

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 386-13

AN ORDINANCE

authorizing Amendment to Memorandum and Agreement of Leases and Parking Rights with Broadway Lodging, LLC to increase the number of leased parking spaces in the Short Street parking garage; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute the Amendment to Memorandum and Agreement of Leases and Parking Rights with Broadway Lodging, LLC to increase the number of leased parking spaces in the Short Street parking garage. The form and content of the Memorandum and Amendment to Agreement shall be substantially as set forth in "Attachment A" attached hereto.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2014.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

**AMENDMENT TO MEMORANDUM AND
AGREEMENT OF LEASES AND PARKING RIGHTS**

This Amendment to Memorandum and Agreement of Leases and Parking Rights (this "Amendment") is made and entered into as of this ____ day of _____, 2013, by and between **the City of Columbia, Missouri**, a municipal corporation, with an address of 701 East Broadway, P.O. Box 6015, Columbia, Missouri 65205 (the "City" or "Landlord" or "Grantor"), and **Broadway Lodging LLC**, a Missouri limited liability company, with an address of 5 McBride and Son Center, Chesterfield, Missouri 63005 ("Tenant" or "Grantee") (Landlord and Tenant collectively hereinafter may be referred to as the "Parties").

This Amendment has been entered into and is made in view of the following facts:

WHEREAS, the Parties entered into that certain Contract for the Purchase and Sale of Real Property dated the 8th day of June, 2011, (the "Contract") between Landlord, as the Buyer, and Tenant, as the Seller.

WHEREAS, the Parties further entered into that certain Memorandum and Agreement of Leases and Parking Rights (the "Memorandum") dated the 6th day of April, 2012 and recorded in the Boone County, Missouri Records at Book 3942, Page 109 on the 6th day of April, 2012.

WHEREAS, the Memorandum served to amend and memorialize parking rights and other related rights and obligations of the Parties.

WHEREAS, legal descriptions of the property to which the Memorandum, the Contract, and this Amendment apply are shown on Attachment 1 attached hereto and incorporated herein by this reference.

WHEREAS, this Amendment is intended to amend and memorialize the agreement constituted by this Amendment, the Memorandum, and the Contract.

WHEREAS, the layout of the Garage, which is being constructed by the City as of the date of this Amendment, has changed such that the Parties desire to increase the number of Garage Spaces leased by Tenant, redefine the location of the Hotel Spaces, and refine the boundaries of the Storage Space.

WHEREAS, the Parties desire to replace Exhibit D to the Memorandum with a new Exhibit D as set forth in Attachment 2 to this Amendment for the purposes of depicting the redefined location of the Hotel Spaces and the boundaries of the Storage Space.

NOW, THEREFORE, in view of the foregoing facts, which the Parties believe are true and which are incorporated herein by reference, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Amendment of Section 1 of the Memorandum.** Section 1 of the Memorandum shall be amended to read as follows:

1. Parking Spaces.

a. The number of Space Leases that Landlord agrees to lease to Tenant shall be one hundred forty-nine (149) parking spaces. One hundred thirty-nine (139) of such spaces shall be within the Garage. Thirty-six (36) of those one hundred thirty-nine (139) spaces shall be the Hotel Spaces (which shall be marked in accordance with the Contract for the exclusive use by the Hotel Project) and the remaining one hundred three (103) of such spaces shall be Nondesignated Spaces, subject to permitted adjustments in the Contract and as described below. The Hotel Spaces and the Nondesignated Spaces collectively hereinafter referred to as the Garage Spaces. The remaining ten (10) parking spaces outside of the Garage shall be parallel oriented parking spaces, five (5) of which shall be along Short Street (where the 11 Spaces were required under the Contract) and five (5) of which shall be along Broadway. These ten (10) spaces are hereinafter referred to as the "Adjacent Spaces".

b. Intentionally Omitted.

c. There shall be one hundred three (103) Nondesignated Spaces (as opposed to seventy-two (72) identified in the Contract), which shall be located throughout the remainder of the Garage (the portion of the Garage which is not the Hotel Spaces area). The terms and provisions in the Contract, which are related to the Nondesignated Spaces, including, without limitation, the terms and provisions allowing the Tenant to alter the number of Nondesignated Spaces shall remain applicable to the Nondesignated Spaces.

