

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
DIVISION OF REMEDIATION
BROWNFIELD VOLUNTARY AGREEMENT

This Brownfield Voluntary Agreement addresses the Site located at 300 12th Avenue South, Nashville Davidson County, Tennessee, 37203. The Site has been assigned site number 19709 and is known as the W Nashville Hotel Site.

I. INTRODUCTION

This Brownfield Voluntary Agreement (hereinafter referred to as the "Agreement") is made and entered into as of the last date of execution shown herein below by and between the Tennessee Department of Environment and Conservation (hereinafter referred to as "TDEC" or the "Department") and Nashville Gulch Hotel LLC, a Delaware limited liability company (the "Voluntary Party") for the purpose of addressing the 1.24 acre above-referenced site (the "Site"), which has the real or perceived threat of the presence on the Site of hazardous substances, solid waste, or any other pollutant. The administrative record for the Site addressed in this Agreement is maintained by the Department's Division of Remediation. The Site has been assigned site number 19-709 and is known as the Proposed W Hotel Site.

David W. Salyers, P.E., is the duly appointed Commissioner of the Department. James S. Sanders, Director of the Department's Division of Remediation, has been delegated the authority to enter into this Agreement.

Pursuant to Tennessee Code Annotated § 68-212-224, the Commissioner is authorized to enter into an Agreement with a party who is willing and able to conduct an investigation and/or

remediation of a hazardous substance site or Brownfield Project and who did not generate, transport or release the contamination that is to be addressed at the Site.

The Department and the Voluntary Party agree to undertake all actions required by this Agreement. The purpose of this Agreement is to set forth a scope and schedule of activities at the above-referenced Site and respond to the actual, threatened, or perceived release of hazardous substances at the Site. In addition, this Agreement is intended to settle and resolve the potential liability of the Voluntary Party for the real or perceived threat of the presence of hazardous substances, solid waste, or any other pollutant at the Site which might otherwise result if and when Voluntary Party becomes the owner and/or operator of the Property.

II. REQUIREMENTS

A. **SITE LOCATION**

The Site is located at 300 12th Avenue South, Nashville, Davidson County, Tennessee 37203. A legal description of the Site and a survey ("Survey") depicting the Site is attached as Exhibit A, which is incorporated herein by reference.

B. **ELIGIBILITY**

As required by Tennessee Code Annotated § 68-212-224(a)(4), as of the effective date of this Agreement, the Department has determined that the Site is not listed or been proposed for listing on the federal National Priorities List by the United States Environmental Protection Agency ("EPA").

The Voluntary Party was accepted into the Brownfield Projects Voluntary Cleanup Oversight and Assistance Program on May 21, 2018. By entering into this Agreement, the Voluntary Party certifies, to Voluntary Party's actual knowledge that pursuant to Tennessee Code Annotated § 68-212-224(a)(1) the Voluntary Party did not generate, transport, or release the contamination that is to be addressed at the Site. As required by Tennessee Code Annotated § 68-212-224(a)(2), a summary description of all known existing environmental investigations, studies, reports, or

documents concerning the Site's environmental condition has been submitted to the Department by the Voluntary Party (a copy of the Summary is attached hereto as Exhibit B).

C. FINANCIAL REQUIREMENTS

Tennessee Code Annotated § 68-212-224 requires consideration of a fee to enroll in the Voluntary Cleanup Oversight and Assistance Program. The Commissioner has set the following schedule of fees that may apply to all sites working in cooperation with the Department to recover the expense of oversight. These fees are in place of hourly time charges and normal travel costs during the first 150 hours of oversight for the project.

Program Entry	\$ 750
Site Characterization	\$ 2,000
Remediation	\$ 2,500
Risk Assessment	\$ 2,000
Vapor Intrusion Evaluation	\$ 2,000
Voluntary Agreement/Consent Order	\$ 3,000
Land Use Restrictions	\$ 500
Annual O&M Review	\$ 500

In addition to the fees identified previously, an annual longevity fee of \$3,000 will be charged to the Voluntary Party on the anniversary of the date the site was accepted into the Voluntary Program until a letter requiring no further action has been issued or this Agreement has been terminated.

Upon reaching 150 hours of oversight, the Site will be charged the current hourly rate (e.g. one hundred ten dollars (\$110.00) per hour for FY 2020-2021) per hour of oversight in addition to the fee schedule listed above. This amount includes the current hourly rate and pro rata portion benefits for the Department's employees actively employed in oversight of work under this Agreement, including preparation for and attendance at meetings, mileage, any costs billed by State contractor(s) who are actively performing oversight, and the current State overhead rate. Additionally, any out-of-pocket expense, mileage, lab expense or other unusual costs to the Department shall be billed to and paid by the Voluntary Party. The applicable Voluntary Party

shall pay each bill referenced in this Section C within sixty (60) days of receipt by such Voluntary Party.

Applicable fees and financial requirements must be timely paid by the applicable Voluntary Party to remain in the Voluntary Cleanup Oversight and Assistance Program and to receive a letter of no further action under Section G of this Agreement. For the purpose of this Agreement, timely payment means the Department receiving payment from the Voluntary Party within 60 days of the first billing of a financial requirement or according to a payment plan agreed in writing between Voluntary Party and the Department.

Notwithstanding the foregoing, any and all cost recovery assessments arising from actions to comply with a recorded Notice of Land Use Restrictions imposed pursuant to and recorded on the Site under the terms of this Agreement, shall be due from and payable only from the particular Voluntary Party or Successor Party submitting the report to be reviewed and/or requesting the related oversight action by TDEC that gives rise to the associated fees.

D. IDENTIFICATION AND DOCUMENTATION OF MATTERS ADDRESSED

Real or perceived hazardous substances, solid wastes or other pollutants are determined to be present on this Site to an extent that may or may not have yet been fully characterized. Pursuant to Tennessee Code Annotated § 68-212-224(a)(2) the Voluntary Party has submitted to the Commissioner a summary (the "Summary") description of all known existing environmental investigations, studies, reports or documents concerning the site's environmental condition. The Summary is attached as Exhibit B. Based on the information submitted to the Department by or on behalf of the Voluntary Party, and the Department's own review of this information, the Parties hereto agree that the environmental conditions identified in the reports referred to below and any reports generated pursuant to this Agreement, or in the Summary, including the environmental conditions described below are to be addressed under this Agreement (collectively referred to as the "*Matters Addressed in this Agreement*"):

1. Phase I Environmental Site Assessment-Laurel Street and 12th Avenue South- March 3, 2006 prepared by TVG Environmental, Inc.

2. Phase I Environmental Site Assessment- 316 12th Avenue South- December 6, 2007 prepared by TVG Environmental, Inc.
3. Limited Subsurface Assessment- September 23, 2016 prepared by Professional Services Industries (PSI)
4. Limited Soil Gas Assessment- August 22, 2018 prepared by Professional Services Industries, Inc. (PSI)
5. Phase I Environmental Site Assessment of The Gulch Hotel & Residences – by ATC – July 19, 2018

The Voluntary Party is developing the this Site as a hotel, with below grade parking, and at or above grade retail and restaurant space. Pursuant to this Agreement, Voluntary Party is not being required to fully remediate the pre-existing environmental conditions noted above, but is required to take certain actions specified in this Agreement to ensure that the identified environmental impacts and conditions do not pose a threat to human health or the environment during and after completion of the redevelopment.

The Voluntary Party agrees that criteria required in Tennessee Code Annotated § 68-212-206(d) shall be used in determining containment and cleanup actions, including monitoring and maintenance options to be followed under this Agreement.

E. AGREED LIABILITY RELIEF

As the current owner or operator, or upon becoming an owner or operator of the Site, the Voluntary Party may occupy the status of a “liable party” pursuant to the definition of that term contained in Tennessee Code Annotated § 68-212-202(4). The Commissioner is authorized by Tennessee Code Annotated § 68-212-224 to determine an apportionment of liability pursuant to factors in Tennessee Code Annotated § 68-212-207 as well as other equitable factors in an Agreement. Further, Tennessee Code Annotated § 68-212-224(a)(5) provides that the Commissioner is authorized to limit the liability of a participant in a voluntary agreement or consent order entered into pursuant to Tennessee Code Annotated § 68-212-224. Such voluntary agreement or consent order may limit the liability of such participant to the obligations set forth therein and exempt the participant from any further liability under any statute administered by the Department for

investigation, remediation, monitoring, and/or maintenance of contamination identified and addressed in the voluntary agreement or consent order. The Commissioner may extend this liability protection to successors in interest or in title to the participant, contractors conducting response actions at the Site, developers, future owners, tenants, and lenders, fiduciaries, or insurers (collectively "Successor Parties"). The Commissioner agrees that the Voluntary Party's implementation of the actions agreed upon in Section G will constitute satisfaction of the apportioned liability of the Voluntary Party under all environmental statutes administered by the Department for the "*Matters Addressed in this Agreement*".

The Voluntary Party and any of the Successor Parties, however, remain potentially responsible for any release of hazardous substances or other pollutants that occurs at the Site after the effective date of this Agreement while it owns or operates the Site or for environmental conditions other than *Matters Addressed in this Agreement*.

