



# City of Lawrence

## CITY MANAGER'S OFFICE

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### CITY COMMISSION

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COMMISSIONERS  
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December 16, 2015

### **BY HAND-DELIVERY**

Oread Inn, L.C.  
643 Massachusetts Street, Suite 300  
Lawrence, Kansas 66044

Re: 12th & Oread Tax Increment Financing District Redevelopment Agreement by  
and between the City of Lawrence, Kansas and Oread Inn, L.C. (April 8, 2008)

Dear Oread Inn, L.C.:

On April 8, 2008, the City of Lawrence, Kansas (City), and Oread Inn, L.C. (Oread Inn), entered into the 12th & Oread Tax Increment Financing District Redevelopment Agreement (Redevelopment Agreement). Among other things, the Redevelopment Agreement obliges the City -- in order to reimburse Oread Inn for certain public improvements made by Oread Inn -- to disburse to Oread Inn certain sales tax collected within the 12th & Oread Tax Increment Financing District and the 12th & Oread Transportation Development District (Special Taxing Districts), both of which the City established for that purpose.

As you are aware, the City recently hired the firm of Allen, Gibbs & Houlik, L.C. (AGH), to review the sales tax records of Oread Inn's tenant, Oread Wholesale, L.C. (Oread Wholesale). AGH has now completed its review. That review discloses that, despite reporting significant sales within the Special Taxing Districts for the years 2010 through the present time, Oread Wholesale actually made **no sales** under the Kansas Retailers' Sales Tax Act of 1937, codified as amended at K.S.A. 79-3601 *et seq.*, within the Special Taxing Districts during that time. Consequently, as a result of the actions of Oread Wholesale, the City disbursed to Oread Inn sums that Oread Inn was not entitled to receive under the Redevelopment Agreement and Oread Inn was thereby unjustly enriched in the amount of \$492,914.86 (which sum is the amount the City disbursed to Oread Inn as the result of Oread Wholesale's sales tax returns, together with interest at the rate prescribed by the Redevelopment Agreement). A redacted copy of AGH's report accompanies this letter and is incorporated herein by reference.



As you are also aware, Section 10.01 of the Redevelopment Agreement obliges the parties to take such actions as are necessary or appropriate to carry out the intent of the Redevelopment Agreement and to assist each other in carrying out said intent. The intent of the Redevelopment Agreement is that, in order to reimburse Oread Inn for certain public improvements that Oread Inn made, the City disburse to Oread Inn certain sales tax collected on retail sales within the Special Taxing Districts. Here, as the result of the actions of Oread Inn's tenant, Oread Wholesale, the City disbursed to Oread Inn funds that were not related to sales and were not due Oread Inn under the Redevelopment Agreement. Such is clearly contrary to the intent of the Redevelopment Agreement. Therefore, pursuant to Section 10.01 of the Redevelopment Agreement, the City hereby demands that Oread Inn assist it in carrying out the intent of the Redevelopment Agreement, as follows:

- (1) Oread Inn shall, on or before December 31, 2015, make payment to the City in the amount of \$492,914.86, said sum being the amount the City overpaid Oread Inn as the result of the actions of its tenant Oread Wholesale together with interest thereon, all under the terms of the Redevelopment Agreement;
- (2) Oread Inn shall, within thirty days of receiving an invoice from the City, reimburse the City for the costs it incurred in hiring AGH, which as of December 5, 2015, was in the amount of \$27,455.65, said costs being incurred only due to the obfuscatory and recalcitrant behavior of its tenant, Oread Wholesale;
- (3) Oread Inn shall, on or before January 18, 2016, obtain from its tenant, Oread Wholesale, all tax records and documents that Oread Wholesale used to prepare its *original* sales tax returns and shall provide the same to AGH for its review.
- (4) Oread Inn shall, on or before December 31, 2015, agree to amend the Redevelopment Agreement, in writing, to insert an Audit Clause that will permit the City to audit, without advance notice, any and all sales tax records (regardless of their nature or how stored) of Oread Inn, its tenants, or any person or entity doing business within the Oread Hotel, in order to foreclose the possibility of a similar occurrence in the future; and
- (5) Oread Inn shall give written assurance to the City that, in the event of a future occurrence, it will fully cooperate with the City in any future audits or review that may be necessary as the result of the actions of Oread Inn, its tenants, or any person or entity doing business within the Oread Hotel.

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Oread Inn, L.C.

Please note that failure to assist the City in seeing that the intent of the Redevelopment Agreement is carried out may be deemed by the City as an Event of Default under Section 9.01 of the Redevelopment Agreement, may be cause, if not cured, for termination of the Redevelopment Agreement under Section 9.03, and may be cause for the City to pursue whatever course of action may be necessary to make it whole.

The City will continue to withhold all further reimbursements under the Redevelopment Agreement until this matter is resolved. Additionally, in making this demand, the City waives no rights or claims that it may have under the Redevelopment Agreement and waives no claims that may be available to it at law or in equity.

Please contact me with questions.

Sincerely,

A handwritten signature in cursive script, reading "Diane Stoddard".

Diane Stoddard  
Interim City Manager

cc: Catherine Theisen, Barber Emerson, L.C., as attorney for Oread Inn, L.C.