d. Eleven (11) on-street parking spaces were required to be leased from Landlord to the Tenant under the Contract as the 11 Spaces located along the east side of Short Street. However, Landlord's approved design for the construction of Short Street does not provide for the 11 Spaces as planned (rather, the parking spaces in that area must be parallel oriented, instead of perpendicular, which only leaves room for five (5) parking spaces). The Parties agree, however, that Landlord shall lease ten (10) parking spaces (in addition to the Garage Spaces for a total of 149) to Tenant pursuant to the terms of this Memorandum and that such ten (10) parking spaces (referred to as the "Adjacent Spaces" herein) shall be treated in all respects as the 11 Spaces as provided in the Contract as modified by this Memorandum, to-wit:

i. Five (5) of the Adjacent Spaces shall be parking spaces parallel to Short Street and along the east side of Short Street where the 11 Spaces were intended by the Contract and within the real estate described on Exhibit F attached hereto.

ii. Five (5) of the Adjacent Spaces shall be located parallel to East Broadway and along the north side of East Broadway and adjacent to the Hotel Tract on the real estate described on Exhibit F attached hereto.

iii. The five (5) parking spaces along and parallel to Short Street and the five (5) spaces along and parallel to East Broadway leased to Tenant under paragraphs 1(d)(1) and 1(d)(2) above (such 10 spaces collectively herein referred to as the "Adjacent Spaces") shall replace the intended on-street parking spaces required to be leased to Tenant as the 11 Spaces in the Contract. The rights and obligations of the Tenant and Landlord regarding the Adjacent Spaces shall exist as the rights and obligations regarding the 11 Spaces were described in the Contract (i.e., the spaces shall be designated and reserved, via signage and other reasonably required methods, for the sole and exclusive use by the Hotel Project and shall be paid for by the Hotel Project at the 11 Spaces prices).

iv. Intentionally Omitted

e. Intentionally Omitted.

f. When the Hotel Project is completed, there shall be two (2) additional parking spaces created along East Broadway, which are two (2) of the (5) parking spaces along Broadway as described in paragraph 1(d) above and which are leased to Tenant hereunder. The creation of those two (2) parking spaces, the six (6) additional spaces which shall be available in the Garage due to Tenant's agreement with respect to cordoning off of the Hotel Spaces as described in paragraph 2 below, an additional eight (8) Hotel Spaces agreed upon by the Parties, and an additional thirty (30) Nondesignated Spaces agreed upon by the Parties, Landlord shall have a total of one hundred forty-nine (149) parking spaces made up of the Garage Spaces and the Adjacent Spaces.

g. In consideration of the foregoing and consistent with the terms of the Contract, payments by Tenant for the Garage Spaces and the Adjacent Spaces shall begin upon such spaces being made available for use as parking for the Hotel Project following the initial opening of the Hotel Project. Nothing contained herein shall prevent Landlord from occupying or leasing the Parking Spaces within the Garage to the public until initial opening of the Hotel Project or until Tenant begins making payment to Landlord for the use of such Parking Spaces, whichever occurs first. Provided however, (i) in the event the Hotel Project is not open by April 1, 2014, Tenant shall begin making payments to Landlord for the 36 Hotel Spaces and at such time the 36 Hotel Spaces shall be dedicated to the exclusive use of Tenant pursuant to the terms of the Contract as amended by the Memorandum and this Amendment; and, (ii) in the event the Hotel Project is not open by June 1, 2014, Tenant shall begin making payment to Landlord for the remaining 103

Nondesignated Spaces within the Garage and the 10 Adjacent Spaces. Except as provided in (i) and (ii) above in this subparagraph 1 g., nothing herein or in the Contract or any ordinance, regulation, rule, resolution, policy, or practice of the Landlord to the contrary, prior to such time as such spaces are made available for use as parking for hotel patrons of the Hotel Project following the initial opening of the Hotel Project, there shall be no payments of any kind, which shall be due or payable or accruing from the Tenant to the Landlord with respect to the use of any of the parking spaces contemplated hereunder (including the Garage Spaces and Adjacent Spaces and including no payments being due for the closure of the parking spaces along Broadway which constitute a part of the Adjacent Spaces).