In accordance with the above referenced authority, the Department agrees that other than with respect to the obligations set forth in this Agreement, including without limitation the implementation of the actions agreed upon in Section G to the extent applicable to each Voluntary Party and Successor Parties shall bear no liability to the State of Tennessee under any statute administered by the Department for investigation, remediation, monitoring, treatment, and/or maintenance of environmental conditions identified in and addressed in Section D of this Agreement; provided, however, that to the extent that the Voluntary Party or Successor Parties has or maintains an interest in the Site, or possesses and/or controls all or a portion of the Site, its liability protections herein are contingent upon its continued adherence and enforcement of any land use restrictions imposed pursuant to or as a result of this Agreement. Nothing in this Agreement shall be construed as limiting the liability or potential liability of the Voluntary Party for environmental conditions occurring after the effective date of this Agreement or for environmental conditions not identified and addressed in this Agreement. This liability protection and all other benefits conferred by this Agreement are extended to all future "Successor Parties" conditioned upon performance of the obligations contained in this Agreement and compliance with the Land Use Restrictions (hereinafter defined); provided, that such liability protection to other persons does not apply to the extent that such liability arose prior to the effective date of this Agreement. For the avoidance of doubt, a breach of this Agreement by a successor-in-interest or

a successor-in -title will not alter the liability protection provided to a predecessor-in-interest or in-title.

F. ADMINISTRATIVE SETTLEMENT; THIRD PARTY LIABILITY

The Voluntary Party shall not be liable to third parties for contribution regarding *Matters Addressed in this Agreement*; provided that, the Voluntary Party gave the third party actual or constructive notice of this Agreement, and the third party was given an actual or constructive opportunity to comment upon this Agreement. The Voluntary Party has demonstrated to the Department that constructive notice was accomplished by publishing a summary of this Agreement in The Tennessean at least thirty (30) days prior to the Effective Date of this Agreement.

Nothing in this Agreement shall impair the rights of third parties with respect to tort liability claims for damage to person or property arising from the contamination addressed by this Agreement.

G. AGREED ACTIONS TO BE TAKEN

The Voluntary Party agrees to conduct the following activities in order to address remedial action(s) recommended, including any monitoring and/or maintenance, pursuant to Section D of this Agreement. The Voluntary Party will conduct all activities required by this Agreement in accordance with all applicable work plans, as approved by TDEC, all applicable laws and regulations, and any appropriate guidance documents. The Department has determined that the actions in this Agreement constitute “reasonable steps” with respect to *Matters Addressed in This Agreement*.

The Voluntary Party agrees as specified below to conduct the following activities:

1. Voluntary Party shall record a Notice of Land Use Restrictions (“NLUR”) attached hereto as Exhibit C within thirty (30) days of taking title to the Site, or the effective date of this Agreement, whichever occurs later . Upon recording, a copy of the NLUR shall be mailed to all local governments having jurisdiction over any part of the subject property. Additionally, a copy of the recorded NLUR shall be provided to the Department. Any party receiving liability protection under this Agreement that seeks approval for restricted uses or seeks to cancel or make a restriction less stringent shall be responsible for any costs incurred by the Department in the review and oversight of work associated with the restriction modification.
2. Voluntary Party agrees to send notification of this Agreement by certified mail to all local governments having jurisdiction over any part of the subject property and to all owners of adjoining properties. Voluntary Party shall provide adequate documentation to the Department to demonstrate that public notice has been accomplished.
3. The Voluntary Party agrees to implement the TDEC approved Soil Management Plan (“SMP”) dated August 22, 2018, a copy of which is attached hereto as Exhibit D. Upon completion of activities under the SMP, Voluntary Party agrees to submit a report detailing the activities conducted under the plan, including any "as built" drawings applicable to the improvements on the Site.

Upon completion of all tasks set forth in this Agreement, the Department shall issue, to Voluntary Party, a letter stating the requirements of this Agreement have been fulfilled and no further action is required of the Voluntary Party concerning contamination identified and addressed in this Agreement. Upon the request of a Voluntary Party from time to time, the Department shall issue an interim status letter identifying what specific obligations remain to achieve completion of the work under this Agreement. Issuance of a no further action letter shall not relieve the Voluntary Party receiving such letter of any responsibilities for operation and maintenance activities or continued adherence to and enforcement of land use restrictions, if any, pursuant to Tennessee Code Annotated § 68-212-225. The Department reserves the right to require a Voluntary Party to take additional action for contamination caused by such Voluntary Party occurring after the date of this Agreement or for environmental conditions other than *Matters Addressed in this Agreement*.

H. ADDITIONAL REQUIREMENTS

1. The Voluntary Party may request a time extension for any deadline included in this Agreement prior to the deadline. The time extension may be granted through mutual consent for good cause shown.
2. The Voluntary Party and Successor Parties agree not to disturb, move, or remove any areas of hazardous substances, solid waste, or other pollutant(s) that are subject to liability protection under this Agreement without written approval by the Department unless the activities are being conducted under the terms and conditions of this Agreement or necessitated by the normal day-to-day activities of any on-going business.
3. Pursuant to Tennessee Code Annotated § 68-212-222, whether or not permits are required for onsite cleanup activities related to *Matters Addressed in this Agreement*, such activities shall meet the standards that would apply if such permits were required.
4. The Department acknowledges that the Voluntary Party itself may conduct redevelopment activities at the Site in addition to preparing the Site for potential development for Successor Parties, and the Voluntary Party enters into this Agreement in order to facilitate Voluntary Party's potential development of the Site or Successor Parties' potential development of the Site as herein agreed by Voluntary Party. The Department further acknowledges that Voluntary Party and more than one Successor Party may develop different portions of the Site. Accordingly, Voluntary Party and one or more Successor Parties may assume the obligations and liability protections provided under this Agreement upon such Successor Parties' acquisition of property interests in the Site. The Voluntary Party or any Successor Party that transfers its interest at the Site shall be relieved of any further obligations under this Agreement.

I. SITE ACCESS

During the effective period of this Agreement, and until the Department's issuance of a No Further Action Letter upon the Voluntary Party's completion of all activities under this Agreement, the Voluntary Party, and any Successor Party shall, to the extent it is in control of the Site, provide the Department and its representatives or designees access during normal business hours to the Site to the extent that the Voluntary Party has the power and authority to grant such access. Nothing herein shall limit or otherwise affect the Department's right of entry, pursuant to any applicable statute, regulation, or permit. The Department and its representative shall comply with all reasonable health and safety plans published by the Voluntary Party, Successor Party or their contractors and used by Site personnel for the purpose of protecting life and property.

J. SUBMISSION OF INFORMATION, REPORTS, OR STUDIES

The Department may deny submission or approval of any reports or studies performed by or on behalf of the Voluntary Party and submitted under the terms of this Agreement that do not contain the following statement:

"I certify under penalty of law, including but not limited to penalties for perjury, that this document and all attachments were prepared by me, or under my direction or supervision. The submitted information contained in this document and on any attachment is true, accurate and complete to the best of my knowledge, information, and belief. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for intentional violation. As specified in Tennessee Code Annotated § 39-16-702(a)(4), this declaration is made under penalty of perjury."

K. RESERVATION OF RIGHTS

1. This Agreement shall not be construed as waiving any right or authority available to the Commissioner to assess responsible parties other than the Voluntary Party or Successor Parties for liability for civil penalties or damages incurred by the State, including any natural resource damage claims which the Department or the State of Tennessee may have under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") or any other statute, rule, regulation, or common law.

2. Nothing in this Agreement shall be construed as limiting or waiving any right or authority available to the Commissioner to require a liable party to address contamination occurring after the effective date of this Agreement or for environmental conditions other than *Matters Addressed in this Agreement*.

3. Nothing in this Agreement shall be interpreted as limiting the Voluntary Party's right to preserve the confidentiality of attorney work product or client-attorney communication. Tennessee Code Annotated § 68-212-202 et seq. contains no provisions for confidentiality or proprietary information. Therefore, records, reports, test results, or other information submitted to the Department under this Agreement shall be subject to public review. Any and all records, reports, test results or other information relating to a hazardous substance site or the possible hazardous substance at the Site submitted under this Agreement may be used by the Department for all purposes set forth in Tennessee Code Annotated § 68-212-201 et seq.

4. Any Voluntary Party or any of their Successor Parties may terminate this Agreement as it pertains to such terminating party at any time upon written notice to the Department during the time period that such party owns the Site and/or conducts operations at the Site. Upon such termination, the terminating party shall have no further obligations hereunder other than payment of outstanding oversight costs, if any, accrued to the date of notice of termination and adherence to any notice of land use controls filed under Tennessee Code Annotated § 68-212-225; provided, that all parties to this Agreement shall have and retain all authority, rights, and defenses as if this Agreement had never existed.

5. The Department may terminate this Agreement by written notice to the Voluntary Party in the event that the Department receives timely comments from third-party contribution claim holders pursuant to the notice sent under Section F of this Agreement, if any, and such comments disclose facts or considerations that indicate that the allocation of liability of the Voluntary Party under this Agreement is inappropriate, improper, or inadequate; provided, however, absent fraud or intentional misconduct, that in such event the Voluntary Party may elect to waive the protections set forth in Section F hereunder and in such event this Agreement shall not be terminated, but rather the remainder of the terms and conditions of this Agreement shall continue to be in full force and effect and without termination. The Department's notice of

termination must be made within thirty (30) days of the end of the 30-day notice period required by Section F. The Voluntary Party's waiver notice must be made within fifteen (15) days after receipt of the Department's termination notice.

