

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (“Agreement”) made this _____ day of October, 2024, by and between **SHREEJYOTI HOSPITALITY LLC** (hereinafter referred to as "Owner"), whose principal office address is 2260 Elkhorn Road, Lexington, Ky, 40505, and the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT** (hereinafter referred to as "LFUCG", and together with the Owner, the “Parties”), an urban county government pursuant to KRS Chapter 67A, whose address is 200 East Main Street, Lexington, Kentucky.

RECITALS:

WHEREAS, LFUCG has seen an increase in the public’s need for emergency shelter for people experiencing homelessness in Fayette County, Kentucky;

WHEREAS, LFUCG now desires to provide additional options for shelter to accommodate the needs of persons experiencing homelessness during the winter months, within a hotel currently owned by Owner;

WHEREAS, Owner agrees to allow LFUCG the right to select the guests who may occupy certain rooms of the hotel, in furtherance of the public purpose identified herein;

WHEREFORE, in consideration of the foregoing, the sufficiency of which is hereby acknowledged, the Owner hereby conveys to LFUCG the rights herein defined in accordance with the following terms and conditions. Capitalized terms shall have the meanings ascribed to them in the Definitions section below.

DEFINITIONS:

“**ADA**” shall mean the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12101 et seq.) and regulations and guidelines promulgated thereunder, as may be amended and supplemented from time-to-time.

“**Effective Date**” shall mean the first date of the Term, as defined herein.

“**Guests**” shall mean any users or occupants of the Premises registered with the Hotel Operator and selected by LFUCG or LFUCG’s designee.

“**Premises**” shall mean a hotel located at 2260 Elkhorn Road, Lexington, Ky, 40505, which is currently known as “Motel 6.”

“**Franchise**” means the hotel brand currently used on the Premises and includes any and all unexpired Franchise Agreements executed by Owner and/or Hotel Operator, as defined herein.

“**Hotel Operator**” shall mean whomever Owner, Owner’s successors, and/or Owners assigns, deems fit to manage daily operations of the Premises, as approved by the Franchise, and who is authorized to collect sums payable on behalf of Owner.

“**Hotel Standard**” shall mean Hotel Operator’s then-current policies, procedures, instructions, standards, guidelines, specifications, programs and materials, as approved by the Franchise, and applicable to all guests located anywhere on the Premises.

“**Operations**” shall mean selecting Guests to occupy the Select Rooms, as defined herein, providing any security services for the Select Rooms that LFUCG believes necessary and appropriate, providing any emergency services on the Premises that LFUCG believes necessary and appropriate, and providing any food services for Guests occupying the Select Rooms as LFUCG believes necessary and appropriate.

“**Property Manager**” shall mean the Property Manager selected by the Hotel Operator to manage the Hotel, with consent of the Owner and approval of the Franchise. For purposes of this Agreement, LFUCG may take direction from Property Manager and Property Manager may collect sums payable by LFUCG hereunder on behalf of Owner.

“**Repairs**” shall mean all maintenance, repairs and, when required, replacements necessary to maintain the Premises in compliance with the Hotel Standard and the ADA. All repairs that Owner or Owner’s designee shall make shall be completed in a good and workmanlike manner. Owner shall use reasonable efforts during the making of repairs to avoid interference with LFUCG’s Operations.

“**LFUCG Parties**” shall mean LFUCG and its employees, officers, contractors, subcontractors, visitors or assignees.

The Parties hereto, for themselves, their heirs, executors, administrators, legal representatives, successors and assigns, hereby covenant as follows:

1. SELECTION OF ROOMS.

- A. Consistent with the terms and conditions stated herein, Owner hereby grants to LFUCG an irrevocable and exclusive right to select the Guests who may occupy a minimum of seventy-five (75) Hotel Standard rooms, at fixed locations within the Premises. These Hotel Standard rooms shall at least have the hospitalities specified herein, and not fewer than four (4) of them shall be fully compliant with the ADA, with said rooms to be selected by the Hotel Operator by and through the Property Manager, for the duration of this Agreement (“Select Rooms”). Owner herein covenants that it shall not interfere or hinder, nor shall it permit the Hotel Operator to interfere or hinder, with any of LFUCG’s Operations during the term of this Agreement.

B. The Select Rooms shall include the following hospitalities:

1. Pets shall be allowed as an additional guest accommodation in all of the Select Rooms;
2. Five (5) of the Select Rooms shall be smoking rooms; and,
3. All Select Rooms shall have heating facilities capable of maintaining a room temperature of 65 degrees F, a functioning bathroom and a functioning toilet.