2. **Amendment of Exhibit D of the Memorandum.** Exhibit D attached to the Memorandum is hereby amended by replacing such Exhibit D with the new Exhibit D dated ___
[date to be inserted at time of execution] and attached hereto in Attachment 2. The Parties agree that all of the Hotel Spaces shall be located on the ground level of the Garage as shown on Exhibit D. The highlighted and labeled areas, shown on Exhibit D, depict the new locations of the Hotel Spaces and the new boundaries of the Storage Space. The Parties hereby agree that all of the provisions in the Memorandum identifying the number of Spaces leased by the Tenant, as well as the provisions identifying the locations of the Hotel Spaces and the boundaries of the Storage Space, are hereby modified by and replaced pursuant to the provisions of this Amendment.

3. **Contract and Memorandum Amendment.** This Amendment is made upon all of the terms, covenants and conditions set forth in the Contract and Memorandum, as modified herein, all of such terms and conditions of the Contract and Memorandum being made a part hereof as though fully set forth herein. Except as expressly modified by this Amendment, all other terms and provisions of the Contract and Memorandum shall remain in full force and effect and the Landlord and Tenant hereby ratify and reaffirm those terms and provisions. In the event of any conflict between the terms and provisions of this Amendment and the terms and provisions of the Contract or the Memorandum, the terms and provisions of this Amendment shall control. Capitalized terms used herein shall be given the same meaning as set forth in the Contract and Memorandum unless a contrary meaning of definition is specifically set forth herein.

4. **Further Actions.** The Parties agree to execute such further documents and take such further actions as may reasonably be required to carry out the provisions and intent of this Amendment and the Memorandum and Contract, as amended, or any agreement or document related hereto or entered into in connection herewith.

5. **Binding Effect:** This Amendment and the terms and conditions hereof shall apply to, inure to the benefit of, and be binding on successors and assigns of the Parties. This Amendment, the Contract, and the Memorandum and the terms and conditions thereof and all amendments and supplements thereto, shall run with the land referenced herein and any adjacent land upon which Grantee or its assigns may conduct operations and shall apply to, inure to the benefit of, be enforceable by, and be binding upon the Grantor and Grantee, their heirs,

successors and assigns and all parties claiming under them or under this Amendment, the Contract, or the Memorandum.

6. **Construction:** This Amendment shall be governed and construed in accordance with the laws of the State of Missouri.

7. **Counterparts:** This Amendment may be executed in one or more counterparts, each of which will be deemed an original but all of which together shall constitute one and the same agreement. A faxed copy, electronic copy, or photocopy of this Amendment executed by a party in counterpart will constitute a properly executed, delivered, and binding agreement and counterpart of the executing party.

8. **Relationship:** Nothing in this Amendment shall be deemed or construed as creating a partnership, joint venture, principal-agent or employer-employee relationship between the Parties.

[Remainder of this page left blank intentionally – Signature page(s) to follow]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date and year first above written.

City of Columbia, City/Landlord/Grantor

By: _____
Mike Matthes, City Manager

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor

Broadway Lodging LLC, Tenant/Grantee

By: _____
David Parmley, Authorized Agent

State of Missouri)
) ss.
County of Boone)

On this ____ day of _____, 2013, before me personally appeared _____, who, upon his/her oath and upon being duly sworn, did state, affirm, and acknowledge that he/she is the _____ of the City of Columbia, Missouri, and that he/she has executed this document on behalf of the City of Columbia, Missouri as the free act and deed of the City of Columbia, Missouri, and pursuant to the authority vested in him/her to execute this document by the City of Columbia, Missouri, that the foregoing document is binding in all respects upon the City of Columbia, Missouri, and that he/she is duly empowered by the City of Columbia, Missouri to execute this document on its behalf.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal at my office in Columbia, Missouri, the day and year first above written.

_____, Notary Public
Commissioned in _____ County, MO

My commission expires _____.

State of Missouri)
) ss.
County of Boone)

On this ____ day of _____, 2013, before me personally appeared David Parmley, who upon his oath and upon being duly sworn, did state, affirm, and acknowledge that he is an authorized agent of Broadway Lodging LLC, a Missouri limited liability company, that he executed the foregoing on behalf of said limited liability company, as the free act and deed of said limited liability company, and pursuant to the authority vested in him to execute the foregoing by the members of said limited liability company, that the foregoing is binding in all respects upon said limited liability company, and that said limited liability company is duly empowered to enter into the foregoing.

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed my seal the day and year first above written.

_____, Notary Public
Commissioned in _____ County, MO

My commission expires _____.