6. In the event a Voluntary Party or Successor Party does not fulfill all the requirements established in this Agreement, the Commissioner may seek to enforce the Agreement through any legal remedy.

7. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions of this Agreement will remain in full force and effect.

8. Nothing in this Agreement shall be interpreted as limiting the liability for the improper management and/or disposal of contaminated material removed from the Site.

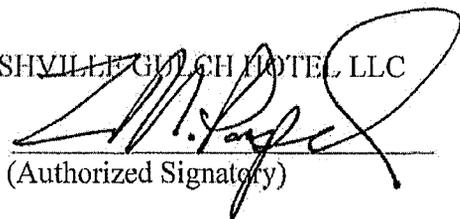
The individuals signing below on behalf of each Voluntary Party represents that they are duly authorized agents, capable of entering into a binding Agreement on behalf of the Voluntary Party. By entering into this Agreement, this individual certifies that the Voluntary Party did not generate or did not cause to generate, transport, or release contamination that is to be addressed at this Site.

The Effective Date of this Agreement is the last date of execution shown below.

VOLUNTARY PARTY

NASHVILLE GILCH HOTEL LLC

By:



(Authorized Signatory)

LAURENCE M. PAPELI, VP

(Print Signatory's Name & Title)

Date:

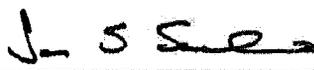
March 19, 2021

STATE OF TENNESSEE

DEPARTMENT OF
ENVIRONMENT AND

CONSERVATION

By:



James S. Sanders

Director, Division of Remediation

JAMES S SANDERS

(Print Director's Name)

Date:

MARCH 25, 2021

Suite 1100, One Nashville Place
(Address)
150 4th Avenue, North
Nashville, TN 37219
(City, State, Zip Code)

Approved as to form and legality:
TDEC Office of General Counsel Attorney

E. Joseph Sanders

E. Joseph Sanders BPR#6691
312 Rosa L. Parks Ave.
Tennessee Tower, 2nd Floor
Nashville, TN 37243
615-532-0122
Joseph.sanders@tn.gov

EXHIBIT A
TO BROWNFIELD AGREEMENT
SITE DESCRIPTION

AND SURVEY

BEING A TRACT OF LAND LYING IN THE 19TH DISTRICT OF DAVIDSON COUNTY, NASHVILLE, TENNESSEE, BEING LOTS 300, 301, 302, 333, 334, 335 AND 336 OF PLAN OF MCNAIRY'S WEST AS RECORDED IN MINUTE BOOK C, PAGE 136, AND PLAN BOOK 1, PAGE 15, NASHVILLE CHANCERY COURT, AND BEING A CLOSED PORTION OF ALLEY #233.

SAID TRACT BEING BOUNDED ON THE NORTH BY THE SOUTHERN RIGHT OF WAY (ROW) OF LAUREL STREET; BOUNDED ON THE EAST BY LOT 299 OF SAID PLAN OF MCNAIRY'S WEST, BEING LAUREL HOUSE 2001, LP AS RECORDED IN INSTRUMENT NUMBER 200112200140461, REGISTER'S OFFICE OF DAVIDSON COUNTY (RODC) AND BY LOT 1 OF NASHVILLE URBAN VENTURES, SECTION 1, AS RECORDED IN INSTRUMENT NUMBER 200905010039790, RODC, BEING NASHVILLE URBAN VENTURES, LLC AS RECORDED IN INSTRUMENT NUMBER 200309110133587, RODC; BOUNDED ON THE SOUTH BY THE NORTHERN ROW OF PINE STREET; AND BOUNDED ON THE WEST BY THE EASTERN ROW OF 12TH AVENUE SOUTH. TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

POINT OF BEGINNING BEING A SCRIBED "X" LYING ON THE SOUTHEAST ROW INTERSECTION OF SAID 12TH AVENUE SOUTH AND LAUREL STREET;

THENCE ALONG SAID SOUTHERN ROW OF LAUREL STREET NORTH $62^{\circ}38'12''$ EAST 149.51 FEET TO A FOUND P.K. NAIL;

THENCE ALONG THE COMMON LINE OF SAID LOT 299 AND LOT 1 SOUTH $27^{\circ}00'22''$ EAST 371.57 FEET TO A FOUND IRON ROD WITH CAP;

THENCE ALONG SAID NORTHERN ROW OF PINE STREET WITH THE FOLLOWING: ON A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 26.33 FEET, A RADIUS OF 394.00 FEET, A CENTRAL ANGLE OF $03^{\circ}49'42''$ AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH $64^{\circ}35'16''$ WEST 26.32 FEET TO A FOUND IRON ROD WITH CAP;

THENCE SOUTH $62^{\circ}40'25''$ WEST 97.33 FEET TO A FOUND IRON ROD WITH CAP;

THENCE WITH A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 23.67 FEET, A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF $90^{\circ}23'58''$ AND HAVING A CHORD

BEARING AND DISTANCE OF NORTH 72°07'36" WEST 21.29 FEET TO A FOUND IRON ROD WITH CAP;

THENCE ALONG SAID EASTERN ROW OF 12TH AVENUE SOUTH WITH THE FOLLOWING: NORTH 26°55'37" WEST 118.53 FEET TO A POINT;

THENCE SOUTH 62°38'14" WEST 11.25 FEET TO A SCRIBED "X";

THENCE NORTH 26°56'01" WEST 236.97 FEET TO THE POINT OF BEGINNING.

CONTAINING 53,957 SQUARE FEET, 1.24 ACRES.

BEING THE SAME PROPERTY CONVEYED TO NASHVILLE GULCH HOTEL LLC, A DELAWARE LIMITED LIABILITY COMPANY, BY DEED FROM TWELFTH AVENUE PARTNERS, LLC, A TENNESSEE LIMITED LIABILITY COMPANY, OF RECORD AS INSTRUMENT NO. 20180914-0091534, IN THE REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE.

EXHIBIT B

TO BROWNFIELD AGREEMENT

SUMMARY OF TECHNICAL REPORTS FOR THE SITE

The following summary is a listing of technical reports for environmental investigations and assessments for the Site that are in the possession of the Voluntary Party. This summary is intended to fulfill the statutory disclosure requirements associated with the Brownfield agreement application process. All reports listed below are on file at TDEC.

1. Phase I Environmental Site Assessment-Laurel Street and 12th Avenue South- March 3, 2006 prepared by TVG Environmental, Inc.

TVG Environmental, Inc. has performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Standard Practice E 1527-00 of the Horton Property located at Laurel Street and 12th Avenue South in Nashville, Tennessee. Any exceptions to, or deviations from, this practice are described in Section 10.0 of this report.

This assessment has revealed no evidence of recognized environmental conditions in connection with the property.

Based upon the above findings and conclusions, no further action or investigation is deemed necessary at the subject property.

2. Phase I Environmental Site Assessment- 316 12th Avenue South- December 6, 2007 prepared by TVG Environmental, Inc.

TVG Environmental, Inc. has performed a Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Standard Practice E 1527-05 of the Charles T. Wehby, Trustee Property located at 316 12th Avenue South in Nashville, Tennessee. Any exceptions to, or deviations from, this practice are described in Section 10.0 of this report.

This assessment has revealed no evidence of recognized environmental conditions in connection with the property.

3. Limited Subsurface Assessment- September 23, 2016 prepared by Professional Services Industries (PSI)

Results of the laboratory analysis for the soil samples indicate concentrations of acenaphthene, accnaphthylene, anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(g,h,i)perylene, benzo(k)fluoranthene, chrysene, dibenz(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, 1-methylnaphthalene, 2-methylnaphthalene, naphthalene, phenanthrene, pyrene, arsenic, barium, cadmium, chromium, lead, and mercury above laboratory reporting limits.

Results of the laboratory analysis for the soil samples indicate concentrations of arsenic, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene and indeno(1,2,3-cd)pyrene that exceed the EPA residential RSLs.

Results of the laboratory analysis for the soil samples indicate concentrations of arsenic, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, dibenz(a,h)anthracene and indeno(1,2,3-cd)pyrene that exceed the EPA industrial RSLs.

Analytical results of soil samples collected indicate analyte concentrations of arsenic above the EPA industrial RSL; however, these concentrations are below the State level published threshold of 10 mg/kg for arsenic in Tennessee. Therefore, they do not represent a significant deviation from normal background concentrations in this region. Based on this data, no further investigation of arsenic in soil appears warranted at this time.

In order to evaluate the soil material for transport and disposal as a "Special Waste", PSI had the soil samples that indicated elevated lead concentrations analyzed by the Characteristic Leachate Procedure (TCLP) Method. The samples include B-1 1.5'-3' (lead 121 mg/kg), and B-5 1'-2.5' (lead 383 mg/kg). In order to qualify for disposal as

“Special Waste” the analyte cannot exceed 5 mg/l under the TCLP Method. The results of the TCLP analysis indicate concentrations below 0.010 mg/l for all of the above referenced samples; therefore, the material does qualify for disposal as “Special Waste” at a properly permitted Tennessee landfill.

