



CITY OF MARYVILLE
400 West Broadway
Maryville, TN 37801

CALLED
CITY COUNCIL MEETING
5:00P.M. TUESDAY, NOVEMBER 21, 2023
MARYVILLE MUNICIPAL CENTER

NOTICE: Individuals who wish to speak at council meetings should sign up on the public comment sheets available outside the council chamber. There are sign-up sheets for the following comment periods: public hearings, non-agenda items (Hear Citizens), and existing agenda items. The Mayor will use the sign-up sheets to call upon citizens for comments during the correlating comment period. Please remain seated until called upon to speak.

5:00 P.M.

CITY COUNCIL

CALL TO ORDER

ROLL CALL

INVOCATION

ACCEPTANCE OF AGENDA

Individuals with disabilities who require accommodation for participation in meetings must request accommodation at least 72 hours ahead of the scheduled meeting. Contact the ADA Coordinator, at (865) 273-3430 or email at adainfo@maryville-tn.gov.

Meeting attendees who have difficulty hearing can sign out an assisted listening device prior to the meeting. Please let a member of staff know before the meeting starts to use a device.

HEAR CITIZENS ON NON-AGENDA ITEMS

BUSINESS

1. CONSIDERATION OF A MOTION APPROVING THE LONG-TERM LEASE OF AIR RIGHTS, CONSTRUCTION AGREEMENT AND RELATED AGREEMENTS FOR CONSTRUCTION OF A HOTEL AND PARKING GARAGE IN DOWNTOWN MARYVILLE, BETWEEN THE CITY OF MARYVILLE AND DEVI CAPITAL MARYVILLE HOSPITALITY, LLC, AND TO AUTHORIZE THE MAYOR OF THE CITY OF MARYVILLE TO SIGN SAID DOCUMENT.



CITY OF MARYVILLE
400 West Broadway
Maryville, TN 37801
(865) 273-3401

AGENDA ITEM BACKGROUND

1. CONSIDERATION OF A MOTION APPROVING THE LONG-TERM LEASE OF AIR RIGHTS, CONSTRUCTION AGREEMENT AND RELATED AGREEMENTS FOR CONSTRUCTION OF A HOTEL AND PARKING GARAGE IN DOWNTOWN MARYVILLE, BETWEEN THE CITY OF MARYVILLE AND DEVI CAPITAL MARYVILLE HOSPITALITY, LLC, AND TO AUTHORIZE THE MAYOR OF THE CITY OF MARYVILLE TO SIGN SAID DOCUMENT.

A) Introduction: The developer (Devi Capital Maryville Hospitality, LLC) seeks to build a hotel and parking garage in Downtown Maryville. Said building will be on city owned property, which will be leased to the developer for \$1.00 per year for a 99-year period. The city will pay, not to exceed \$2 million, for construction of a parking garage which will be owned by the city.

B) Financial Impact of Action: Not to exceed \$2 million expenditure for construction of parking garage. In addition, additional infrastructure cost related to hotel construction (water, sewer, electric and streets).

C) Impact of Action on Other Departments/Agencies: Additional cost for infrastructure.

D) Proposed Action: Complete and sign lease agreement.

E) Staff Recommendation: Approve agreement.

This instrument was prepared by:
Melanie E. Davis, Attorney
217 East Broadway Avenue
Maryville, Tennessee 37804

LONG TERM LEASE OF AIR RIGHTS AND RIGHT TO USE SPACES IN PARKING GARAGE, CONSTRUCTION AGREEMENT AND RELATED AGREEMENTS FOR CONSTRUCTION OF A HOTEL AND PARKING GARAGE IN DOWNTOWN MARYVILLE, TENNESSEE

This Agreement (“Agreement”) is made and entered into on this the ___ day of _____, 2023, by and between the City of Maryville, Tennessee, a municipal corporation located in Blount County, Tennessee (“City”), and Devi Capital Maryville Hospitality, LLC, a Tennessee limited liability company, (“Developer”) and Sandip Patel, a citizen and resident of Hamblen County, Tennessee (“Guarantor”). The City and the Developer together shall be referred to herein as the “Parties”. The portions of this Agreement dealing only with the lease of air rights shall be referred to as the “Lease”.

RECITALS:

WHEREAS, the City is the owner of a tract of real property which is more fully described in **Exhibit A** herein (the “Property”); and

WHEREAS, the Developer intends to cause to be constructed on the Property a hotel (the “Hotel”) built on a parking garage with approximately 124 parking spaces for automobiles with approximately sixty (63) of those parking spaces available for public use on the lower level (the entire garage shall be referred to as the “Garage”); and

WHEREAS, the building of the Garage and Hotel together shall be referred to collectively as the “Project”; and

WHEREAS, the City will retain fee ownership of the Property and the Garage, but will enter into a long-term lease with Developer of the air rights above the Garage to allow Developer to construct and operate the Hotel for a term of ninety-nine (99) years on top of the Garage; and

WHEREAS, during the Lease Term, Developer will also have exclusive rights to use the parking spaces in the Garage on the second floor of the Garage in support of the Hotel; and

WHEREAS, the Developer has agreed to cause the garage to be constructed on a fixed price basis for the City to own for a fee not to exceed Two Million Five Hundred Thousand Dollars and No/100 Dollars (\$2,500,000.00) to be paid in Progress Payments as set forth herein; and

WHEREAS, the Project is further described on the plans and specifications as shown on **Exhibit B** attached hereto which shall include the number and location of parking spaces in the Garage;

WHEREAS, Developer desires to lease as air space only the Leased Premises more particularly described on **Exhibit C** (“Leased Premises”) which shows where the Leased Premises is located in relation to the Garage and Hotel and the intersection of the two, with **Exhibit C** attached hereto and incorporated herein by this reference;

NOW, THEREFORE, for valuable consideration and the mutual covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

