

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (hereinafter “Agreement”) is made and entered into as of the ____ day of _____, 2018 (the “Effective Date”), by and among The Industrial Development Board of the City of Cookeville, a public, nonprofit corporation organized and existing under the laws of the State of Tennessee (the “Board”), and Cookeville Downtown Hotels, LLC, a Tennessee limited liability company (the “Company”).

WITNESSETH:

WHEREAS, an industrial development corporation (the “IDB”) is authorized under Tennessee Code Annotated § 7-53-312 to prepare and submit to cities and counties an economic impact plan with respect to an area that includes a project within the meaning of Tennessee Code Annotated § 7-53-101 *et seq.* (the “IDB Act”) and such other properties that the IDB determines will be directly improved or benefited due to the undertaking of such project; and

WHEREAS, the IDB Act and the Uniformity in Tax Increment Financing Act of 2012, Tennessee Code Annotated § 9-23-101, *et seq.* (the “Uniformity Act”), also authorize Authorities, cities and counties to apply and pledge new incremental tax revenues which arise from the area subject to the economic impact plan to the IDB to promote economic development to pay the cost of projects or to pay debt service on bonds or other obligations issued by the IDB to pay the costs of projects; and

WHEREAS, pursuant to Section 312 of the IDB Act, the Board has approved, after a public hearing, an economic impact plan entitled “The Industrial Development Board of the City of Cookeville, Tennessee – Economic Impact Plan for the Downtown Garage Facility at the Hotel and Conference Center Economic Development Area” (the “Plan”), and thereafter the Plan was approved by the City Council of the City of Cookeville, Tennessee (the “City”) and the County Commission of Putnam County, Tennessee (the “County”), and the Plan is incorporated herein by reference; and

WHEREAS, the Plan provides that in order to induce the Company to undertake a development consisting of privately-owned off-street parking facilities which will be available to serve a hotel, conference center, restaurant, retail establishments and other facilities being constructed by the Company pursuant to the Plan, with said parking facilities being composed of a five-story garage with approximately 317 parking spaces that will be available for use by the general public and a surface parking lot containing about 193 spaces making a total of approximately 510 parking spaces (the “Project”);

WHEREAS, the Project will be constructed on the property in the location described on Exhibit A to the Plan (the “Property”); and

WHEREAS, in order to make the Project financially feasible, the Board will provide financial assistance to fund the Permitted Costs of the Project by borrowing money from a lender to be identified by the Company (the “Lender”), pursuant to a loan (the “Loan”), evidenced by a certain Promissory Note, secured and repaid by the Available Increment (as defined in the Plan), and the proceeds of the Loan to be evidenced by the Note will be paid or reimbursed to the

Company all or a portion of the Permitted Costs as defined in the Plan in the maximum amount of Seven Million and No/100 Dollars (\$7,000,000), plus interest on the Note not to exceed 5.25% per annum; and

WHEREAS, it is the intent of the Board to formalize its intentions by entering into this Agreement with the Company, and by entering into the Note and a separate Collateral Assignment and Security Agreement (the "Security Agreement") with the Lender.

NOW, THEREFORE, in consideration of the terms, conditions and mutual agreements by and between the parties, as hereinafter set forth in detail, the parties do hereby mutually agree as follows:

1. Definitions. Terms that are used herein that are not defined in this Agreement shall have the meaning ascribed thereto in the Plan.
2. Commitments.
 - (a) Board Covenants. Subject to the other terms and provisions of this Agreement being satisfied:
 - (i) The Board shall issue its nonrecourse Promissory Note to the Lender (the "Note"), in form, scope and substance satisfactory to the Board.
 - (ii) The Board may use the proceeds of the Note to pay or to reimburse the Company for paying the Board's cost and expenses incurred in connection with the preparation, authorization, execution and delivery of the Plan, and any and all additional documents, instruments or agreements related thereto or to this Agreement, including, without limitation, the legal fees, costs and expenses of the Board's counsel. The principal amount of the Note may be advanced by the Lender from time to time to pay interest on the Loan from the date of the first advances thereunder until the Annual Payments are sufficient to cover the same. After the Date of Completion and upon receipt of the Investment Certificate and demonstration that the promised capital expenditures have been made for the Project as provided in Sections 2(c)(ii), and provided that the Company has otherwise complied with all of the terms and provisions of this Agreement and the Plan, the Board (or the Lender at the direction of the Board) shall use the proceeds from the Note to pay or to reimburse the Company for paying additional Permitted Costs as defined in and pursuant to the Plan.
 - (iii) The Board shall, upon receipt of the Available Increment allocated to the Board under Sections 6.1(c)(iv) of the Plan, pay the Available Increment revenues received each year by the Board under Sections 6.1(d) of the Plan (the "Annual Payment") into a separate fund maintained with the Lender established to hold such payments until applied to pay the debt service on the Note, and grant lender a security interest in said fund and authorize the Lender to withdraw the proceeds in such fund to pay the debt service on the Note as and