2. TERM.

This Agreement shall last from November 1, 2024 until April 1, 2025 (“Term”), unless terminated at an earlier date by LFUCG. This Agreement shall be contingent upon completion of a documented initial walk-through of the Select Rooms prior to occupancy of the Select Rooms, if LFUCG requests a walk-through prior to the Effective Date. Upon the expiration or sooner termination of this Agreement, LFUCG shall quit and surrender the Select Rooms in a broom-clean condition, in good order, condition and repair, ordinary wear and tear and casualty excepted, which may be documented upon a final walk-through, if requested by LFUCG. Copies of all paperwork generated during the walk-throughs shall be promptly provided to LFUCG.

3. FEES.

LFUCG shall pay the fees specified herein, in the manner hereafter provided:

- A. Agreed Daily Rate. The agreed daily rate for a Select Room shall be **Fifty-Five Dollars (\$55.00)**.
- B. Retainer. LFUCG shall pay a fee equal to **One Hundred Twenty-Three Thousand Seven Hundred and Fifty Dollars (\$123,750.00) (“Retainer”)**, exclusive of any required taxes, on the Effective Date. This fee amount shall reflect the daily rate for the anticipated number of rooms during the first month of the term.
- C. Invoicing. On the first day of each month during the Term, excluding the Effective Date, the Hotel Operator shall send to LFUCG an invoice for the following month’s projected fee. That invoice shall reflect the daily rate for the anticipated number of rooms during the upcoming month of the Term and shall include a reconciliation of the Retainer balance with an accounting for any Additional Fees, as defined herein, which were incurred during the previous month.
- D. Additional Fees. Any Additional Fees shall be payable only after receipt of a valid invoice documenting all expenses incurred, and shall furthermore be limited to the following amounts:
 - i. An amount reflecting the costs of necessary repairs directly attributable to occupancy of the Select Rooms during the Term, which shall be paid and documented in a manner consistent with Article 4 of this Agreement.
- E. Final Close-Out. The Owner shall provide a final invoice reconciling all amounts paid with all amounts owed within thirty (30) days of the termination of this Agreement. LFUCG shall pay the approved invoice amount within thirty (30) days of receipt of same.

4. UPKEEP.

- A. Repairs and Maintenance. Owner agrees to keep in good order, condition and repair all portions of the Premises including the roof, foundations, and all other structural portions of the Premises. Should any damage to the Premises be directly attributable to LFUCG's Operations, LFUCG shall be responsible for the cost and expense of Owner's repair, replacement or maintenance of the same. But in no case shall LFUCG's responsibility to pay for damages, in the aggregate, exceed **One Hundred Thousand Dollars (\$100,000.00)**. Owner shall provide LFUCG with an itemization of damages, and whatever additional supporting documentation LFUCG deems necessary in its sole discretion, to support the Owner's claim of damages, prior to LFUCG having any obligation to issue payment. LFUCG shall also have the right to review and give final approval of all invoices submitted for repairs prior to issuing any payment. All completed repairs may be documented during a final walk-through of the Select Rooms at the end of the Term, if requested by LFUCG. But LFUCG shall not be responsible for the cost of repair, replacement or maintenance that is attributable to the misuse or damage by Owner, Hotel Operator, or by the tenants, agents, employees, guests, or invitees of either the Owner or the Hotel Operator. For the foregoing sentence, the agents, employees and Guests of LFUCG shall not be deemed to be agents, employees, guests and invitees of Owner or Hotel Operator.
- B. Cleaning. The entire Premises, including, without limitation, any doors, interior and exterior portions of any windows and all other glass constituting a portion of the Premises, are to be kept clean by Owner or by Owner's designee, in a manner reasonable to Owner and consistent with the Hotel Standard and the Franchise.
- C. Extermination Services. Owner or Owner's designee shall keep the Premises free from infestation from vermin and other pests and shall conduct its operations in a manner conducive to such result, and shall, at its sole cost and expense, cause the Premises to be exterminated, on a frequent and regular basis and as often as necessary during the Term.

5. COMPLIANCE WITH LAWS.

At all times during this Agreement, the Owner represents that it is and shall remain lawfully registered or authorized to do business in the Commonwealth of Kentucky and Lexington-Fayette County and shall at all times comply with any and all applicable federal, state, and local laws, ordinances, and regulations. The person signing this Agreement on behalf of Owner is fully authorized to do so.