A single analyte (benzo(a)pyrene) was identified on the northern portion of the property (boring B-1) above the EPA RSL for soil. The remaining soil samples from borings B-1 through B-4 did not indicate the presence of PAHs or RCRA metals (with the exception of arsenic) above the EPA RSLs to a depth of up to 12 feet bgs. Therefore, PSI expects that the soils predominantly located in the northern half of the site will be able to be excavated and transported from the property as “clean” material, as necessary. Additionally, soil samples collected from borings B-5 through B-8 indicate the presence of PAH and arsenic concentrations above the EPA RSLs from a depth of 0 to 5 feet bgs. Based on the analytical results, soils in the upper 5-feet in the southern portion of the property will likely need to be relocated on-site or transported to an appropriate disposal facility as “Special Waste” in accordance with the TDEC Division of Solid Waste regulations.

4. Limited Soil Gas Assessment- August 22, 2018 prepared by Professional Services Industries, Inc. (PSI)

The laboratory analysis of the soil gas samples indicate concentrations of 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, 1,3-butadiene, methyl ethyl ketone, acetaldehyde, acetone, acetonitrile, acrylonitrile, benzene, methyl chloride, cyclohexane, cyclopentane, methylene chloride, ethanol, ethylbenzene, n-hexane, m,p-Xylenes, naphthalene, o-Xylenes, pentane, propylene, and toluene above laboratory reporting limits.

In addition, the following analytes were reported above the EPA VISLs for soil gas: Benzene (SG2) and acetaldehyde (SG1 and SG2).

5. Phase 1 Environmental Site Assessment of The Gulch Hotel & Residences – by ATC –
July 19, 2018.

1.2 Findings and Conclusions Summary

ATC Group Services LLC has performed a Phase I Environmental Site Assessment (ESA) of the property in conformance with the scope and limitations of ASTM Standard Practice E1527-13. Any exceptions to, or deletions from, this practice are described in Section 2.0 of this report. This assessment has revealed no evidence of *recognized environmental conditions* in connection with the property, except as noted in the summary of report findings and conclusions below.

Based on the findings of the Phase I ESA, ATC has identified the following *recognized environmental condition*:

According to the Soil Characterization Assessment (SCA), dated September 23, 2016 and provided by the Tennessee Department of Environment and Conservation Division of Remediation (TDEC-DoR), soil sampling was conducted at the property to identify potential polynuclear aromatic hydrocarbons (PAHs), volatile organic compounds (VOCs) and RCRA metal contamination at the property for soil excavation work during potential redevelopment activities. The analytical results indicated arsenic and PAH concentrations in the soil samples collected along the southern portion of the property exceeded the EPA Regional Screening Levels (RSLs) for residential and commercial properties. Further investigations during the SCA deemed the upper five (5) feet of soils, predominantly on the southern portion of the property, as contaminated soils likely to be transported via a Special Waste Permit. One constituent, benzo(a)pyrene, was identified on the northern portion of the property in excess of the EPA RSL in one boring (B-1). The SCA stated that soils predominantly on the northern portion of the property are deemed clean soils. According to a correspondence letter dated May 21, 2018, the property entered into a Brownfield and VCP Agreement with the TDEC-DoR Nashville Field Office under TDEC-DoR Site Number 19-709. The identification of constituents in soil in excess of RSLs at the southern portion of the property represents a *recognized environmental condition*.

Based on the findings of the Phase I ESA, ATC has identified the following *business environmental risk* (BER):

ATC observed three (3) monitoring wells located on the northern and southern portions of the property. The three (3) monitoring wells were observed to be improperly capped while not in use. The presence of the three (3) uncapped monitoring wells represents a *business environmental risk* associated with the property.

Based on the findings of the Phase I ESA, ATC has identified the following non-ASTM scope consideration:

ATC observed approximately 150 square feet of potential ACM floor tile within the footprint of the former structures on the property. The presence of potential ACM represents a *business environmental risk* associated with the property.

EXHIBIT C
TO BROWNFIELD AGREEMENT
NOTICE OF LAND USE RESTRICTIONS

This instrument prepared by:
Nelson Mullins Riley & Scarborough LLP
Attn: Laurence M. Papel
150 Fourth Avenue, North, Suite 1100
Nashville, Tennessee 37219

NOTICE OF LAND USE RESTRICTIONS

Notice is hereby given that pursuant to Tenn. Code Ann. § 68-212-225 of the *Hazardous Waste Management Act of 1983*, the Commissioner of the Tennessee Department of Environment and Conservation ("TDEC") has determined that land use restrictions are an appropriate remedial action at the below-described property. Pursuant to Tenn. Code Ann. § 68-212-225(d) the Register of Deeds shall record this Notice of Land Use Restrictions ("Notice") and index it in the grantor index under the name of the below-referenced Grantor.

Witnesseth:

WHEREAS, Nashville Gulch Hotel LLC, a Delaware limited liability company ("Grantor") is the real property owner of 300 12th Avenue South, located in Nashville, Davidson County, Tennessee, the same being more particularly described in Instrument No. 20180914-0091534, in the Register of Deed's Office of Davidson County, identified as Parcel No. 09313009000, herein after referred to as "Site" or the "Property," and which is more particularly described in Exhibit A hereto; and,

WHEREAS, the Property is shown on a survey ("Survey") drawn by L. Brandon Lambert (Tennessee LS# 1666), dated 7/18/18, attached hereto as Exhibit B and incorporated herein by reference; and

WHEREAS, Grantor, also sometimes referred to herein as the "Voluntary Party," entered into a Brownfield Voluntary Agreement ("BVA") with TDEC pursuant to Tennessee Code Annotated §68-212-224 for the purpose of addressing the real or perceived threat of the presence on the Site of hazardous substances, solid waste or other pollutants; and

WHEREAS, the Property has been remediated, to the extent practicable, to levels protective of human health and the environment, as determined by the United States Environmental Protection Agency (EPA) Regional Screening Levels, so long as certain land use restrictions are instituted and observed for the Property; and

WHEREAS, Grantor has agreed to impose certain land use restrictions on the Property as set forth hereinafter and has agreed to preserve and maintain these restrictions.

Notice of Land Use Restrictions for:
Site # 19709
300 12th Avenue South, Nashville, Tennessee

NOW, THEREFORE, in consideration of the foregoing, Grantor hereby declares that the Property should be held, sold, and conveyed subject to the following land use restrictions:

Restrictions Run With the Land

This Notice of Land Use Restrictions shall run with the land and bind the Property and shall be binding upon all owners and possessors of the Property, including but not limited to their tenants, authorized agents, employees, or persons acting under their direction or control, and inure to the benefit of TDEC, each successor owner, and their successors and assigns, unless and/or until this Declaration shall be made less stringent or canceled as set forth below under the paragraph entitled "Amendment and Termination."

Location of Contamination

The Property is located at 300 12th Avenue South in Nashville, Davidson County, Tennessee, at the former McNairy's West site. The Survey depicts the entire Site. A summary of the environmental conditions is included in the BVA.

Based on environmental investigations conducted by Grantor, arsenic and polynuclear aromatic hydrocarbons (PAHs) remain in various areas on the Property above regulatory limits.

Land Use Restrictions

Grantor agrees that the use of Property will be restricted as follows:

The Property will be restricted from use as single family residences, daycare facilities or churches with outdoor playgrounds ("Restricted Uses").

Prior to any part of the Property being used for these Restricted Uses, Grantor, its successors, and/or assigns must notify TDEC, and must demonstrate to the satisfaction of TDEC that any such proposed use will not pose a danger to public health, safety, or the environment. Any approval granted by TDEC for a Restricted Use shall be in writing and must contain a reference to this instrument.

Subsequent to completion of the W Nashville Hotel construction, prior to the expansion of the footprint of any existing building on the Property or the construction of any new building on the Property or disturbance/removal/excavation of soil underlying the buildings or the Property, Grantor, its successors, and/or assigns must notify TDEC and must demonstrate to the satisfaction of TDEC that any such proposed soil removal will not pose a danger to public health, safety, or the environment. Any approval granted by TDEC for a Restricted Use shall be in writing and must contain a reference to this instrument.

Notice of Land Use Restrictions for:
Site # 19709
300 12th Avenue South, Nashville, Tennessee

Any excavated soil shall be managed, transported, and/or disposed of in compliance with all applicable federal, state and local laws, regulations and ordinances including, without limitation, those pertaining to environmental protection and occupational safety and in such a manner as to not create an unacceptable risk or threat to site workers and neighbors.

Grantor, its successors, and/or assigns must notify TDEC and receive written approval prior to any demolition or modification of the concrete slab floor, including any vapor barrier, that would expose the underlying soils. Grantor, its successors, and/or assigns must demonstrate to the satisfaction of TDEC's Division of Remediation, through sampling and analysis or other methods approved by TDEC's Division of Remediation, that the exposed soils will not pose a danger to public health, safety, or the environment and must receive approval prior to removal of the concrete slab. Any approval granted by TDEC's Division of Remediation shall be in writing and must contain a reference to this instrument. The requirements of this paragraph also do not apply if it can be demonstrated to the satisfaction of TDEC's Division of Remediation that removal of structures present at the Site does not damage or otherwise materially compromise the integrity of the foundations and footers underlying the existing structures that are providing an effective cap.

The groundwater beneath the Property will not be used, accessed, or otherwise disturbed unless required by a Government agency of competent jurisdiction. This Land Use Restriction prohibits, without limitation, the installation of groundwater wells for intended use as a potable water source.