when received pursuant to the Collateral Assignment and Security Agreement (the “Security Agreement”), in form scope and substance satisfactory to the Board and its counsel. The Annual Payments are to be paid solely out of the Available Increment received by the Board under Sections 6.1(c)(iv) of the Plan.

(b) [Lender Covenants. TO BE ADDED]

(c) Company Covenants.

(i) The Company shall cause an architect or engineer licensed in Tennessee to prepare design development and construction plans for the completion of the Conference Center, and submit such plans to the City Manager for his approval as to compliance with the Plan and this Agreement, which shall not be unreasonably withheld, conditioned or delayed, and to the City planning department for approval in accordance with the City’s normal planning and permitting requirements. The approved plans that are the basis for the final building and other permits, as applicable, are defined as the “Construction Plans.” The Construction Plans and work in connection with the Conference Center shall include certain off-site improvements in the public right of way, including new sidewalks, upgraded decorative street lighting consisting of a 14’ bronze fluted aluminum pole with banner arms and a decorative LED acorn style light fixture meeting the specifications of the Cookeville Electric Department and at least 21 additional public parking spaces (approximately as shown on **Exhibit A** to the Plan). The approval of the Construction Plans by the City Manager and the City planning department shall be conditioned upon the Company having received the approval by the City’s governing body of an ordinance approving the proposed land exchange between the City and the Company in comparable form to the ordinance that has previously expired, and the execution and delivery of the documents implementing that exchange.

(ii) The Company shall, at its cost and expense, cause the general contractor to obtain and maintain until final completion of the Conference Center, a payment and performance bond for the “hard” construction cost of the Conference Center in favor of the Company and the Board in form, scope and substance reasonably satisfactory to the City Manager.

(iii) After the Date of Completion, the Company shall submit a certificate (the “Investment Certificate”) to the Board and the Lender in form and substance reasonably acceptable to the Board and the Lender certifying that the total capital expenditures that the Company has made for the Project Costs exceeds \$7,000,000.00, and that the total capital expenditures to acquire, construct and equip the Conference Center (which includes the Project Costs) pursuant to the Construction Plans exceeds \$35,000,000.00, together with reasonable evidence (such as receipts, cancelled checks, etc.) that it has paid or incurred said Project Costs, if requested by the Board or the Lender. The completion of construction of the Conference Center pursuant to the Construction Plans shall be demonstrated by the issuance of a final certificate of occupancy

(“Certificate of Occupancy”) for the construction work and the opening of the five-story garage for public parking and the hotel for the first overnight stay by guests (the “Date of Completion”).

(iv) The Company shall engage The Malcom Bryant Corporation, of Owensboro, Kentucky, as the operator of the hotel component of the Conference Center, or another hotel management company reasonably acceptable to the Board, and shall cause said hotel to always be operated as Hilton Garden Inn or a major national hotel brand of comparable or higher quality as reasonably approved by the Board. The Company shall, following the Date of Completion, continuously operate the garage as a public parking facility and the hotel and the conference center as hotel and conference facilities, except due to events of force majeure that the Company is using commercially reasonable diligence to repair or otherwise remedy or reasonable periods of maintenance of the Project, and if there is any violation of this requirement, then the Board shall have the right to withhold the payment of the Available Increment to or for the benefit of the Company or the Lender.

(v) The five-story garage component of the parking facilities that are part of the Project shall always be available for use by the general public at no more than market rates. Any dispute as to the composition of “market rates” shall be determined by an M.A.I. appraiser reasonably acceptable to the Board with at least ten (10) years’ appraisal experience. If, at any time, the Company fails to make the five-story garage available for use by the general public, then the Board shall be entitled to immediately withhold the Annual Payment as set forth in Section 2(a)(iii) of this Agreement after 30 days written notice and opportunity for the Company to cure such failure.

(vi) The Company shall commence construction by no later than July 1, 2019. In the event that construction is not commenced by July 1, 2019, then this Agreement shall be terminable at the option of the Board after 60 days written notice and opportunity for the Company to cure such failure. “Commence construction” for purposes of this provision shall mean that site demolition is completed and all necessary building permits for the Center shall have been issued. The Company shall cause the Date of Completion to occur on or before December 31, 2021, subject to force majeure or other delays beyond the reasonable control of the Company.

