name: Nick Esterline
Title: Manager
Date: October __, 2019

ACKNOWLEDGMENT

STATE OF KANSAS )
) ss.
COUNTY OF SEDGWICK )

BE IT REMEMBERED, that on this ___ day of October, 2019 before me, the undersigned, a Notary Public in and for said County and State, came Nick Esterline, who is known to me to be the same person who executed the within instrument, and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

(Seal)

Notary Public in and for said County and State

My Commission Expires:
APPROVED (In Counterpart):

DELANO APARTMENTS LLC,

By: Woodbury Corporation, a Utah corporation, its Manager

By: ________________________________
Name: O. Randall Woodbury
Title: President
Date: October ____, 2019

By: ________________________________
Name: W. Richards Woodbury
Title: Chairman
Date: October ____, 2019

ACKNOWLEDGMENT

STATE OF _________ )
) ss.
COUNTY OF _________ )

BE IT REMEMBERED, that on this ___ day of ______________ 2019 before me, the undersigned, a Notary Public in and for said County and State, came _____________, who is known to me to be the same person who executed the within instrument, and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

(Seal)

Notary Public in and for said County and State

My Commission Expires:

__________________________

ACKNOWLEDGMENT

STATE OF _________ )
) ss.
COUNTY OF _________ )

BE IT REMEMBERED, that on this ___ day of ______________ 2019 before me, the undersigned, a Notary Public in and for said County and State, came _____________, who is known to me to be the same person who executed the within instrument, and such person duly acknowledged the execution of the same.
IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the
day and year last above written.

(Seal)

My Commission Expires:

____________________

Notary Public in and for said
County and State
APPROVED (In Counterpart):

DELANO APARTMENTS LLC,

By: Delano Capital Partners, LLC, a Kansas limited liability company, its Manager

By: __________________________________________
Name: Michael McKeen
Title: Manager
Date: October __, 2019

ACKNOWLEDGMENT

STATE OF KANSAS )
) ss.
COUNTY OF JOHNSON )

BE IT REMEMBERED, that on this ___ day of October, 2019, before me, the undersigned, a Notary Public in and for said County and State, came Michael McKeen, who is known to me to be the same person who executed the within instrument, and such person duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year last above written.

(Seal)

Notary Public in and for said
County and State

My Commission Expires:

________________________
EXHIBIT A

LEGAL DESCRIPTIONS AND MAPS OF PROPERTY, CID DISTRICT AND TIF DISTRICT

* * * * * * * * * * * * * * * * * * * * *

Legal Description of Property:
Lot 1, Block 2, Advanced Learning Library Addition to Wichita, Sedgwick County, Kansas;
Lot 1, Block 1 EPC Real Estate Group LLC Addition to Wichita, Sedgwick County, Kansas;
Reserve A except the south 50 feet of the east 265 feet, EPC Real Estate Group LLC Addition to Wichita, Sedgwick County, Kansas; and
Lot 27 & vacated West ½ of Oak Street adjacent to said Lot 27 on Oak Street, West Wichita Addition to Wichita, Sedgwick County, Kansas.

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Legal Description of CID:
Lot 1, Block 2, Advanced Learning Library Addition to Wichita, Sedgwick County, Kansas;
Lot 1, Block 1 EPC Real Estate Group LLC Addition to Wichita, Sedgwick County, Kansas; and
Reserve A except the south 50 feet of the east 265 feet, EPC Real Estate Group LLC Addition to Wichita, Sedgwick County, Kansas.