SECTION I: GENERAL

1. Recitals. The above recitals are true and correct and are binding on the Parties.
2. Air Space Lease; Term; Rent. As set forth below in Section II of this Agreement, City, as owner of the Property, agrees to lease to the Developer the Leased Premises for a Ninety-Nine (99) year lease period in exchange for rent in the amount of One Dollar and No/100 Dollars (\$1.00) per year. The lease term for such air rights commences as of the date of commencement of construction on the Project.
3. Parking Garage. The Developer will build for the City on City’s land a Garage under the Hotel on the Property as shown on the attached plans. The City will pay actual costs incurred by Developer, not to exceed Two Million Five Hundred Thousand Dollars and No/100 Dollars (\$2,500,000.00) for the construction of the Garage (“Not to Exceed Amount”) The Not To Exceed Amount shall be disbursed in progress payments on a percentage-of-completion basis, in accordance with the construction draw schedule of Developer’s construction lender (the loan documents showing this draw schedule shall be provided to City before any payment is made hereunder), except that the requests made to City may be made fifteen (15) days in advance of the date the payment is due to the construction lender to allow for cash flow for the loan payment. Construction draw requests shall be prepared by Developer and submitted to City in the form specified by the City. City will review the requests and will only pay for work that has been satisfactorily completed to date based on City’s inspection of the work completed for the Project. If approved by City, payments shall be made within ten (10) days after receipt of the draw request. The sums paid by the City for the Garage shall include all sums paid to contractors, laborers, materials, and suppliers for the Project and all costs of insurance, bonds, permits, and similar expenses incurred during the construction. To the extent the actual costs of construction is more than stated above, it shall be the responsibility of the Developer to pay any and all such amounts. The Garage will include an elevator to be paid for by the Developer and maintained by the Developer.
4. Restriction of Use; Permitted Uses. Developer shall use and occupy the Leased Premises solely for use as a Hotel (with related but ancillary facilities like a hotel owned and operated restaurant, bar and/or small retail store as approved by City) and for no other purpose unless approved by the City Council of the City in its sole but reasonable discretion. Developer shall not occupy or use the Leased Premises or permit any portion of the Leased Premises to be occupied or used, for any other purpose or cause the load upon any floor of the Hotel to exceed the load for which the floor or the foundations were designed, or the amount permitted by law, or use electrical energy exceeding the capacity of the then existing feeders or wiring installations.

Developer shall further conduct its business and control its agents, employees, invitees, and visitors in such a manner as not to create any nuisance, or interfere with, annoy or disturb any owner or tenant of adjacent property. Developer will be able to use the air rights conveyed herein only for the described Hotel. The Hotel will have at least four (4) floors and at least fifty thousand (50,000) square feet and at least eighty (80) hotel rooms for rent.

5. Liens and Encumbrances. Any liens and encumbrances on the air rights of the subject Property have to be approved by the City and its reasonable discretion though the City will agree to allow Developer to encumber his Lease interest with a Note and Deed of Trust to a bank or financial institution in said property so long as Developer does not decrease the value of the City's property and as long as the interests of the City are protected so that that the Property be used only as set forth herein during the Lease Term, even in the event of a foreclosure or like event. The City's fee interest in the Property will not be used or placed at risk as collateral of any sort by Developer.

6. Plans. The Hotel and the Garage shall be constructed in accordance with the plans and specifications listed on **Exhibit B** attached hereto and incorporated herein by reference. The plans may not be further altered or amended in the future without the prior written consent of the City, with such consent not to be unreasonably withheld. The Plans as provided as an Exhibit herewith are not finally approved and are subject to being replaced by final plans as agreed by the parties.

7. Construction Contract; Utilities; Mechanics and Materialmen's Liens. Developer will negotiate a construction contract for the Garage and for the Hotel with a contractor of its choice. The construction contract will require the contractor to complete the construction of the Project in accordance with the terms of this Agreement and with all applicable codes and other legal requirements. The City will provide water, sewer and electric utilities to the Property boundaries. The contractor will provide payment and performance bonds for the work on the construction on the Project for the full amount of the contract with the Developer listed as a dual Obligee on the bonds. All utilities used in construction will be in the name of and paid by Developer. After a certificate of occupancy is provided for the Garage, the City shall pay for the utilities in the Garage including paying for installing permanent meters for the Garage. The Developer will at all times be responsible for utilities in the Hotel including paying for installation of permanent meters. All work done pursuant to this Agreement will be done: (a) in a good, workmanlike, first-class and prompt manner; (b) by a licensed contractor or by Developer's employees and in accordance with plans and specifications approved in writing by City and the Downtown Design Review Board or other governmental agencies as otherwise then required; (c) in accordance with all applicable legal requirements and the requirements of any insurance company insuring the Leased Premises or portion thereof; and (d) after Developer has obtained public liability and workers' compensation insurance policies approved in writing by City, which policies shall cover every person who will perform any work with respect to the Project. If any mechanics' or materialmen's lien (or a petition to establish such lien) is filed against the Leased Premises or any equipment within the Leased Premises for work claimed to have been done for, or materials claimed to have been furnished to, the Leased Premises, Developer shall discharge the lien within ten (10) days thereafter, at Developer's sole cost and expense, either by the payment thereof or by filing a bond acceptable to City.

In addition to the \$2,500,000 payment by the City for the construction of the Garage, the City will reimburse Developer for certain work done for infrastructure for the Project to include the following: sidewalks on Church Avenue, the Greenway connection to the Property; and the cross walk on Broadway Avenue. The City will share stormwater related construction costs with Developer in amounts to be determined. Additionally, the City will do the work to relocate the fire hydrant on the Property as shown on the Plans and Specifications.

8. Completion of Construction of Project. Subject to delays as a result force majeure, construction of the Project must be substantially completed with all relevant certificates of occupancy issued and delivered to the City within thirty-six (36) months after the date of commencement of construction.