(vii) The Company shall enter into and perform the Collateral Assignment.

(viii) The Company shall pay the property taxes for the Property and for any personal property located thereon for each tax year on or before the date that the same would be delinquent.

3. Board Representations. The Board hereby represents, warrants, and covenants as follows as the basis for the undertakings on its part herein contained:

(a) That the Board: (i) was legally created and exists under the provisions of the IDB Act; (ii) has the power under the provisions of the IDB Act and the Uniformity Act to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder; and, (iii) has been duly authorized, by proper action, to execute, deliver and perform this Agreement and the Plan; and

(b) That the Project constitutes a “project” within the meaning of the IDB Act, and that the Board is entering into this Agreement, the Plan and the Note to aid in the funding of the Project to accomplish the public purposes of the IDB Act; and

(c) The Board will finance the costs incurred in the acquisition, construction and equipping of the Project in accordance with the terms and provisions hereof, and of the Plan, the Note and the Security Agreement, in order to induce and cause the Company to provide the Project, thereby maintaining and increasing employment opportunities, and furthering the welfare of the residents of the City and the County and of the State; and

(d) That the execution and delivery of this Agreement will be valid and binding on the Board and that neither the execution nor delivery of the foregoing documents, nor the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, will violate any applicable law or conflict with or result in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Board is now a party or by which it is bound; and

(e) That there is no action, suit, proceeding or, to the Board’s knowledge, any inquiry or investigation at law or in equity or before or by any public board or body pending or, to the Board’s knowledge, threatened against or affecting the Board or the Board’s property, wherein an unfavorable decision, ruling or finding would have a material, adverse effect on the validity or enforceability of this Agreement; and

(f) That the Board will not pledge the Available Increment from the Project other than to secure the Note.

4. Company Representations. The Company hereby represents, warrants, and covenants as follows as the basis for the undertakings on its part herein contained:

(a) That the Company: (i) is a limited liability company organized and existing under the laws of the state of Tennessee, and is duly qualified to do business in the State of Tennessee, (ii) has the power and authority to enter into this Agreement; and (iii) has duly authorized the execution, delivery, and performance of this Agreement and the undertaking of the Conference Center, including the Project; and

(b) That the Project constitutes a “project” within the meaning of the IDB Act, and the Company will not take, permit to be taken, fail to take, or permit to fail to be taken, any action which would cause the Project not to constitute a “project” within the meaning of the IDB Act; and

(c) That the execution and delivery of this Agreement will be valid and binding on the Company and that neither the execution nor delivery of the foregoing documents, nor the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, will violate any applicable law or conflict with or result in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Company is now a party or by which it is bound; and

(d) That all of the proceeds of the Loan will be used to fund the Project; and

(e) That there is no action, suit, proceeding or, to the Company's knowledge, any inquiry or investigation at law or in equity or before or by any public board or body pending or, to the Company's knowledge, threatened against or affecting the Company or the Company's property, wherein an unfavorable decision, ruling or finding would have a material, adverse effect on the validity or enforceability of the this Agreement, or the Company's ability to provide and operate the Conference Center or the Project.

5. Board Breach.

(a) A default by the Board under this Agreement (a "Board Default") shall occur if the Board fails to comply with any provision of this Agreement and does not cure such failure within thirty (30) days after receipt of written notice from the Company; provided that if (i) such default cannot be cured within such thirty (30) day period, (ii) the Board notifies the Company in writing stating the reasons for delay prior to expiration of such thirty (30) day period, (iii) the Board promptly commences curative actions within such thirty (30) day period, and (iv) the Board thereafter diligently and continuously pursues cure efforts, then the period for cure shall be extended for such period of time as shall reasonably be required under the circumstances, except that the Board shall not be entitled to any extension if the default is monetary in nature.

(b) Upon the occurrence of a Board Default, but subject to Section 13, the Company may pursue such remedies as may be available at law or in equity, including, but not limited to, actions for actual damages, including additional legal, design, engineering, professional and delay costs; specific performance; and injunction.