ATTACHMENT 1

Legal Descriptions

LOT ONE-A (1-A) OF HICKMAN'S ADDITION, PLAT NO. 1-A, A SUBDIVISION LOCATED IN THE CITY OF COLUMBIA, MISSOURI, AS SHOWN BY THE PLAT RECORDED IN PLAT BOOK 45, PAGE 31, RECORDS OF BOONE COUNTY, MISSOURI.

and

A PART OF LOT 1 OF HICKMAN'S ADDITION AS SHOWN BY THIS PLAT RECORDED IN BOOK 37, PAGE 521, RECORDS OF BOONE COUNTY, MISSOURI, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1, THENCE WEST ALONG THE NORTH LINE THEREOF, 63 FEET TO THE EAST LINE OF CENTRAL STREET; THENCE SOUTH ALONG THE EAST LINE OF CENTRAL STREET, 150 FEET TO THE NORTH LINE OF AN ALLEY; THENCE EAST ALONG THE NORTH LINE OF SAID ALLEY 63 FEET; THENCE NORTH ALONG THE EAST LINE OF SAID LOT 1, 150 FEET TO THE POINT OF BEGINNING.

ALSO LOT THREE (3) OF HICKMAN'S ADDITION TO THE TOWN, NOW CITY OF COLUMBIA, MISSOURI AS SHOWN BY THE PLAT RECORDED IN BOOK 37, PAGE 521, RECORDS OF BOONE COUNTY, MISSOURI.

ALSO A PART OF LOT 1 OF HICKMAN'S ADDITION TO THE TOWN, NOW CITY OF COLUMBIA, MISSOURI AS SHOWN BY THE PLAT RECORDED IN BOOK 37, PAGE 521, RECORDS OF BOONE COUNTY, MISSOURI, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WEST LINE OF CENTRAL STREET (OR SHORT STREET) WITH THE SOUTH LINE OF THE EASTERN EXTENSION OF WALNUT STREET; THENCE WEST ALONG THE SOUTH LINE OF WALNUT STREET 73 FEET 6 INCHES; THENCE SOUTH 150 FEET TO THE NORTH LINE OF AN ALLEY; THENCE EAST WITH THE NORTH LINE OF SAID ALLY 73 FEET 6 INCHES TO THE WEST LINE OF CENTRAL STREET (OR SHORT STREET); THENCE NORTH 150 FEET TO THE POINT OF BEGINNING.

and

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 48 NORTH, RANGE 12 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF THE RIGHT-OF-WAY OF SHORT AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF LOT 1-A OF HICKMANS ADDITION, PLAT NO. 1-A RECORDED IN PLAT BOOK 45, PAGE 31 AND WITH THE

EAST LINE THEREOF, S 0°56'10"E, 21.69 FEET; THENCE LEAVING SAID EAST LINE, S 89°04'30"E, 22.52 FEET TO THE POINT OF BEGINNING;

THENCE FROM THE POINT OF BEGINNING AND CONTINUING S 89°04'30"E, 8.50 FEET; THENCE S 0°55'30"E, 119.00 FEET; THENCE N 89°04'30"W, 8.50 FEET; THENCE N 0°55'30"W, 119.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 1011 SQUARE FEET.

and

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 48 NORTH, RANGE 12 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF THE RIGHT-OF-WAY OF EAST BROADWAY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 1-A AND WITH THE SOUTH LINE THEREOF, N 89°29'40"W, 11.95 FEET; THENCE LEAVING SAID SOUTH LINE, S 1°18'15"W, 11.00 FEET TO THE POINT OF BEGINNING;

THENCE FROM THE POINT OF BEGINNING AND CONTINUING S 1°18'15"W, 9.50 FEET; THENCE N 88°41'45"W, 133.25 FEET; THENCE N 1°18'15"E, 9.50 FEET; THENCE S 88°41'45"E, 133.25 FEET TO THE POINT OF BEGINNING AND CONTAINING 1265 SQUARE FEET.

and

TWO TRACTS OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 48 NORTH, RANGE 12 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF THE LAND DESCRIBED BY THE WARRANTY DEED RECORDED IN BOOK 3885, PAGE 199, AND BEING PART OF LOT 1-A OF HICKMANS ADDITION PLAT NO. 1-A, RECORDED IN PLAT BOOK 45, PAGE 31, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT 1

THE EAST SEVEN FEET OF SAID LOT 1-A SAID TRACT BEING ADJACENT TO AND PARALLEL TO THE EAST LINE OF SAID LOT 1-A AND CONTAINING 1050 SQUARE FEET.