9. Liquidated Damages. In the event the Garage and/or the Hotel is not delivered to the City within the time set forth above, Developer agrees to pay to the City as liquidated damages the amount of One Thousand Five Hundred Dollars and No/100 Dollars (\$1,500.00) per day for each day of such delay. In agreeing to this liquidated damages provision, each party has considered the damages which would likely be caused by a delay in completion of construction and delivery of the Garage or Hotel and have determined that it would not be possible to accurately determine the actual amount of such damages. Each party has also considered such matter and determined that the amount of liquidated damages specified above is reasonable. It is understood that certain portions of the Garage may not be used by the public on a temporary basis due to construction of the Hotel.

10. Insurance. During construction of the Project, beginning by the first day of construction, City and Developer shall cause their respective interests in the Garage and the Hotel and the remaining Property to be insured against all risks arising from the construction of the Project. The Parties recognize that if the construction of the Garage and Hotel makes it impossible to insure either the Garage or Hotel under separate policies, the Project shall be insured under one policy, with the costs shared equitably between the Parties based on the value of the insured Property, and the insurance premiums paid by the Developer with the City named as an additional insured. After completion of construction of the Garage and the issuance of a certificate of occupancy therefor, liability and property insurance will be provided by the City for the Garage under its separate policies of insurance. After completion of the Hotel and the issuance of a certificate of occupancy therefor, liability and property insurance shall be provided for the Hotel for the remaining Lease term by the Developer under its own separate policies of insurance. Further information on limits of liability and other requirements relating to insurance are shown on **Exhibit D** attached hereto and incorporated by reference herein.

11. Proof of Financing. Developer will within sixty (60) days of the date of this Agreement provide to City commercially reasonable proof of sufficient financing for the construction of the Project in a form and substance reasonably required by City.

12. Proof of Hotel Chain Support. Developer will within ninety (90) days of the date of the signing of this Agreement provide to City proof of support by a major and nationally recognized United States hotel chain for the Project in the form of a letter indicating that such a hotel chain will agree to have the Hotel as a franchise member upon completion.

13. Time is of the Essence. Time is of the essence in the performance of this Agreement.

14. Required Approvals. The Developer understands that any plans for construction on the subject Property would have to be approved by the City of Maryville Downtown Design Review Board just as any property would have to be approved in this zoning district in the City of Maryville.

15. Right of Support. The City will, in addition to air rights for the Hotel, provide a perpetual right of support for the Hotel over the Garage. The City will maintain in its Garage columns, supports and foundations as necessary to support the Hotel and the drains, utility lines, elevator shafts and other improvements that are reasonably necessary for maintenance of the Hotel where such items are within the boundaries of the Garage. The cost of construction (subject to the not to exceed limitation contained herein) of such support shall be borne by the City as part of its payment for construction of the Garage.

16. Garage and Hotel Repair and Maintenance; Reserved Parking Spaces. The City will agree to use the Garage as a public parking garage for the term of the Lease of air rights to the Developer, with approximately half of the one hundred twenty four (124) parking spaces reserved for use exclusively by the Hotel and its guests, employees, and contractors during the Lease Term, as located on the second floor of the garage. The City will maintain and repair the Garage reasonably throughout that time. The Developer will agree to keep and maintain the Hotel in good repair and condition and to promptly repair all damage thereto.

17. Indemnity and Hold Harmless. The Developer will indemnify and hold harmless the City (and its agents, employees, and attorneys) from any claims, damage, or loss arising from the Developer's use of or construction on the Property or use by Developer's contractors, agents or employees other than claims, damages, or losses caused by the gross negligence or willful misconduct of the City, contractors, agents, or employees. Such indemnity will include payment of the City's reasonable attorney's fees and costs incurred in defense of any such claims.

18. Substantial Completion. In the event the Hotel is not substantially completed within four (4) years from the date of this Agreement, the Developer agrees to sell or assign his interests in the Hotel and the Property to the City at a fair market value (to be determined by a mutually acceptable licensed commercial appraiser) minus twenty percent (20%). This amount is not to be construed as a penalty. The fair market value amount will not include the value of the Garage if it has already been paid for by the City.

19. Default and Remedies. An occurrence of one or more the following shall constitute a default hereunder:

- a) Developer's failure to pay all sums as required to be paid herein within fifteen (15) days after written notice that such sum is due to be paid and has not been paid;
- b) Developer's failure to timely perform any other obligations hereunder required on Developer's part to be performed within thirty (30) days after written notice that such obligation has not been performed. In the event that the obligation to be

performed cannot be reasonably performed within thirty (30) days, the period permitted to perform such obligations shall be extended so long as the acts necessary to cause performance are promptly begun and are diligently pursued thereafter until completion;

c) Failure to do, observe, keep, and perform any of the terms, covenants, conditions, agreements, and provisions contained in this Agreement (other than the payment of rent) on the part of Developer to be done, observed, kept, and performed;

d) Notwithstanding any other provision herein, it is agreed that Developer is not entitled to written notice of default and an opportunity to cure if such default is the failure to complete construction and deliver the Garage to the City in the time period set forth in Paragraph 8 hereof;

e) If Developer shall vacate, abandon or fail to continuously occupy the Leased Premises or diligently operate its business at the Leased Premises;

f) An Event of Bankruptcy occurs with respect to Developer or its successors or assigns; or

g) If Developer has assigned its rights hereunder to an entity, a dissolution of Developer or liquidation of substantially all of Developer's assets occurs.

Upon the occurrence of an event of default which has not been cured within the time specified herein, the City may do any or all or any combination of the following:

a) Terminate this Agreement in whole or in part and seek to evict Developer from the Leased Premises, with payment due to Developer of the then fair market value of the Property (with Property to be defined in this instance to be only the Hotel and to not include the Garage after the Garage has been paid for by City upon completion) as determined by a licensed commercial real estate appraiser minus twenty percent (20%);

b) Immediately, or anytime thereafter, file suit against the Developer for all damages, losses, costs, and expenses including, but not limited to, reasonable attorney's fees which result from or were caused by such default;

c) Prior to completion of the Garage, enter upon the property and complete construction of the Garage with Developer agreeing to be liable and responsible for all costs and expenses incurred by the City in completing construction, but with the City paying up to \$2,500,000.00 of the cost as promised herein;

d) Terminate the lease and evict the Developer from the air rights and all appurtenant rights to the Hotel at a public sale advertised in the same manner as foreclosure sales for deeds of trust in Tennessee, and if a deficiency results from

such sale, the Developer shall remain liable for, and the City may collect any deficiency from Developer.

e) Seek and obtain such injunctive and equitable relief including, but not limited to, specific performance of the obligations of Developer hereunder as may be appropriate.