6. Company Breach.

(a) A default by Company under this Agreement (a "Company Default") shall occur if the Company fails to comply with any provision of this Agreement and does not cure such failure within thirty (30) days after receipt of written notice from the Board; provided that if (i) such default cannot be cured within such thirty (30) day period, (ii) the Company notifies the Board in writing stating the reasons for delay prior to expiration of such thirty (30) day period, (iii) the Company promptly commences curative actions within such thirty (30) day period, and (iv) the Company thereafter diligently and continuously pursues cure efforts, then the period for cure shall

be extended for such period of time as shall reasonably be required under the circumstances, except that the Company shall not be entitled to any extension if the default is monetary in nature.

(b) Upon the occurrence of a Company Default, the Board may pursue such remedies as may be available at law or in equity, including, but not limited to, actions for actual damages, including additional legal, design, engineering, professional and delay costs; specific performance; and injunction.

(c) If at any time it is necessary for the Board to undertake any action to enforce the terms of this Agreement or any documents attached hereto, the Company agrees to pay all costs of such enforcement by the Board including reasonable attorney's fees actually incurred and court costs.

7. Cooperation. The Company and the Board agree that:

(a) Each party shall cooperate with the other party to provide such assistance as may reasonably be requested in connection with the fulfillment of each of its respective obligations under this Agreement; provided that the Company acknowledges that the City and County are independent from the Board and that the Board cannot guarantee the City and County cooperation, but will work in good faith. Each party shall keep the other party informed of its actions taken in connection with this paragraph.

(b) Each party agrees that in exercising any rights of approval or consent it may have under this Agreement, it shall act in good faith.

8. Term. The term of this Agreement shall end, and the payment of the Annual Incentive Amount to the Company, shall terminate, at the End of the Term, as defined in the Plan.

9. Governing Law. This Agreement shall be governed and construed under and in accordance with the laws of the State of Tennessee and may not be modified or amended except in writing signed by all parties. Any legal venue for claims or actions arising from this Agreement shall be in Putnam County, Tennessee.

10. Assignment. This Agreement shall not be assigned by either party hereto without the written consent of the other party, it being agreed and understood that any change in control of the Company shall constitute an assignment. "Change in control" means a change in the person(s) that have the possession, directly or indirectly, of the power to direct or to cause the direction of the management and policies of the Company, whether through the ownership of voting stock, beneficial interests or partnership or limited liability company interests, by contract or otherwise.

11. Successors and Assigns; Recordation. This Agreement shall inure to the benefit of and be binding upon the parties hereto and the permitted successors and assigns of the

parties. This Agreement may be filed of record and the covenants and restrictions in this Agreement shall constitute covenants which run with the land.

12. Notices. All notices, certificates, and other communications hereunder shall be in writing, and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by registered mail or certified mail, return receipt requested, postage prepaid, addressed as follows:

To the Board: Industrial Development Board of the City of
Cookeville
45 East Broad Street
Cookeville, TN 38501
Attention: Mike Davidson, City Manager

With a copy to: Bradley Arant Boult Cummings, LLP
1600 Division Street, Suite 700
Nashville, Tennessee 37203
Attention: J. Thomas Trent, Jr.

And with a copy to: David Ledbetter, Esq.
24 N. Jefferson Street
Cookeville, TN 38501

To the Company: Cookeville Downtown Hotels, LLC

With a copy to: Kenneth L. Campbell
P.O. Box 60600
Nashville, TN 37206

To the Lender:

With a copy to:

13. Limitation of Liability. Anything in this Agreement to the contrary notwithstanding, the performance by the Board of all duties and obligations imposed upon it hereby, the exercise by it of all powers granted to it hereunder, the carrying out of all covenants, agreements, and promises made by it hereunder, and the liability of the Board for all warranties and other covenants hereunder, shall be limited solely to its interest in and right to receive the Available Increment revenues from the Project and the Board shall not be required to effectuate any of its duties, obligations, powers or covenants hereunder except to the extent of such revenues and receipts. No recourse under or upon any obligation, covenant or agreement contained in this Agreement, or in the Note, or under any judgment obtained against the Board, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of this Agreement, shall be had against any incorporator, member, employee, agent, director or officer, as such, past, present or future, of the Board, either directly or through the Board, or otherwise, for the payment for or to the holder of the Note, of any sum that may be due and unpaid by the Board upon the Note. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, employee, agent, director or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Board or any receiver thereof, or for or to

the holder of the Note of any sum that may remain due and unpaid upon condition of and consideration for the execution of the Note, is hereby expressly waived and released as a condition of and in consideration for the execution of this Agreement and the issuance of the Note.