A vapor mitigation system shall be/has been installed at the Property. No one shall disturb, modify, damage or remove any vapor mitigation system installed at or within any structure at the Property unless first approved in writing by TDEC and pursuant to an approved work plan. Any future replacement of such structures shall be equipped with an equivalent vapor mitigation system or, if approved in writing by TDEC, another vapor mitigation system.

All impacted soils remaining on the Property shall be covered by an impervious surface (concrete, asphalt, or pavement) or by a minimum of 24 inches of clean soil, and these protections shall be maintained until such time as TDEC amends or terminates this restriction pursuant to the Amendment and Termination section herein.

Grantor, its successors, and/or assigns must utilize the approved Soil Management Plan, approved on 8/23/2018, that demonstrates to the satisfaction of TDEC that any such proposed soil removal, excavation or regrading will not pose a danger to public health, safety, or the environment. Any approval granted by TDEC for a Restricted Use shall be in writing and must contain a reference to this instrument.

Notice of Land Use Restrictions for:
Site # 19709
300 12th Avenue South, Nashville, Tennessee

Subsequent to construction of the W Nashville Hotel improvements, prior to beginning construction for any new building(s) designed for human occupancy at the Property, Grantor shall evaluate whether environmental conditions pose a threat of vapor intrusion into the new building(s), and shall share its findings with TDEC. If warranted based upon the data obtained, any new building(s) designed for continuous occupancy shall be equipped with one or more effective vapor mitigation features (e.g., membrane or other barrier). No one will disturb, modify, damage or remove any vapor mitigation barrier at any structure at the Property, unless first approved in writing by TDEC and pursuant to an approved work plan.

Enforcement

Any owner of the Property, or any unit of local government having jurisdiction over any part of the Property, may enforce this Notice by means of a civil action. The Commissioner of TDEC may enforce this Notice through the issuance of an Administrative Order or by means of a civil action, including one to obtain an injunction against present or threatened violations of the Restricted Uses. TDEC is granted reasonable right of access to the Property for the purpose of implementation or enforcement of this Notice. Pursuant to Tenn. Code Ann. § 68-212-213, any person who fails, neglects, or refuses to comply with a land use restriction commits a Class B misdemeanor and is subject to the assessment of a civil penalty of up to ten thousand dollars (\$10,000) per day.

Term

This Notice shall run with and bind the Property and shall be binding upon all holders and their grantees, lessees, authorized agents, employees, or persons acting under their direction or control unless/until this Notice is made less stringent or canceled as set forth under the paragraph (below) entitled "Amendment and Termination."

Amendment and Termination

Pursuant to the terms and conditions of this Notice, after public notice and an opportunity for public input, as provided in Tenn. Code Ann. § 68-212-225(e), this Notice may be made less stringent or canceled by the Commissioner of TDEC if the risk has been eliminated or reduced so that less restrictive land use controls are protective of human health and the environment. The Grantor, its successors, and/or assigns seeking approval to cancel or make this Notice less stringent shall be responsible for any costs incurred by the Department in the review and oversight of work associated with the restriction modification.

An amendment or termination of this land use restriction is subject to TDEC approval and must be approved in writing before any amendment or termination is made. No amendment to or termination of this Notice shall be effective until such amendment or instrument terminating this Notice is recorded in the Davidson County Register of Deeds.

Notice of Land Use Restrictions for:
Site # 19709
300 12th Avenue South, Nashville, Tennessee

Contact the Tennessee Department of Environment and Conservation, Division of Remediation, for further information concerning the Property and refer to site number 19709.

Severability

Invalidation of any of these covenants or restrictions by judgement or court order shall in no way affect any other provisions, which shall remain in full force and effect until amended or terminated as provided herein.

[TDEC approval and Grantor signature pages follow]

Notice of Land Use Restrictions for:
Site # 19709
300 12th Avenue South, Nashville, Tennessee

Real property described in a Deed of record as Instrument No. 20180914-0091534,
Davidson County Register of Deeds.

Approved by:

Tennessee Department of Environment and Conservation, Division of
Remediation

Name: James S Sanders
Title: Director

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Personally appeared before me, the undersigned, Notary Public having authority within the aforesaid State, **James S. Sanders**, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the Director of the Division of Remediation and is authorized to execute this instrument on behalf of the Department.

WITNESS my hand, at office, this _____ day of _____, 2020.

Notary Public

My Commission Expires: _____
Name: _____

Notice of Land Use Restrictions for:
Site # 19709
300 12th Avenue South, Nashville, Tennessee

IN WITNESS WHEREOF, the undersigned has executed this instrument this
_____ day of _____ 2020.

NASHVILLE GULCH HOTEL LLC,
Delaware limited liability company

By: _____

Name: _____

Title: _____

Personally appeared before me, the undersigned Notary Public having authority within the aforesaid State, _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be the _____ of Nashville Gulch Hotel LLC, the within named Grantor, a Delaware limited liability company, and that such person executed this instrument for the purposes herein contained, by signing the name of the Grantor by such person as _____.

WITNESS, this _____ day of _____, 2020.

Notary Public

Commission Expiration

Notice of Land Use Restrictions for:
Site # 19709
300 12th Avenue South, Nashville, Tennessee

EXHIBIT A
DESCRIPTION OF THE PROPERTY

BEING A TRACT OF LAND LYING IN THE 19TH DISTRICT OF DAVIDSON COUNTY, NASHVILLE, TENNESSEE, BEING LOTS 300, 301, 302, 333, 334, 335 AND 336 OF PLAN OF MCNAIRY'S WEST AS RECORDED IN MINUTE BOOK C, PAGE 136, AND PLAN BOOK 1, PAGE 15, NASHVILLE CHANCERY COURT, AND BEING A CLOSED PORTION OF ALLEY #233.

SAID TRACT BEING BOUNDED ON THE NORTH BY THE SOUTHERN RIGHT OF WAY (ROW) OF LAUREL STREET; BOUNDED ON THE EAST BY LOT 299 OF SAID PLAN OF MCNAIRY'S WEST, BEING LAUREL HOUSE 2001, LP AS RECORDED IN INSTRUMENT NUMBER 200112200140461, REGISTER'S OFFICE OF DAVIDSON COUNTY (RODC) AND BY LOT 1 OF NASHVILLE URBAN VENTURES, SECTION 1, AS RECORDED IN INSTRUMENT NUMBER 200905010039790, RODC, BEING NASHVILLE URBAN VENTURES, LLC AS RECORDED IN INSTRUMENT NUMBER 200309110133587, RODC; BOUNDED ON THE SOUTH BY THE NORTHERN ROW OF PINE STREET; AND BOUNDED ON THE WEST BY THE EASTERN ROW OF 12TH AVENUE SOUTH. TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

POINT OF BEGINNING BEING A SCRIBED "X" LYING ON THE SOUTHEAST ROW INTERSECTION OF SAID 12TH AVENUE SOUTH AND LAUREL STREET;

THENCE ALONG SAID SOUTHERN ROW OF LAUREL STREET NORTH 62°38'12" EAST 149.51 FEET TO A FOUND P.K. NAIL;

THENCE ALONG THE COMMON LINE OF SAID LOT 299 AND LOT 1 SOUTH 27°00'22" EAST 371.57 FEET TO A FOUND IRON ROD WITH CAP;

THENCE ALONG SAID NORTHERN ROW OF PINE STREET WITH THE FOLLOWING: ON A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 26.33 FEET, A RADIUS OF 394.00 FEET, A CENTRAL ANGLE OF 03°49'42" AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 64°35'16" WEST 26.32 FEET TO A FOUND IRON ROD WITH CAP;

THENCE SOUTH 62°40'25" WEST 97.33 FEET TO A FOUND IRON ROD WITH CAP;

THENCE WITH A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 23.67 FEET, A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 90°23'58" AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 72°07'36" WEST 21.29 FEET TO A FOUND IRON ROD WITH CAP;

THENCE ALONG SAID EASTERN ROW OF 12TH AVENUE SOUTH WITH THE FOLLOWING: NORTH 26°55'37" WEST 118.53 FEET TO A POINT;

THENCE SOUTH 62°38'14" WEST 11.25 FEET TO A SCRIBED "X";

THENCE NORTH 26°56'01" WEST 236.97 FEET TO THE POINT OF BEGINNING.

CONTAINING 53,957 SQUARE FEET, 1.24 ACRES.

BEING THE SAME PROPERTY CONVEYED TO NASHVILLE GULCH HOTEL LLC, A DELAWARE LIMITED LIABILITY COMPANY, BY DEED FROM TWELFTH AVENUE PARTNERS, LLC, A TENNESSEE LIMITED LIABILITY COMPANY, OF RECORD AS INSTRUMENT NO. 20180914-0091534, IN THE REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE.

EXHIBIT D
TO BROWNFIELD AGREEMENT
SOIL MANAGEMENT PLAN



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Remediation, Nashville Field Office
711 R.S. Gass Boulevard
Nashville, Tennessee 37243

August 23, 2018

Mr. Patrick Borzenski
Magellan Development Group, LLC
225 North Columbus Drive, Suite 100
Chicago, IL 60601

RE: Acceptance Letter for Soil Management Plan
Proposed W Hotel
Nashville, Davidson County, Tennessee
DoR #19-709

Dear Mr. Borzenski,

The Tennessee Department of Environment and Conservation, Division of Remediation (DoR) received the revised Soil Management Plan dated August 22, 2018 on August 22, 2018. DoR has reviewed the document and accepts the document without comment.