The City may exercise any one or more of the foregoing remedies either at once or from time to time in any order it chooses without being deemed to have waived any remedies. All rights and remedies of City set forth in this Agreement are in addition to all other rights and remedies available to City at law or in equity. All rights and remedies available to City pursuant to this Agreement or at law or in equity are expressly declared to be cumulative. The exercise by City of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. No delay or failure by City to exercise or enforce any of City's rights or remedies or Developer's obligations shall constitute a waiver of any such rights, remedies or obligations. City shall not be deemed to have waived any default by Developer unless such waiver expressly is set forth in a written instrument signed by City. If City waives in writing any default by Developer, such waiver shall not be construed as a waiver of any covenant, condition, or agreement set forth in this Agreement except as to the specific circumstances described in such written waiver.

If Developer defaults in the making of any payment to any third party or in the doing of any act herein required to be made or done by Developer, then City may, but shall not be required to, make such payment or do such act. The taking of such action by City shall not be considered as a cure of such default by Developer or prevent City from pursuing any remedy it is otherwise entitled to in connection with such default. If City elects to make such payment or do such act, then all costs and expenses incurred by City, plus interest thereon at the Default Rate of 18% per annum, from the date incurred by City to the date of payment thereof by Developer, shall constitute Additional Rent due hereunder; provided however, that nothing contained herein shall be construed to permit City to charge or receive interest in excess of the maximum rate then allowed by law.

20. Attorney's fees. In the event of litigation between the Parties relating to this Agreement, the prevailing party shall have its or his reasonable attorney's fees and costs paid by the non-prevailing party.

21. Notice. Any notice, request, or other information to be given by any party hereto shall be in writing and shall be sufficiently given if given by registered or certified mail, postage prepaid, return receipt requested, addressed to such party as follows:

If to City:

City Manager
404 West Broadway Avenue
Maryville, TN 37801-4710

If to Guarantor:

Sandip Patel
2365 Benjamin Ct
Morristown, TN 37814

Melanie E. Davis, City Attorney
217 East Broadway Av
Maryville, TN 37804

Or to such other addresses as the parties shall from time to time designate by like notice.

22. No Third-Party Rights. The provisions of this Agreement shall not entitle any party not a signatory to this Agreement to any rights as a third-party beneficiary or otherwise. It being the specific intention of the parties hereto to preclude any and all non-signatory parties from any such third-party rights.

23. General. This Agreement sets forth the entire agreement and understanding of the Parties in respect of the transactions contemplated hereby and supersedes all prior agreements, arrangements, and understandings related to the subject matter hereof. No representation, promise, inducement, or statement of intention has been made by the City or Developer which is not embodied in this Agreement, or the Exhibits, or other documents delivered pursuant hereto or in connection herewith. Nothing contained in this Agreement shall be construed as creating a partnership or joint venture of or between City and Developer, or to create any other relationship between the Parties hereto other than that expressly set forth herein. All of the terms, covenants, representations, warranties, and conditions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns. This Agreement and the rights and obligations hereunder shall be assignable by Developer with notice to City to an entity owned at least fifty percent (50%) by Developer. If assigned to any other party, any such assignment must be approved by the City in its reasonable but sole discretion. In such instance, Developer will not be released from indemnity herein. This Agreement may not be altered or amended, except by an instrument in writing signed by both City and Developer. City agrees that it shall execute such further amendments to this Agreement as may be reasonably requested by any future holder of a first mortgage on the Leased Premises, provided such amendments do not materially and adversely affect the interest of City hereunder. The failure of any Party at any time to require performance of any provision hereof shall in no manner affect the rights at a later time to enforce the same. No waiver by any party of any provision or any breach of any provision of this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed or construed to be a further or continuing waiver of such provision or breach or any other provision or breach. The invalidity of any or all part of any provision of this Agreement shall not render invalid the remainder of the Agreement. This Agreement may be executed simultaneously in counter parts each of which shall be deemed as an original but all of which together shall constitute one in the same instrument. This instrument shall be governed by the laws of the State of Tennessee. Paragraph headings herein are for convenience only and will not limit the content of the paragraphs in this Agreement. This Agreement will be recorded. Any liability of Developer to City existing hereunder as of the expiration or earlier termination of the Agreement Term shall survive such expiration or earlier termination.

24. Guaranty. Guarantor, Sandip Patel, an individual, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, joins in this Agreement for the purpose of guaranteeing, and does hereby unconditionally guarantee to City, the timely performance of all of the Developer's obligations under this Agreement as this Agreement may be renewed, assigned, or modified from time to time. Guarantor will

reimburse City on demand for all reasonable attorneys fees and expenses that City incurs in enforcing this guaranty provision. Guarantor waives notice of any default by Developer under this Agreement and any requirement that City proceed first against Tenant. Guarantor's liability is primary and direct. Guarantor will not be released from liability by any modification of this Agreement, or by any assignment of this Agreement. This Agreement will be binding on Guarantor, his successors, assigns, heirs and personal representatives. City may waive any of the terms of this Agreement, consent to any matter relating to this Agreement, or grant extensions of time to the Developer without notice to Guarantor and without releasing Guarantor from liability under this guaranty. Until all of Developer's obligations under this Agreement are fully performed, Guarantor will have no right of subrogation against Developer, and Guarantor subordinates any obligation of Developer to Guarantor to the obligations of the Developer to the City under this Agreement. The liability of the Guarantor under this guaranty will not be affected by the discharge of Developer in any bankruptcy or similar proceeding, the rejection of this Agreement in any such proceeding, any defense available to Developer, or the termination or diminution for any other reason of the liability of Developer or of City's remedies against the Developer. This guaranty may not be modified except by an agreement in writing signed by the Guarantor and City. Guarantor acknowledges that City is relying on this guaranty and that City would not be entering into this Agreement without this guaranty.