6. INDEMNITY; INSURANCE.

- A. The Owner shall maintain at all times for the duration of this Agreement such policy or policies of appropriate insurance coverage for commercial general liability, premises and operations liability, fire insurance, and such other insurance as appropriate for the protection of the Premises, proof of which coverages may be inspected by LFUCG upon request.
- B. The Parties shall have no obligation to indemnify either party for any activities that occur as a result of the Operations. Owner further understands and acknowledges that LFUCG is a governmental entity, and it cannot indemnify Owner. Nothing in this Agreement shall be

construed as to require LFUCG to purchase insurance.

7. DAMAGES.

The Parties agree that in the event either party is found to be in breach of this Agreement, the Parties are mutually limited to recovering the amount stated in Article 4.A of this Agreement as liquidated damages for that breach. Notwithstanding anything contained in this Agreement to the contrary, the Parties waive, to the fullest extent permitted by Law, the right to seek any special, consequential or punitive damages against the other whether such damages are covered by insurance or not.

8. TERMINATION.

LFUCG may terminate this Agreement at any time by giving written notice of cancellation to the Owner, in the manner provided herein, no less than thirty (30) days prior to the intended date of termination, at which time Owner shall return to LFUCG the amount of any fees paid in advance as part of the Final Close-Out required by Article 3.E of this Agreement.

9. NOTICES.

Any written notices required under this Agreement shall be deemed sufficient when made in writing and: (A) deposited in the United States Mail, to be sent via certified mail; or, (B) deposited with FedEx or any similar nationally recognized overnight delivery service; and, addressed as follows:

To the Owner:

Motel 6
2260 Elkhorn Road,
Lexington, Ky, 40505
Attn: Neel Patel

To LFUCG:

Charlie Lanter
Division of Housing Advocacy and Community Development
200 E. Main Street, Suite 12
Lexington, Ky. 40507

Notice provided in accordance with this Article shall be deemed to have been given on the date deposited with the U.S. Mail or the nationally recognized delivery service.

10. FORCE MAJEURE.

If LFUCG is delayed in its performance of any obligation under this Agreement due to an act, event, or

condition beyond its reasonable control, then LFUCG will immediately give timely notice to Owner and will act in good faith to remedy such act, event, or condition and resume performance as soon as practicable.

11. SEVERABILITY PROVISION.

If any provision of this Agreement, or its application to any situation, shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12. ENTIRE AGREEMENT.

No earlier statement by Owner or LFUCG or any of their respective agents or employees regarding this Agreement or the Premises shall have any force or effect. Owner and LFUCG agree that they are not relying on any representations or agreements other than those contained in this Agreement. This Agreement shall not be modified except via a separate written amendment, signed by both Parties.

13. NO WAIVER.

The failure of either party to seek redress for violation of, or to insist upon the strict performance of any covenant or condition of this Agreement, shall not prevent a subsequent act that would have originally constituted a violation from having all the force and effect of an original violation.

14. APPLICABLE LAW, JURISDICTION AND VENUE.

This Agreement shall be construed under the laws of the Commonwealth of Kentucky, with exclusive jurisdiction and venue being in the Fayette Circuit Court.

15. TIME OF ESSENCE.

Time is of the essence with respect to the performance of every provision of this Agreement.

16. NO THIRD-PARTY RIGHTS.

Nothing in this Agreement shall be construed as creating or vesting any rights in any third parties or establishing any third-party beneficiaries hereto.

17. NO TENANCY.

Nothing in this Agreement shall be construed as establishing any landlord-tenant relationship between the parties, or between the parties and any guest(s).

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and date first set forth above.

OWNER

SHREEJYOTI HOSPITALITY LLC

A limited liability company

By: _____

Name: Neel Patel

Its: Member

COMMONWEALTH OF KENTUCKY)

)

COUNTY OF FAYETTE)

The foregoing instrument was subscribed, sworn to and acknowledged by me this ____ day of _____, 2024, by Neel Patel, as Member of SHREEJYOTI HOSPITALITY LLC, a limited liability company, on behalf of the company.

Notary Public

My commission expires: _____

Notary No.: _____

LFUCG

By: _____

Name: Linda Gorton

Its: Mayor

COMMONWEALTH OF KENTUCKY)

)

COUNTY OF FAYETTE)

The foregoing instrument was subscribed, sworn to and acknowledged by me this ____ day of _____, 2024, by Linda Gorton, as Mayor of the Lexington-Fayette Urban County Government, on behalf of the Lexington-Fayette Urban County Government.

Notary Public

My commission expires: _____

Notary No.: _____