If you should have any questions, please contact me at (615) 687-7065.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Seifert", with a long horizontal line extending to the right.

Christopher L. Seifert, P.G.
TDEC- Division of Remediation
Nashville Environmental Field Office

cc: NCO/VOAP

Mr. Steve Sanders
Intertek-PSI
751 South 5th Street
Nashville, TN 37206



August 22, 2018

Professional Service Industries, Inc.
751 S. 5th Street Nashville, Tennessee 37206
Tel: +1 615 244 8990
Fax: +1 615 242 1618

Mr. Christopher Seifert
Tennessee Department of Environment & Conservation
Division of Remediation
711 R.S. Gass Blvd.
Nashville, Tennessee 37243

Re: Soil Management Plan
Proposed W Hotel
310 12th Avenue South
Nashville, Tennessee 37203

Dear Mr. Seifert:

In accordance with a request from the Tennessee Department of Environment and Conservation (TDEC) and on behalf of 12th Avenue Realty Holding Company LLC c/o Magellan Development Group LLC ("Client"), PSI has prepared the following Soil Management Plan (SMP) for the referenced property. The SMP was prepared in conjunction with redevelopment activities for the subject property situated at 310 12th Avenue South in Nashville, Tennessee. A Soil Characterization Assessment performed by PSI in September of 2016 provided soil sampling data that has been compared to June 2017 EPA Regional Screening Levels (RSLs). Analyzed soil data revealed the following:

Results of the laboratory analysis for the soil samples indicate concentrations of acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(g,h,i)perylene, benzo(k)fluoranthene, chrysene, dibenz(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, 1-methylnaphthalene, 2-methylnaphthalene, naphthalene, phenanthrene, pyrene, arsenic, barium, cadmium, chromium, lead, mercury and 1,2-dichloroethane above laboratory reporting limits.

Results of the laboratory analysis for the soil samples indicate concentrations of arsenic (5.02-15.3 mg/kg), benzo(a)anthracene (1.22-6.31 mg/kg), benzo(a)pyrene (0.175-5.29 mg/kg), benzo(b)fluoranthene (1.60-7.69 mg/kg), dibenz(a,h)anthracene (0.136-0.690 mg/kg) and indeno(1,2,3-cd)pyrene (1.28-3.42 mg/kg) that exceed the EPA residential RSLs.

Results of the laboratory analysis for the soil samples indicate concentrations of arsenic (5.02-15.3 mg/kg) and benzo(a)pyrene (0.175-5.29 mg/kg) that exceed the EPA industrial RSLs.

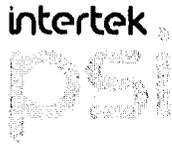
Soil samples were collected at depths ranging from 1 to 12 feet below ground surface (bgs). Contaminates that exceed the EPA RSLs were found from approximately 0 to 5 feet bgs. in B-5, B-6, B-7 and B-8. PSI anticipates that isolated portions of these soils will be impacted during construction activities. An environmental professional will be responsible for observing these materials during grading and utility installation.



Based on the presence of known contaminants in the soil, PSI understands that TDEC requires steps to be taken to limit potential human exposure to the soil during the construction process. Based on PSI's understanding of the proposed property use, a portion of the soil at the property is expected to remain at the property during future development. Therefore, PSI recommends the following actions during on-site construction activities:

- Construction workers who are reasonably expected to be exposed to contaminated soil during construction activities will be alerted to the potential constituents of concern associated with the soil prior to any work involving potential exposure. These workers will be informed of the risk associated with dermal contact, ingestion, or inhalation of the contaminated soil and will be instructed to limit physical contact with the contaminated soil. If an aspect of the work will require extensive contact with contaminated soil, a task-specific safety plan will be developed and implemented which will provide additional information on associated risks, personal protective equipment, and decontamination practices.
- Construction workers who are reasonably expected to be exposed to contaminated soil must be familiar with these soil management practices prior to implementing the work.
- Proper sediment and erosion controls must be established prior to construction activities in accordance with the project's Construction Storm Water Pollution Prevention Plan and the TDEC Sediment and Erosion Control Handbook.
- Dust control practices must be implemented to prevent the air-borne mobilization of contaminated soil from the site. This will generally consist of keeping exposed soil moist.
- Concrete pads, foundations, gravel substrate, and asphalt from previous structures will be removed from the site as non-regulated debris.
- All excavated soils not loaded directly into trucks for transportation to a regulated facility shall be stockpiled on poly sheeting for analysis prior to off-site disposal. Soils will be covered with poly prior to transportation. Soils with contaminant levels above the EPA residential RSLs (identified in the upper 3-5 feet on south side of property) will be transported and disposed as a "Special Waste" under a State of Tennessee Permit. PSI will observe all excavated materials.
- The remaining soils from deeper than 5 feet bgs on the southern half of the property and all soils on the north half of the site that did not reveal target analyte concentrations above the EPA residential RSLs will be transported to an appropriate C&D facility.
- Areas of the building intended for occupancy atop impacted soils shall be underlain by one or more passive mitigation systems (membrane or other barrier) or demonstrate to TDEC that such a system is not warranted. The mitigation system to be used and soil gas data will be submitted to TDEC under separate cover and will comply with the 20-mil minimum thickness requirement.
- In the event that groundwater is encountered, it will be managed in accordance with local, State, and Federal regulations
- The site developer shall retain an environmental professional to observe and document all site grading and trenching activities.

Based on the nature of downtown fill and previously conducted investigations in the area, high concentrations of VOCs are not anticipated; however, in the event that site workers or



excavation crews encounter areas of unexpected odors or visual staining or other evidence of contamination, TDEC will be notified and the following procedures should be followed:

- In-situ and/or excavated soils from the area of concern will be screened visually and with a PID by the environmental professional for detection of volatile organic vapors present in the soil. Soil screening will be conducted on grab samples that exhibit visual or olfactory evidence of impact. Should elevated PID readings be encountered during excavation work, the work in that local area would be temporarily stopped, TDEC notified, soil samples taken, in accordance with TDEC and EPA protocols, and evaluated for VOCs on an expedited basis to determine concentration levels. Based on the results of the lab testing and discussions with TDEC a determination will be made if any special precautions should be taken while working in these areas. In addition, the results will be used to determine if the landfill should be notified of additional waste profiles. The soil screening and sampling, if necessary, will consist of the following:
 1. Soil Samples will be placed in a Ziploc bag to stabilize for approximately 15 minutes.
 2. A PID probe will be inserted into the bag to collect volatile organic vapor readings.
 3. Soil samples that indicate organic vapor concentrations above 100 parts per million (ppm) will be placed into laboratory supplied jars and packed with zero headspace, then immediately placed on ice for transport to ESC laboratory in Mt. Juliet, Tennessee for analysis of VOCs, PAHs and RCRA metals by EPA Methods 8260, 8270SIM and 6010.
 4. Management of the identified area will be consistent with the previously prescribed methods.
- In the unlikely event that groundwater is encountered, a groundwater sample will be collected and submitted to the laboratory for analysis of VOCs, PAHs, and RCRA metals (dissolved).

At the completion of construction activities, the following actions should occur:

- Soils shall be capped by concrete or asphalt everywhere except decorative landscape areas.
- Decorative landscape areas shall be capped with two feet of clean soil to limit contact during installation and maintenance activities. A witness barrier will be installed at the interface between contaminated soils and fill material.
- A completion report including as-built drawings, analytical reports, and waste manifests will be submitted to TDEC.

The above soil management plan is being provided to TDEC in conjunction with a proposed Brownfield Agreement to ensure compliance with the applicable State, Local or Federal regulations during site redevelopment.



PSI appreciates you allowing us to assist with this process. If you have any questions, please contact PSI at 615-244-8990.