SECTION II: LEASE SPECIFIC PROVISIONS

25. Triple Net Lease. This Lease is what is commonly called a Triple Net Lease, it being understood that the City shall receive the rent free and clear of any and all other impositions, taxes, liens, charges, or expenses of any nature whatsoever in connection with the operation of the Leased Premises. In addition to the rent, Developer shall pay directly to the Parties respectively entitled thereto all ad valorem taxes, assessments and other impositions on the Leased Premises, taxes imposed on Developer's equipment, inventory, furniture and fixtures located on the Leased Premises, premiums and deductibles for insurance required to be obtained by Developer under this Lease, operating charges and maintenance charges incurred to operate and maintain the Leased Premises, and all other charges, costs and expenses incurred in connection with the Leased Premises that arise or may be contemplated under the provisions of this Lease during the term hereof. All of such charges, costs and expenses shall constitute Additional Rental and upon the failure of Developer to pay any of such costs, charges or expenses, City shall have the same rights and remedies as otherwise provided in this Lease for the failure of Developer to pay rent. It is the intention of the Parties hereto that this Lease shall not be terminable for any reason by the Developer, and that Developer shall in no event be entitled to any abatement of or reduction in Rent payable under this Lease, except as herein expressly provided. Upon request by City, Developer shall provide evidence to City of the payment of the ad valorem taxes, assessments and other impositions on the Leased Premises and taxes imposed on Developer's equipment, inventory, furniture and fixtures located on the Leased Premises and premiums for insurance required to be provided by Developer under the terms of this Lease.

26. Taxes. Developer shall pay directly to the taxing authority any sales, use, property or other tax (excepting income tax) that may be levied as a result of this Agreement. All such taxes, if not paid when due, may but are not required to be paid by the City on behalf of Developer, with Developer to repay City upon demand for the same, and such amounts shall bear interest at the

per annum rate that is the maximum lawful rate of interest chargeable under the laws of the State of Tennessee, from the date paid by the City on Developer's behalf until City is paid back by Developer.

27. Inclusion of Prior Paragraphs. The paragraphs of the Agreement set forth above, including but not limited to Paragraph 2 setting forth the term and rental amount, are part of this Lease.

28. Improvement, Repairs and Maintenance of Leased Premises; As-Is Condition. City shall not be required to make any improvements to or repairs of any kind or character to the Leased Premises or to maintain the Leased Premises in any respect. Developer, at Developer's sole cost and expense, shall promptly make all repairs, perform all maintenance, and make all replacements in and to the Leased Premises that are necessary or desirable to keep the Leased Premises in first-class condition and repair, in a safe and tenantable condition. Developer shall maintain all fixtures, furnishings, and equipment (excluding Developer's personal property) located in, or exclusively serving, the Leased Premises in clean, safe, and sanitary condition, shall take good care thereof and make all required repairs and replacements thereto. The Leased Premises is leased to Developer in an "AS-IS, WHERE IS, AND WITH ALL FAULTS" condition as of the date of this Agreement. City makes no warranties or representations of any kind whatsoever with respect to the Leased Premises and shall have no liability of any kind to Developer or to any of Developer's employees, agents, or invitees based on the condition of the Leased Premises. Developer represents and warrants to City that Developer has conducted any and all inspections and investigations of the Leased Premises deemed material by Developer, and the execution of this Agreement by Developer shall be conclusive evidence that the Leased Premises is in a condition acceptable to Developer and is fit for Developer's purposes. Developer acknowledges that neither City nor any agent, contractor, employee, or other representative of City has made any representation whatsoever with respect to the condition of the Leased Premises including, without limitation, any representation regarding fitness of the Leased Premises.

29. No Waste or Injury to Leased Premises. Developer shall suffer no waste or injury to any part of the Leased Premises, and Developer shall, at the expiration or earlier termination of the Lease Term, surrender the Leased Premises in a reasonable condition considering its age, ordinary wear and tear excepted. Without limitation of the generality of the foregoing, Developer, at Developer's sole cost and expense, shall promptly make all repairs to (a) any pipes, lines, ducts, wires, or conduits contained within the Leased Premises;(b) Developer's signs;(c) any heating, air conditioning, electrical, ventilating, or plumbing equipment installed in or serving the Leased Premises;(d) all glass, window panes, and doors; (e) roof and structure of the Leased Premises; and (f) any other mechanical systems serving the Leased Premises. Developer shall be responsible, at Developer's sole expense, for providing all janitorial and cleaning services for the Leased Premises. All such services shall be provided in accordance with cleaning standards customarily maintained for similar properties.

30. Alterations. City shall have no obligation to make any structural or other alterations, decorations, additions, or improvements in or to the Leased Premises. After completion of construction of the Project, Developer will not make or permit anyone to make any alterations, additions, improvements or other changes (collectively, the "Alterations"), structural or otherwise, in or to the Leased Premises without the prior written consent of City (and the Downtown Design