* * * * * * * * * * * * * * * * * * * * *

Legal Description of TIF District:
An area including the following additions, lots and parcels all located in Wichita, Sedgwick County, Kansas:
Advanced Learning Library Addition; Sycamore Addition; Odd Lots 21 to 51 on Oak Street and half of vacated Pearl on the south, West Wichita Addition; Even Lots 22 to 52 on Oak Street and half of vacated Pearl on the south, West Wichita Addition; Odd Lots 21 to 51 on Sycamore Street and half of vacated Pearl on the south, West Wichita Addition; Odd Lots 101 to 143 on Chicago, now Douglas Avenue, West Wichita Addition; The north six feet of the south ½ of vacated Pearl Street between Oak Street and Sycamore Street, West Wichita Addition; Even lots 92 to 100 on Pearl Street and the south 34 feet of vacated Pearl Street on the north, West Wichita Addition; Even Lots 12 through 20 on Oak Street and the south 34 feet of vacated Pearl on the north, West Wichita Addition; Odd lots 11 through 19 on Oak Street and ½ vacated Pearl Street on north, West Wichita Addition; Even lots 32 through 40 on Osage Street and ½ vacated Pearl Street on the north the east 10 feet of vacated Osage on the west, West Wichita Addition; Lot 42 on Osage Street and ½ of vacated Pearl Street on the south, West Wichita Addition; Odd lots 31 through 39 on Osage Street and the west 10 feet of vacated Osage on the east and ½ of vacated alley on west and the south 20 feet of vacated Pearl Street adjacent to Lot 39 on the north, West Wichita Addition;
Even lots 32 through 40 on Wichita, now Handley Street and the east 10 feet of vacated Handley on the west and ½ of vacated alley on the east and the south 20 feet of vacated Pearl Street adjacent to Lot 40 on the north, West Wichita Addition; Odd lots 31 through 39 on Wichita, now Handley Street and ½ of vacated alley on west and the west 10 feet of vacated Handley on the east, West Wichita Addition; Even lots 12 through 20 on Walnut Street and ½ vacated alley on east, West Wichita Addition; Even lots 2 through 20 on Pearl Street, West Wichita Addition; Odd lots 1 through 99 on Chicago, now Douglas Avenue including a vacated alley between lots 29 and 31, a vacated alley between Lots 69 and 71, 10 feet of vacated Wichita, now Handley adjacent to Lots 39 and 41, and 10 feet of vacated Osage adjacent to Lots 59 and 61, West Wichita Addition; Even Lots 82 to 100 on Chicago, now Douglas Avenue, West Wichita Addition; Even Lots 72 to 80 on Chicago, now Douglas Avenue and ½ of vacated alley on south and ½ of vacated alley adjacent to Lot 72, West Wichita Addition; Even Lots 12 to 30 on Osage Street and the east 10 feet of vacated Osage on the west and half of vacated alley adjacent to the east and the vacated alley between Lots 20 and 22; East 50 feet of the north 125 feet of Reserve “E” plus 10 feet of vacated Osage Street on the east, West Wichita Addition; Kelch’s Resurvey of a portion of Reserve “E” in West Wichita Addition including the vacated alley therein; Odd lots 11 through 29 on Wichita, now Handley Street and the west 10 feet of vacated Handley on the east and ½ of vacated alley adjacent on west adjacent to Lots 21 through 29, West Wichita Addition; Even Lots 2 to 30 on Chicago, now Douglas Avenue and ½ of vacated alley adjacent to Lot 30 on east, West Wichita Addition; Lawrences’ Subdivision of Lots 1, 3, 5, 7 and 9 on Texas in West Wichita Addition and the north 10 feet of vacated Texas Street adjacent to the east ½ of Lot 5 thereof; Odd lots 11 through 29 on Texas Avenue, West Wichita Addition; Minnich & Jones Subdivision in Reserve “E” in West Wichita Addition; East 75 feet of the south 125 feet of Reserve “E” plus 10 feet of vacated Osage Street on the east, West Wichita Addition; Odd Lots 71 to 79 on Texas Avenue and ½ of vacated alley on north and ½ of vacated alley adjacent to Lot 71, West Wichita Addition Odd Lots 81 to 99 on Texas Avenue, West Wichita Addition; Even Lots 102 to 140 and the West 5 feet of Lot 142 on Chicago, now Douglas Avenue, West Wichita Addition; Even Lots 144 to 160 and the East 20 feet of Lot 140 and the vacated alley adjacent on the South on Chicago, now Douglas Avenue, West Wichita Addition; Reserve A, West Wichita Addition except that part lying east of the center line of the railroad right-of-way and except the northwest 10 feet taken for alley and except that part replatted as part of Payne’s Park Addition; Payne’s Park Addition; that part of the Southwest ¼ of Section 20-Township 27-Range 1 East of the 6th P.M. lying South of Reserve A, West Wichita Addition and East of Payne’s Park Addition and lying north of the South line of Lot 9, Block 6, Payne’s Park Addition extended East to the center line of the railroad right-of-way and except that part dedicated for street; Wichita Ice Center Addition;

All public streets and rights of way contiguous to the above described parcels including parcels condemned in CC A-60844; except that McLean Boulevard, where contiguous to the above described areas, shall only be included to the centerline thereof.
MAP OF TIF DISTRICT