Sincerely,

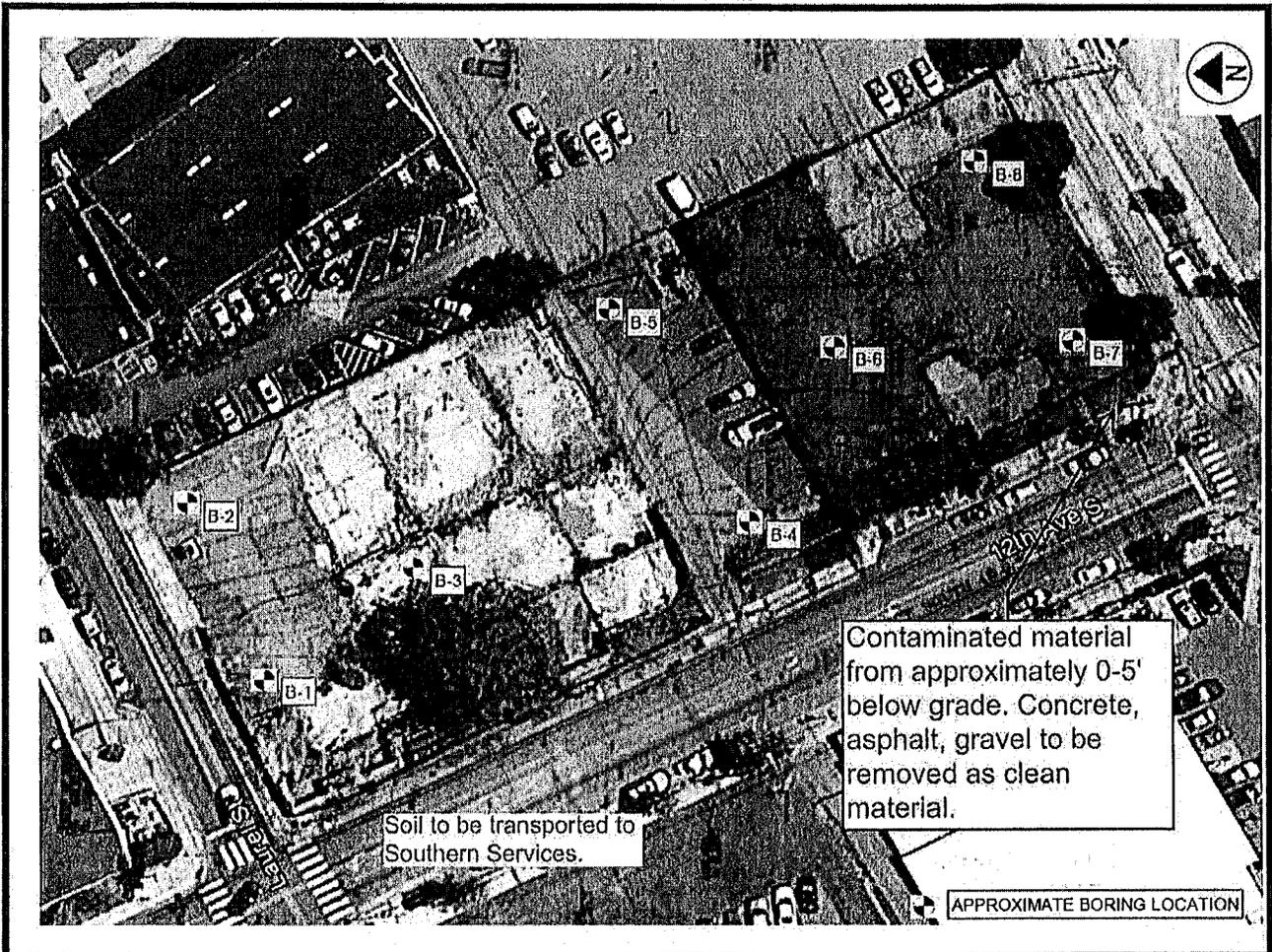
PROFESSIONAL SERVICE INDUSTRIES, INC.

A handwritten signature in black ink, appearing to read "Steve Sanders". The signature is fluid and cursive.

Steve Sanders, P.G.
Department Manager

Attachments:

Excavation Plan



SITE BORING LOCATIONS
Proposed Development
12th Avenue South & Laurel Street
Nashville, Tennessee 37203

psi *Information*
To Build On
Engineering • Consulting • Testing

PREPARED FOR: Magellan Project Services

PROJECT MANAGER: Steve Sanders
DRAWN BY: Tom Buchanan

DATE: 7/9/2018
PROJECT NO:03601369

This instrument prepared by:
Nelson Mullins Riley & Scarborough LLP
Attn: Laurence M. Papel
150 Fourth Avenue, North, Suite 1100
Nashville, Tennessee 37219

NOTICE OF LAND USE RESTRICTIONS

Notice is hereby given that pursuant to Tenn. Code Ann. § 68-212-225 of the *Hazardous Waste Management Act of 1983*, the Commissioner of the Tennessee Department of Environment and Conservation ("TDEC") has determined that land use restrictions are an appropriate remedial action at the below-described property. Pursuant to Tenn. Code Ann. § 68-212-225(d) the Register of Deeds shall record this Notice of Land Use Restrictions ("Notice") and index it in the grantor index under the name of the below-referenced Grantor.

Witnesseth:

WHEREAS, Nashville Gulch Hotel LLC, a Delaware limited liability company ("Grantor") is the real property owner of 300 12th Avenue South, located in Nashville, Davidson County, Tennessee, the same being more particularly described in Instrument No. 20180914-0091534, in the Register of Deed's Office of Davidson County, identified as Parcel No. 09313009000, herein after referred to as "Site" or the "Property," and which is more particularly described in Exhibit A hereto; and,

WHEREAS, the Property is shown on a survey ("Survey") drawn by L. Brandon Lambert (Tennessee LS# 1666), dated 7/18/18, attached hereto as Exhibit B and incorporated herein by reference; and

WHEREAS, Grantor, also sometimes referred to herein as the "Voluntary Party," entered into a Brownfield Voluntary Agreement ("BVA") with TDEC pursuant to Tennessee Code Annotated §68-212-224 for the purpose of addressing the real or perceived threat of the presence on the Site of hazardous substances, solid waste or other pollutants; and

WHEREAS, the Property has been remediated, to the extent practicable, to levels protective of human health and the environment, as determined by the United States Environmental Protection Agency (EPA) Regional Screening Levels, so long as certain land use restrictions are instituted and observed for the Property; and

WHEREAS, Grantor has agreed to impose certain land use restrictions on the Property as set forth hereinafter and has agreed to preserve and maintain these restrictions.

Notice of Land Use Restrictions for:
Site # 19709
300 12th Avenue South, Nashville, Tennessee

NOW, THEREFORE, in consideration of the foregoing, Grantor hereby declares that the Property should be held, sold, and conveyed subject to the following land use restrictions:

Restrictions Run With the Land

This Notice of Land Use Restrictions shall run with the land and bind the Property and shall be binding upon all owners and possessors of the Property, including but not limited to their tenants, authorized agents, employees, or persons acting under their direction or control, and inure to the benefit of TDEC, each successor owner, and their successors and assigns, unless and/or until this Declaration shall be made less stringent or canceled as set forth below under the paragraph entitled "Amendment and Termination."

Location of Contamination

The Property is located at 300 12th Avenue South in Nashville, Davidson County, Tennessee, at the former McNairy's West site. The Survey depicts the entire Site. A summary of the environmental conditions is included in the BVA.

Based on environmental investigations conducted by Grantor, arsenic and polynuclear aromatic hydrocarbons (PAHs) remain in various areas on the Property above regulatory limits.

Land Use Restrictions

Grantor agrees that the use of Property will be restricted as follows:

The Property will be restricted from use as single family residences, daycare facilities or churches with outdoor playgrounds ("Restricted Uses").

Prior to any part of the Property being used for these Restricted Uses, Grantor, its successors, and/or assigns must notify TDEC, and must demonstrate to the satisfaction of TDEC that any such proposed use will not pose a danger to public health, safety, or the environment. Any approval granted by TDEC for a Restricted Use shall be in writing and must contain a reference to this instrument.

Subsequent to completion of the W Nashville Hotel construction, prior to the expansion of the footprint of any existing building on the Property or the construction of any new building on the Property or disturbance/removal/excavation of soil underlying the buildings or the Property, Grantor, its successors, and/or assigns must notify TDEC and must demonstrate to the satisfaction of TDEC that any such proposed soil removal will not pose a danger to public health, safety, or the environment. Any approval granted by TDEC for a Restricted Use shall be in writing and must contain a reference to this instrument.

Notice of Land Use Restrictions for:
Site # 19709
300 12th Avenue South, Nashville, Tennessee

Any excavated soil shall be managed, transported, and/or disposed of in compliance with all applicable federal, state and local laws, regulations and ordinances including, without limitation, those pertaining to environmental protection and occupational safety and in such a manner as to not create an unacceptable risk or threat to site workers and neighbors.

Grantor, its successors, and/or assigns must notify TDEC and receive written approval prior to any demolition or modification of the concrete slab floor, including any vapor barrier, that would expose the underlying soils. Grantor, its successors, and/or assigns must demonstrate to the satisfaction of TDEC's Division of Remediation, through sampling and analysis or other methods approved by TDEC's Division of Remediation, that the exposed soils will not pose a danger to public health, safety, or the environment and must receive approval prior to removal of the concrete slab. Any approval granted by TDEC's Division of Remediation shall be in writing and must contain a reference to this instrument. The requirements of this paragraph also do not apply if it can be demonstrated to the satisfaction of TDEC's Division of Remediation that removal of structures present at the Site does not damage or otherwise materially compromise the integrity of the foundations and footers underlying the existing structures that are providing an effective cap.

The groundwater beneath the Property will not be used, accessed, or otherwise disturbed unless required by a Government agency of competent jurisdiction. This Land Use Restriction prohibits, without limitation, the installation of groundwater wells for intended use as a potable water source.

A vapor mitigation system shall be/has been installed at the Property. No one shall disturb, modify, damage or remove any vapor mitigation system installed at or within any structure at the Property unless first approved in writing by TDEC and pursuant to an approved work plan. Any future replacement of such structures shall be equipped with an equivalent vapor mitigation system or, if approved in writing by TDEC, another vapor mitigation system.

All impacted soils remaining on the Property shall be covered by an impervious surface (concrete, asphalt, or pavement) or by a minimum of 24 inches of clean soil, and these protections shall be maintained until such time as TDEC amends or terminates this restriction pursuant to the Amendment and Termination section herein.

Grantor, its successors, and/or assigns must utilize the approved Soil Management Plan, approved on 8/23/2018, that demonstrates to the satisfaction of TDEC that any such proposed soil removal, excavation or regrading will not pose a danger to public health, safety, or the environment. Any approval granted by TDEC for a Restricted Use shall be in writing and must contain a reference to this instrument.