Review Board if applicable to the proposed Alternations), except as provided expressly below, which consent may be withheld or granted in City's sole but reasonable discretion. Any Alterations made by Developer shall be made: (a) in a good, workmanlike, first-class, and prompt manner; (b) by a licensed contractor or by Developer's employees and in accordance with plans and specifications approved in writing by City and the Downtown Design Review Board or other governmental agencies as otherwise then required; (c) in accordance with all applicable legal requirements and the requirements of any insurance company insuring the Leased Premises or portion thereof; and (d) after Developer has obtained public liability and workers' compensation insurance policies approved in writing by City, which policies shall cover every person who will perform any work with respect to such Alterations. If any mechanics' or materialmen's lien (or a petition to establish such lien) is filed against the Leased Premises or any equipment within the Leased Premises for work claimed to have been done for, or materials claimed to have been furnished to, the Leased Premises, Developer shall discharge the lien within ten (10) days thereafter, at Developer's sole cost and expense, either by the payment thereof or by filing a bond acceptable to City. Notwithstanding the foregoing, Developer shall have the right to make Alterations without the City's consent, provided such Alterations (a) are made to the interior Developer space of the Hotel, (b) do not adversely affect the structural integrity or exterior of the Hotel or Garage, and (c) do not adversely affect the electrical, heating, or plumbing systems servicing the Hotel. If any Alterations other than those permitted above are made without the prior written consent of City, City shall have the right at Developer's expense to remove and correct such Alterations and restore the Leased Premises to its condition immediately prior thereto, or to require Developer to do the same. All Alterations to the Leased Premises made by either party shall remain upon and be surrendered with the Leased Premises as a part thereof at the expiration or earlier termination of the Lease Term; provided, however, that if Developer is not in default under this Lease, then Developer shall have the right to remove, prior to the expiration or earlier termination of the Lease Term, all movable furniture, furnishings, equipment, fixtures installed in the Leased Premises solely at the expense of Developer, provided any damage to the Leased Premises caused by such removal is promptly repaired. If such furniture, furnishings, equipment, fixtures and Alterations are not removed by Developer prior to the expiration or earlier termination of the Lease Term, City shall have the right at Developer's expense to remove from the Leased Premises such furniture, furnishings, equipment, fixtures that City designates in writing for removal or to require Developer to do the same and Developer shall pay to City the cost of such removal and repair.

31. Signs. No sign, advertisement or notice referring to Developer shall be inscribed, painted, affixed or otherwise displayed on any part of the exterior of the Hotel (including Developer's windows and doors) that has not been approved by City through its normal zoning and sign permit process. All of Developer's signs shall be installed at Developer's sole cost and expense, installed, maintained, repaired, and replaced in a first-class manner.

32. Inspection. City or its agents or representatives shall have the right to enter into and upon any part of the Leased \ Premises from time to time at all reasonable hours to inspect the same as City may deem necessary or desirable.

33. Laws, Ordinances, Regulations, and Codes. Developer shall comply with all applicable laws, ordinances, regulations and codes relating to the use, condition or occupancy of the Leased Premises.

34. Peaceful Enjoyment. Developer shall have the right to peacefully occupy, use and enjoy the Leased Premises during the Lease Term, subject to the other terms hereof, provided Developer pays the Rent and other sums herein required to be paid by Developer and performs all of Developer's covenants and agreements herein contained.

35. Limitation of City's Liability. City and its employees and agents shall not be liable to Developer, Developer's employees, agents, assignees, customers, contractors, licensees, concessionaires, or to any other person or entity for any damage (including indirect and consequential damage), injury, loss, compensation or claim, including but not limited to claims for the interruption of or loss to Developer's business, based on, arising out of or resulting from any cause whatsoever (except as otherwise provided in this Article), including but not limited to the following: repairs to any portion of the Leased Premises which are the obligation of Developer; any accident or damage resulting from the use or operation of the Hotel; the termination of this Lease arising in connection with the destruction of the Leased Premises; any fire, robbery, theft, vandalism, mysterious disappearance and/or any other casualty; or any leakage in any part or portion of the Leased Premises, or from water, rain, ice, or snow that may leak into, or flow from, any part of the Leased Premises, or from drains, pipes or plumbing fixtures in the Leased Premises. Any goods, property or personal effects stored or placed by Developer, its employees, or agents in or about the Leased Premises shall be at the sole risk of Developer, and City shall not in any manner be held responsible therefor.

Notwithstanding the foregoing provisions of this Article, City shall not be released from liability to Developer for any physical injury to any natural person or damage to personal property caused by the gross negligence or willful misconduct of City or its employees to the extent such injury or damage is not covered by insurance (a) carried by Developer or such person, or (b) required by this Lease to be carried by Developer. In the event that at any time during the Lease Term, Developer shall have a claim against City, Developer shall not have the right to set off or deduct the amount owed or allegedly owed to Developer from any Rent or other sums payable to City, it being understood that Developer's sole remedy for recovering upon a claim shall be to institute an independent action against City.

36. Damage or Destruction. If the Leased Premises are totally or partially damaged or destroyed from any cause, thereby rendering the Leased Premises totally or partially inaccessible or unusable, Developer shall diligently restore and repair the Leased Premises to substantially the same condition it was in prior to such damage. Developer shall bear the cost and expenses of such repair and restoration of the Leased Premises; provided, however, that if such damage or destruction was caused solely by the act or omission of City, or any of its employees or agents, then City shall pay to Developer the amount by which such costs and expenses exceed the insurance proceeds, if any, actually received by Developer on account of such damage or destruction.

37. Condemnation. If the whole or a substantial part (as hereinafter defined) of the Leased Premises shall be condemned or taken by eminent domain by any governmental authority or other entity for any public or quasi-public use or purpose (including a sale thereof under threat of such condemnation or taking), then this Lease shall terminate on the date of taking. Proceeds of the condemnation payments for the real property interests will be divided equitably between City and Developer and Developer's lender, if any. If less than a substantial part of the Leased Premises

is condemned or taken by eminent domain by any governmental or other entity for any public purpose, then this Lease shall continue in full force and effect as to the portion of the Leased Premises not so condemned or taken, except that as of the date of taking, Developer and City shall negotiate any proceeds that the City receives as compensation for the condemnation based on the factors including, but not limited to, the length of time remaining on the Lease and the value of the condemned portion of the Leased Premises. For purposes of this Section, a substantial part of the Leased Premises shall be considered to have been condemned or taken if more than forty percent (40%) of the rentable area of the Leased Premises is rendered unusable as a result of such condemnation or taking.