14. No Liability of the City or County. The City of Cookeville, Tennessee, and Putnam County, Tennessee, shall not, in any event, be liable for the payment of the principal of, or interest on, the Note, or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever herein contained by or of the Board and neither the Note, nor any of the Board's agreements or obligations herein or otherwise shall be construed to constitute an indebtedness of the City of Cookeville, Tennessee, or of Putnam County, Tennessee, within the meaning of any constitutional or statutory provision whatsoever.

15. Entire Agreement. This Agreement and the other written agreements signed by the Board, the Company and/or the Lender in connection herewith or pursuant hereto, including, but not limited to, the Assignment, the Note, and the Security Agreement constitute the final, complete and entire understanding of the Board, the Company and the Lender with respect to the transactions contemplated by this Agreement. Except as may be otherwise expressly provided herein, this Agreement may not be amended except by a written instrument signed by the parties hereto.

16. Exhibits. The parties hereto acknowledge and agree that all schedules and exhibits referenced in this Agreement are attached hereto and incorporated herein by reference.

17. Attorney Fees. The Company shall pay the attorney's fees and expenses of counsel to the Board in connection with the Incentive from time to time, which counsel in connection with the preparation of the Plan and this Agreement is David Ledbetter, Esq. and Bradley Arant Boult Cummings, LLP, and which costs shall be Permitted Costs and reimbursable from the Available Increment under Section 2(b). In the event of any action or proceeding for enforcement of any of the terms or conditions of this Agreement, the prevailing party in such action, or the non-dismissing party where the dismissal occurs other than by reason of a settlement, will be entitled to recover, from the non-prevailing party, its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs of defense paid or incurred in good faith, provided that the Board shall only be responsible to pay such fees, costs and expenses upon a determination by the court that the Board acted in bad faith or in willful misconduct.

18. Severability. The invalidation of any one or more of the provisions of this Agreement or any part thereof by judgment of any court of competent jurisdiction shall not in any way affect the validity of any other such provisions of the Agreement but the same shall remain in full force and effect.

19. Further Assurances. The Board, the Company and the Lender each agree to execute and deliver such further documents and instruments as may be reasonably necessary to carry out the transaction contemplated by this Agreement.

20. Limitation of Rights. Except as otherwise expressly provided herein, nothing in this Agreement, express or implied, shall be construed to confer upon any person, other than the Board, the Company and the Lender, any right, remedy or claim, legal or equitable, under or by reason of this Agreement or any provisions hereof.

21. Relationship. The relationship of the Board, the Company and the Lender is solely that of independent third parties engaged in an arms-length transaction. Nothing contained herein shall be deemed or construed as creating a partnership, joint venture, agency relationship or other similar relationship between the Board, the Company and the Lender. The Company shall be solely responsible for all liabilities and obligations of every character or description, known or unknown, which are related to the Property and attributable to its period of ownership thereof, and the Board's or the Lender's provision of funds for the Company's acquisition of the Property shall in no way be construed as an assumption of any such liabilities, debts or obligations by any party hereto other than the Company.

22. Interpretation. The titles, captions and section headings herein are inserted for convenience only and are in no way intended to interpret, define, limit or expand the scope or content of this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. If any words or phrases in this Agreement shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Agreement shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Agreement and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated. Unless the context indicates otherwise, (i) the terms "hereof", "hereunder", "herein" and similar expressions refer to this Agreement as a whole, (ii) the singular shall include the plural and the masculine gender shall include the feminine and the neuter, and (iii) all references to sections and subsections shall be deemed references to the sections and subsections of this Agreement.

23. Time of the Essence. Time shall be of the essence in the performance of the terms and conditions of this Agreement.

24. Business Day. If any date on which performance or notice is due under this Agreement should fall on Saturday, Sunday or any other day on which the Company's offices are not open to the general public for business, performance or notice shall not be due until the next business day.

25. No Waiver. No waiver of any provision of this Agreement shall be deemed to have been made unless expressed in writing and signed by the party charged with making the waiver. No delay or omission in the exercise of any right or remedy accruing upon any breach of this Agreement shall impair such right or remedy or be construed as a waiver of any such breach. The waiver of any breach of this Agreement shall not be deemed to be a waiver of any other breach hereof.

26. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

(Signatures on the following page)

DRAFT

In witness whereof the parties hereto have entered into this Agreement as of the Effective Date.

BOARD:

**THE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF COOKEVILLE**

ATTEST:

Secretary

(SEAL)

By: _____
Name: Robert R. Bell
Title: Chairman

COMPANY:

COOKEVILLE DOWNTOWN HOTELS, LLC

By: _____
Name: _____
Title: _____

LENDER:

INSERT NAME OF LENDER

By: _____
Name: _____
Title: _____