Notice of Land Use Restrictions for:
Site # 19709
300 12th Avenue South, Nashville, Tennessee

Subsequent to construction of the W Nashville Hotel improvements, prior to beginning construction for any new building(s) designed for human occupancy at the Property, Grantor shall evaluate whether environmental conditions pose a threat of vapor intrusion into the new building(s), and shall share its findings with TDEC. If warranted based upon the data obtained, any new building(s) designed for continuous occupancy shall be equipped with one or more effective vapor mitigation features (e.g., membrane or other barrier). No one will disturb, modify, damage or remove any vapor mitigation barrier at any structure at the Property, unless first approved in writing by TDEC and pursuant to an approved work plan.

Enforcement

Any owner of the Property, or any unit of local government having jurisdiction over any part of the Property, may enforce this Notice by means of a civil action. The Commissioner of TDEC may enforce this Notice through the issuance of an Administrative Order or by means of a civil action, including one to obtain an injunction against present or threatened violations of the Restricted Uses. TDEC is granted reasonable right of access to the Property for the purpose of implementation or enforcement of this Notice. Pursuant to Tenn. Code Ann. § 68-212-213, any person who fails, neglects, or refuses to comply with a land use restriction commits a Class B misdemeanor and is subject to the assessment of a civil penalty of up to ten thousand dollars (\$10,000) per day.

Term

This Notice shall run with and bind the Property and shall be binding upon all holders and their grantees, lessees, authorized agents, employees, or persons acting under their direction or control unless/until this Notice is made less stringent or canceled as set forth under the paragraph (below) entitled "Amendment and Termination."

Amendment and Termination

Pursuant to the terms and conditions of this Notice, after public notice and an opportunity for public input, as provided in Tenn. Code Ann. § 68-212-225(e), this Notice may be made less stringent or canceled by the Commissioner of TDEC if the risk has been eliminated or reduced so that less restrictive land use controls are protective of human health and the environment. The Grantor, its successors, and/or assigns seeking approval to cancel or make this Notice less stringent shall be responsible for any costs incurred by the Department in the review and oversight of work associated with the restriction modification.

An amendment or termination of this land use restriction is subject to TDEC approval and must be approved in writing before any amendment or termination is made. No amendment to or termination of this Notice shall be effective until such amendment or instrument terminating this Notice is recorded in the Davidson County Register of Deeds.

Notice of Land Use Restrictions for:
Site # 19709
300 12th Avenue South, Nashville, Tennessee

Contact the Tennessee Department of Environment and Conservation, Division of Remediation, for further information concerning the Property and refer to site number 19709.

Severability

Invalidation of any of these covenants or restrictions by judgement or court order shall in no way affect any other provisions, which shall remain in full force and effect until amended or terminated as provided herein.

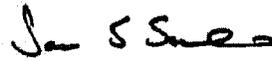
[TDEC approval and Grantor signature pages follow]

Notice of Land Use Restrictions for:
Site # 19709
300 12th Avenue South, Nashville, Tennessee

Real property described in a Deed of record as Instrument No. 20180914-0091534,
Davidson County Register of Deeds.

Approved by:

Tennessee Department of Environment and Conservation, Division of
Remediation

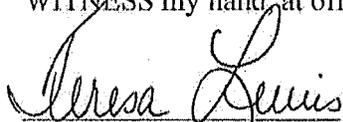


Name: James S Sanders
Title: Director

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

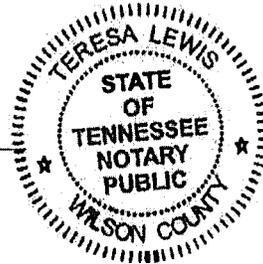
Personally appeared before me, the undersigned, Notary Public having
authority within the aforesaid State, **James S. Sanders**, with whom I am personally
acquainted, and who acknowledged that he executed the within instrument for the
purposes therein contained, and who further acknowledged that he is the Director
of the Division of Remediation and is authorized to execute this instrument on
behalf of the Department.

WITNESS my hand, at office, this 30th day of March, 2020.



Notary Public

My Commission Expires: 10/7/2023
Name: Teresa Lewis



Notice of Land Use Restrictions for:
Site # 19709
300 12th Avenue South, Nashville, Tennessee

19th IN WITNESS WHEREOF, the undersigned has executed this instrument this
day of March, 2021.

NASHVILLE GULCH HOTEL LLC,
Delaware limited liability company

By: [Signature]

Name: LAURENCE M. FAPEL

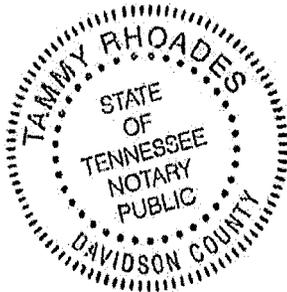
Title: Vice President

Personally appeared before me, the undersigned Notary Public having authority within the aforesaid State, Laurence M Faapel, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be the Vice President of Nashville Gulch Hotel LLC, the within named Grantor, a Delaware limited liability company, and that such person executed this instrument for the purposes herein contained, by signing the name of the Grantor by such person as Vice President.

WITNESS, this 19th day of March, 2021.

[Signature]
Notary Public

July 3, 2023
Commission Expiration



Notice of Land Use Restrictions for:
Site # 19709
300 12th Avenue South, Nashville, Tennessee

EXHIBIT A
DESCRIPTION OF THE PROPERTY

BEING A TRACT OF LAND LYING IN THE 19TH DISTRICT OF DAVIDSON COUNTY, NASHVILLE, TENNESSEE, BEING LOTS 300, 301, 302, 333, 334, 335 AND 336 OF PLAN OF MCNAIRY'S WEST AS RECORDED IN MINUTE BOOK C, PAGE 136, AND PLAN BOOK 1, PAGE 15, NASHVILLE CHANCERY COURT, AND BEING A CLOSED PORTION OF ALLEY #233.

SAID TRACT BEING BOUNDED ON THE NORTH BY THE SOUTHERN RIGHT OF WAY (ROW) OF LAUREL STREET; BOUNDED ON THE EAST BY LOT 299 OF SAID PLAN OF MCNAIRY'S WEST, BEING LAUREL HOUSE 2001, LP AS RECORDED IN INSTRUMENT NUMBER 200112200140461, REGISTER'S OFFICE OF DAVIDSON COUNTY (RODC) AND BY LOT 1 OF NASHVILLE URBAN VENTURES, SECTION 1, AS RECORDED IN INSTRUMENT NUMBER 200905010039790, RODC, BEING NASHVILLE URBAN VENTURES, LLC AS RECORDED IN INSTRUMENT NUMBER 200309110133587, RODC; BOUNDED ON THE SOUTH BY THE NORTHERN ROW OF PINE STREET; AND BOUNDED ON THE WEST BY THE EASTERN ROW OF 12TH AVENUE SOUTH. TRACT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

POINT OF BEGINNING BEING A SCRIBED "X" LYING ON THE SOUTHEAST ROW INTERSECTION OF SAID 12TH AVENUE SOUTH AND LAUREL STREET;

THENCE ALONG SAID SOUTHERN ROW OF LAUREL STREET NORTH 62°38'12" EAST 149.51 FEET TO A FOUND P.K. NAIL;

THENCE ALONG THE COMMON LINE OF SAID LOT 299 AND LOT 1 SOUTH 27°00'22" EAST 371.57 FEET TO A FOUND IRON ROD WITH CAP;

THENCE ALONG SAID NORTHERN ROW OF PINE STREET WITH THE FOLLOWING: ON A CURVE TO THE LEFT HAVING AN ARC LENGTH OF 26.33 FEET, A RADIUS OF 394.00 FEET, A CENTRAL ANGLE OF 03°49'42" AND HAVING A CHORD BEARING AND DISTANCE OF SOUTH 64°35'16" WEST 26.32 FEET TO A FOUND IRON ROD WITH CAP;

THENCE SOUTH 62°40'25" WEST 97.33 FEET TO A FOUND IRON ROD WITH CAP;

THENCE WITH A CURVE TO THE RIGHT HAVING AN ARC LENGTH OF 23.67 FEET, A RADIUS OF 15.00 FEET, A CENTRAL ANGLE OF 90°23'58" AND HAVING A CHORD BEARING AND DISTANCE OF NORTH 72°07'36" WEST 21.29 FEET TO A FOUND IRON ROD WITH CAP;

THENCE ALONG SAID EASTERN ROW OF 12TH AVENUE SOUTH WITH THE FOLLOWING: NORTH 26°55'37" WEST 118.53 FEET TO A POINT;

THENCE SOUTH 62°38'14" WEST 11.25 FEET TO A SCRIBED "X";

THENCE NORTH 26°56'01" WEST 236.97 FEET TO THE POINT OF BEGINNING.

CONTAINING 53,957 SQUARE FEET, 1.24 ACRES.

BEING THE SAME PROPERTY CONVEYED TO NASHVILLE GULCH HOTEL LLC, A DELAWARE LIMITED LIABILITY COMPANY, BY DEED FROM TWELFTH AVENUE PARTNERS, LLC, A TENNESSEE LIMITED LIABILITY COMPANY, OF RECORD AS INSTRUMENT NO. 20180914-0091534, IN THE REGISTER'S OFFICE FOR DAVIDSON COUNTY, TENNESSEE.