38. Bankruptcy. The following shall be Events of Bankruptcy under this Lease:

- a) Developer becoming insolvent, as that term is defined in the United States Code (the Bankruptcy Code), or under the insolvency laws of any state, district, commonwealth or territory of the United States (the Insolvency Laws);
- b) the appointment of a receiver or custodian for any or all of Developer's property or assets or the institution of a foreclosure action upon any of Developer's real or personal property;
- c) Developer's filing or consenting to a petition under the provisions of the Bankruptcy Code or the Insolvency Laws or in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceeding;
- d) The filing of a petition against Developer as the subject debtor under the Bankruptcy Code or Insolvency Laws, which is not consented to by such subject debtor and which either (i) is not dismissed within ninety (90) days of filing, or (ii) results in the issuance of an order for relief against the debtor; or
- e) Developer's making or consenting to an assignment for the benefit of creditors or a common law composition of creditors.
- f) Upon occurrence of an Event of Bankruptcy, City shall have all rights and remedies available to City pursuant to Paragraph 19; provided, however, that while a case in which Developer is the subject debtor under the Bankruptcy Code is pending, City shall not exercise its rights and remedies pursuant to Paragraph 19 so long as both (i) the Bankruptcy Code prohibits the exercise of such rights and remedies, and (ii) Developer or its Trustee in Bankruptcy (the Trustee) is in compliance with the provisions set forth below. In the event Developer becomes the subject debtor in a case pending under the Bankruptcy Code, City's right to terminate this Lease pursuant to Paragraph 19 shall be subject, to the extent required by the Bankruptcy Code, to any rights of Trustee to assume or assign this Lease pursuant to the Bankruptcy Code.

39. Holding Over. If Developer retains possession of the Leased Premises or any part thereof after the expiration of the Lease Term, then Developer shall be deemed a tenant of the Leased Premises from month-to-month subject to all the terms and provisions hereof, except as to the term of this Lease and except that Developer shall pay Rent (including Base Rental and

Additional Rent) for each month after the expiration of the Lease Term at a then fair market value rate plus twenty percent (20%) computed on a daily basis for each day that Developer remains in possession. Except for the term and the increased Rent, all other terms and conditions of this Lease shall remain in full force and effect during the holdover period. In addition, upon the expiration of the Lease Term, Developer shall be liable for and pay to City, all damages, consequential as well as direct, sustained by reason of Developer's holding over beyond the expiration of the Lease Term.

40. Brokers. City and Developer each represent and warrant to the other that neither of them has employed or dealt with any broker, agent, or finder in connection with this Lease. Developer shall indemnify and hold City harmless, including costs of any action and City's attorney's fees, from any claim or claims for brokerage or other compensation asserted by any broker, agent, or finder employed by Developer or with whom Developer has dealt in connection with this Lease.

41. Hazardous Substances. The term Hazardous Substances, as used in this Lease shall mean pollutants, contaminants, toxic or hazardous wastes or any other substances, the use and/or the removal of which is restricted, prohibited, or penalized by any Environmental Law, which term shall mean any federal, state, or local law, ordinance or other statute of a governmental authority relating to pollution or protection of the environment. Developer hereby agrees that (a) no activity will be conducted on the Leased Premises or the Property generally that will produce any Hazardous Substance, except for such activities that are part of the ordinary course of Developer's construction or business activities (the Permitted Activities), provided said Permitted Activities are conducted in accordance with any applicable federal, state, local and foreign laws, statutes, codes, regulations, rules, ordinances, decrees, permits, administrative orders, judicial decisions or the like regulating the actual or alleged migration, release, handling, use, generation, transportation, disposal or storage of or exposure to any Hazardous Substances (collectively, the "Environmental Laws"); (b) the Leased Premises will not be used in any manner for the storage of any Hazardous Substances except for the temporary storage of such materials that are used in the ordinary course of Developer's business (the Permitted Materials), provided such Permitted Materials are properly stored in a manner and location meeting all Environmental Laws; (c) Developer shall be responsible for obtaining any required permits and paying any fees and providing any testing required by any governmental agency in connection with the Permitted Activities and the Permitted Materials; (d) Developer will not allow any surface or subsurface conditions to exist or come into existence that constitute or with the passage of time may constitute a public or private nuisance; and (e) Developer will not permit any Hazardous Substances to be brought into the Leased Premises except for the Permitted Materials described above, and if so brought or found located thereon, the same shall be immediately removed with proper disposal and all required cleanup procedures shall be diligently undertaken pursuant to all Environmental Laws. If at any time during or after the Lease Term, the Leased Premises is found to be so contaminated or subject to said conditions, Developer shall diligently institute proper and thorough cleanup procedures at Developer's sole cost, and Developer agrees to indemnify and hold City harmless from all claims, demand, actions, liabilities, costs, expenses (including City's reasonable attorney's fees), damages and obligations of any nature arising from or as a result of the use of the Leased Premises by Developer. The foregoing indemnification and the responsibilities of Developer shall survive the termination or expiration of this Lease.

IN WITNESS WHEREOF, the Parties and persons listed below hereto have executed this Agreement as of the day and date first above written.

[Signature pages to follow]

CITY OF MARYVILLE:

BY: _____

ITS: _____

STATE OF TENNESSEE)
COUNTY OF BLOUNT)

Before me, a Notary Public in and for said County, personally appeared _____, with whom I am personally acquainted, and who, upon oath, acknowledged himself/herself to be the Authorized Officer of the CITY OF MARYVILLE, a Tennessee Municipal Corporation, and that he/she as such Authorized Officer, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of the Tennessee Municipal Corporation by himself/herself as the Authorized Officer.

WITNESS my hand and official seal at office this ____ day of _____, 2023.