TRACT 2

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1-A AND WITH THE NORTH LINE THEREOF, N 88°29'40"W, 7.00 FEET TO THE POINT OF BEGINNING;

THENCE FROM THE POINT OF BEGINNING, AND LEAVING THE NORTH LINE OF SAID LOT 1-A, S 0°56'10"W, 14.77 FEET; THENCE 15.06 FEET ALONG A 10.00 FOOT-RADIUS, NON TANGENT CURVE TO THE LEFT, SAID CURVE HAVING A CHORD, N 45°19'45"W, 13.68 FEET; THENCE N 1°30'20"E, 5.39 FEET TO THE NORTH LINE OF

SAID LOT 1-A; THENCE WITH SAID NORTH LINE, S 88°29'40"E, 9.85 FEET TO THE POINT OF BEGINNING AND CONTAINING 71 SQUARE FEET.

and

A STRIP OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 48 NORTH, RANGE 12 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF THE RIGHT-OF-WAY OF EAST BROADWAY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

5 FEET WIDE AND LYING SOUTH OF AND ADJACENT TO THE SOUTH LINE OF LOT 1-A OF HICKMANS ADDITION, PLAT NO. 1-A, RECORDED IN PLAT BOOK 45, PAGE 31.

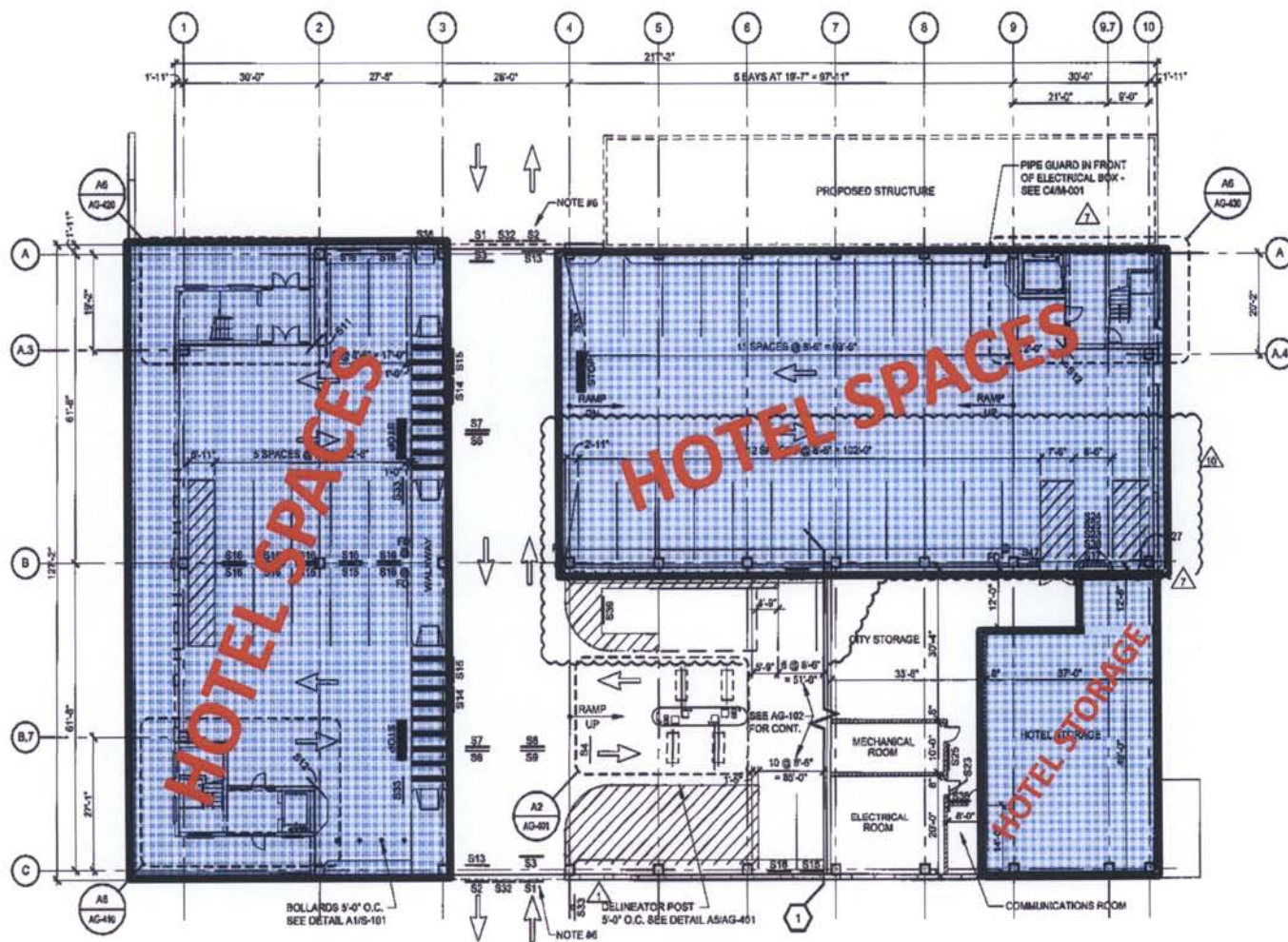
and

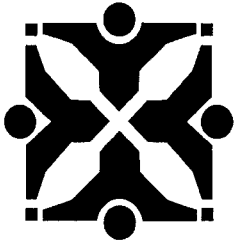
A STRIP OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 48 NORTH, RANGE 12 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF THE RIGHT-OF-WAY OF THE PUBLIC ALLEY AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

5 FEET WIDE AND LYING NORTH OF AND ADJACENT TO THE NORTH LINE OF LOT 1-A OF HICKMANS ADDITION, PLAT NO. 1-A, RECORDED IN PLAT BOOK 45, PAGE 31.

ATTACHMENT 2

Hotel Spaces and Storage Space Depiction Replacing Exhibit D to the Memorandum





Source: Public Works

John

Agenda Item No:

To: City Council

From: City Manager and Staff

MM

Council Meeting Date: Dec 16, 2013

Re: Amendment to Memorandum and Agreement of Leases and Parking Rights with Broadway Lodging LLC pertaining to the Short Street Parking Garage

EXECUTIVE SUMMARY:

Staff has prepared for Council consideration legislation amending the Memorandum and Agreement of Leases and Parking Rights dated April 6, 2012, with Broadway Lodging LLC, to increase the number of leased parking spaces in the Short Street parking garage.

DISCUSSION:

Council passed Ordinance 21267 on March 5, 2012 authorizing a Memorandum and Agreement of Leases and Parking Rights with Broadway Lodging LLC, pertaining to the Short Street parking garage. Broadway Lodging LLC proposes to amend their agreement of April 6, 2012 to increase the number of hotel spaces by 8 (from 28 to 36), and the number of non-designated spaces by 30 (from 73 to 103), for a total of 139 leased parking spaces in the Short Street parking garage. Broadway Lodging further amends the agreement to allow for a slightly different design of their storage space, located within the garage, as shown on the attached Exhibit B.

FISCAL IMPACT:

At current parking rates, the total annual revenue to be received from Broadway Lodging is \$141,032.25, after a five (5) percent discount allowed for businesses leasing spaces in groups of five or more.

VISION IMPACT:

<http://www.gocolumbiamo.com/Council/Meetings/visionimpact.php>

Downtown Columbia is a hip and vibrant district with a diversity of easily accessible businesses, residences, attractions and institutions; it is an exciting gathering place for all types of people.

SUGGESTED COUNCIL ACTIONS:

Pass the legislation authorizing the City Manager to execute the Amendment to the Memorandum and Agreement of Leases and Parking Rights with Broadway Lodging LLC.

FISCAL and VISION NOTES:					
City Fiscal Impact Enter all that apply		Program Impact		Mandates	
City's current net FY cost	\$0.00	New Program/ Agency?	No	Federal or State mandated?	No
Amount of funds already appropriated	\$0.00	Duplicates/Expands an existing program?	No	Vision Implementation impact	
Amount of budget amendment needed	\$0.00	Fiscal Impact on any local political subdivision?	No	Enter all that apply: Refer to Web site	
Estimated 2 year net costs:		Resources Required		Vision Impact?	Yes
One Time	\$0.00	Requires add'l FTE Personnel?	No	Primary Vision, Strategy and/or Goal Item #	6.1
Operating/ Ongoing	\$0.00	Requires add'l facilities?	No	Secondary Vision, Strategy and/or Goal Item #	
		Requires add'l capital equipment?	No	Fiscal year implementation Task #	