My Commission Expires:

Notary Public

**DEVI CAPITAL MARYVILLE
HOSPITALITY, LLC:**

DEVELOPER:

BY: _____

ITS: _____

STATE OF TENNESSEE)
COUNTY OF BLOUNT)

Before me, a Notary Public in and for said County, personally appeared _____, with whom I am personally acquainted, and who, upon oath, acknowledged himself/herself to be the Authorized Officer of DEVI CAPITAL MARYVILLE HOSPITALITY, LLC, a Tennessee limited liability company, and that he/she as such Authorized Officer, being authorized so to do, executed the within instrument for the purposes therein contained by signing the name of the Limited Liability Company by himself/herself as the Authorized Officer.

WITNESS my hand and official seal at office this _____ day of _____, 2023.

My Commission Expires:

Notary Public

GUARANTOR:

SANDIP PATEL

STATE OF TENNESSEE)
COUNTY BLOUNT)

Before me, a Notary Public in and for said County, personally appeared SANDIP PATEL, with whom I am personally acquainted, and who, upon oath, acknowledged that he executed the within instrument for the purposes therein contained.

WITNESS my hand and official seal at office this _____ day of _____, 2023.

My Commission Expires:

Notary Public

Exhibit A

Parcel 1:

Tax parcel 057D D 039.00 (smaller parcel) – City of Maryville – Description

BEGINNING at a point being the northernmost corner of Parcel 057D D 039.00; then southeast along the northeastern property line of Parcel 039.00 to a point 169 ± feet to a point being the easternmost corner of Parcel 039.00; then along the W. Church Ave. right-of-way line southwest 66 feet ± to a point being the southernmost corner of Parcel 039.00; then along the southwestern property line of Parcel 039.00 to a point being 167 ± feet northwest on the right-of-way line of W. Broadway Ave. at the westernmost corner of Parcel 039.00; then 66 ± feet northeast along the W. Broadway Ave. right-of-way line to the point of BEGINNING. consisting of .25 acres located on West Broadway Avenue, Maryville, Tennessee as shown on the attached GIS Map.

Deed reference to be provided.

Parcel 2:

Tax parcel 057D D 040.00 (larger parcel) – City of Maryville - Description

BEGINNING at a point being the northernmost corner of Parcel 057D D 040.00; then southeast along the northeastern property line of Parcel 040.00 to a point 167 ± feet to a point being the easternmost corner of Parcel 040.00; then along the W. Church Ave. right-of-way line southwest 209 feet ± to a point being the southernmost corner of Parcel 040.00; then along the southwestern property line of Parcel 040.00 to a point being 164 ± feet northwest on the right-of-way line of W. Broadway Ave. at the westernmost corner of Parcel 040.00; then 208 ± feet northeast along the W. Broadway Ave. right-of-way line to the point of BEGINNING consisting of .75 acres as shown on the attached GIS map.

This Parcel is identified as Tract 3 in a quitclaim deed of record in Record Book 2323, Page 358 in the Register's Office for Blount County, Tennessee recorded on March 30, 2012.

Exhibit C

Leased Premises

The Leased Premises shall consist of the area where the Hotel is located as shown on the Plans and Specifications (Ex B as it may be amended) and being the area above the two floors of the Garage, with such Leased Premises beginning at the finished floor of the overall third floor of the Project and ending 20 feet above roof of the Hotel.

Exhibit D—Insurance

Casualty Insurance

Upon issuance of the Certificates of Occupancy for the Garage, City shall obtain all risk fire and extended coverage insurance on the Garage. Said insurance shall be in an amount equal to the full replacement cost of the Garage. The cost of maintaining such all-risk fire and extended coverage insurance shall be paid by City.

Upon issuance of the Certificate of Occupancy for the Hotel, Developer shall maintain at its expense all risk fire and extended coverage insurance on the Hotel. Said insurance shall be in an amount equal to the full replacement cost of the Hotel. Said policies shall name City and as an additional loss payee.

Liability Insurance

Beginning upon commencement of construction or sooner, City shall obtain broad form comprehensive general public liability insurance against claims for bodily injury, death or property damage occurring in, on or about the Property in a combined single limit of not less than Five Million and No/100 Dollars (\$5,000,000.00). Developer shall also maintain broad form comprehensive general public liability insurance against claims for bodily injury, death or property damage occurring in, on or about the entire Property until the Garage is completed and a certificate of occupancy is issued therefore, and after that time, and for the duration of the Term of this Agreement, for the Leased Premises in a combined single limit of not less than Three Million and No/100 Dollars (\$3,000,000.00). Such insurance shall be effected under policies satisfactory to City that shall name City as an additional insured thereunder.

General Requirements.

Each insurance policy to be obtained under this Agreement shall: (a) be issued by a company licensed to conduct business in the State of Tennessee; (b) contain an endorsement that such policy shall remain in full force and effect notwithstanding the insured may have waived its right of action against any party prior to the occurrence of a loss, and shall provide that the insurer waives all right of recovery by way of subrogation against any other party to this Agreement, its or his agents, employees and representatives in connection with any loss or damage covered by such policy; (c) be acceptable in form and content to the Parties; (d) contain an endorsement prohibiting cancellation, failure to renew, reduction of amount of insurance or change in coverage without the insurers first giving the other party hereto thirty (30) days prior written notice of such proposed action. Developer shall deliver to City a duplicate original of each such policy, together with a receipt, evidencing payment of the premium for such insurance on or before the insurance is required to go into effect and at least annually thereafter. If Developer is unable to obtain insurance with the required waiver of subrogation, Developer may provide City such additional insurance as will give City the same protection as if the waiver of subrogation had been obtained.

Waiver of Subrogation.

City and Developer hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them, by way of subrogation or otherwise, for any loss or damage to the Leased Premises caused by fire or any other peril insured by a policy of insurance covering such property, to the extent of the proceeds of such insurance, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible; provided, however, that the foregoing release shall apply only to the extent of any recovery made by the suffering party hereto under any such policy of insurance now or hereafter issued, and further provided that the foregoing release shall be ineffective, to the extent that it would otherwise invalidate any policy of insurance of the parties hereto, now or hereafter issued.