

Introduced by \_\_\_\_\_

First Reading \_\_\_\_\_

Second Reading \_\_\_\_\_

Ordinance No. \_\_\_\_\_

Council Bill No. B 116-14

**AN ORDINANCE**

authorizing a right of use permit with BMT of Columbia, LLC for installation, construction, improvement, operation, use, keeping, maintenance, repair and replacement of approximately 350 lineal feet of two-inch PVC sewer force main to extend in portions of an alley right-of-way located north of Broadway, between Tenth Street and Short Street; authorizing a right of use permit with BMT of Columbia, LLC for construction, improvement, operation and maintenance of private storm sewers in portions of the Tenth Street and East Broadway (1007 E. Broadway) rights-of-way; 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 a right of use permit with BMT of Columbia, LLC to allow installation, construction, improvement, operation, use, keeping, maintenance, repair and replacement of approximately 350 lineal feet of two-inch PVC sewer force main to extend in portions of an alley right-of-way located north of Broadway, between Tenth Street and Short Street. The private sewer main shall provide sewer service to the "Lofts on Broadway" development. The form and content of the permit shall be substantially in the same form as set forth in "Exhibit A" attached hereto.

SECTION 2. The City Manager is hereby authorized to execute a right of use permit with BMT of Columbia, LLC to allow construction, improvement, operation and maintenance of private storm sewers in portions of the Tenth Street and East Broadway (1007 E. Broadway) rights-of-way. The form and content of the permit shall be substantially in the same form as set forth in "Exhibit B" attached hereto.

SECTION 3. This ordinance shall be in full force and effect from and after its passage.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

ATTEST:

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City Clerk

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Mayor and Presiding Officer

APPROVED AS TO FORM:

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City Counselor

**RIGHT OF USE PERMIT**

KNOW ALL MEN BY THESE PRESENT that on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, the City of Columbia, a municipal corporation of the State of Missouri ("City"), in consideration of the sum of Fifty Thousand Dollars (\$50,000.00) [as described in paragraph 18 below, and subject to the provisions of such paragraph 18], and an additional Ten Dollars (\$10.00) and other considerations to it paid, does hereby permit BMT of Columbia, LLC, and its successors as owners of that Permittee's Property hereinafter described (hereinafter collectively referred to as "Permittee") to enter upon the following described lands owned by the City of Columbia and located within the right of way for that alley hereinafter described, in Columbia, County of Boone, State of Missouri, and more particularly described as follows, to wit:

An alley which runs east and west, parallel to East Broadway in the City of Columbia, Missouri, from Tenth Street on the west to Short Street on the east, in order to install, keep, maintain, repair and replace within the public right-of-way for such alley approximately three hundred fifty (350) lineal feet of a 2" PVC sewer force main ("the Force Main," as hereinafter described), which will provide sewer service for Permittee's development, known or to be known as "Lofts on Broadway," which is located on what is now a parking lot located in the northeast quadrant of the intersection of East Broadway and Tenth Street in the City of Columbia, Boone County, Missouri, which is legally described on **Exhibit 1** which is attached hereto and incorporated herein by reference ("Permittee's Property"), as such Force Main is shown and described on that diagram, a copy of which is annexed to this Right of Use Permit as **Exhibit 2** and is incorporated into this Right of Use Permit by reference.

This Permit is subject to the following terms, covenants, conditions and stipulations:

1. This Permit is for the exclusive purpose of installation, construction, improvement, operation, use, keeping, maintenance, repair and replacement of the Force Main hereinabove described, which shall be a private sewer main, serving Permittee's Lofts on Broadway project, which will be placed on Permittee's property.
2. This Permit permits Permittee, and its contractors or designees, the right to cut, break and excavate with the right-of-way for that public alley hereinabove described, in order to construct and install the Force Main hereinabove described; provided that Permittee shall, promptly, at its expense, repair and restore the surface of the alley to a condition at least as good as that which existed before the pavement within the alley was excavated or damaged as required for the installation of the Force Main.
3. Permittee will be solely responsible for all costs of any future repairs, maintenance or replacements of the Force Main to be installed within the alley, as hereinabove described in this Right of Use Permit, and the City shall not, under any circumstances whatsoever, have any obligation to provide for, pay for or contribute to any repair, maintenance, replacement or upkeep of the Force Main. Such Force Main shall be a private force main to be installed by, maintained, repaired and replaced by and operated solely by Permittee and Permittee's successors in ownership of the Lofts

on Broadway project hereinabove described (all, collectively, "the Property Owner"), at the cost and expense of the Property Owner.

4. The Force Main will connect to the City's sewer system, at a manhole which is located approximately behind and to the north of The Fieldhouse bar at 1107 East Broadway, in order that the flow from such Force Main will flow to the City's Park Avenue sewer; the intention being that the wastewater/sewage from the Lofts on Broadway project ("Permittee's Property") will flow, via the Force Main, from the proposed Permittee's Project east to such existing manhole and then to the Park Avenue sewer main. The flow from the Force Main and from the Lofts on Broadway Building ("the Building") shall not flow into that existing 8" City of Columbia sewer main ("the 8" Main") which runs along the extension of the above described alley, from Tenth Street west to Fourth Street in the City of Columbia, Missouri. Flow from the Building shall not flow into such 8" Main, but rather shall flow through the Force Main described above so as to discharge into the Park Avenue sewer main.

5. Permittee shall install dual grinder pumps within the boundaries of Permittee's Property, to direct and pump the sewage flow from Permittee's Building through the Force Main. Permittee shall also install an emergency generator, which can power the dual grinder pumps in the event of an electrical outage. Such dual grinder pumps and such generator shall be installed by, and shall be maintained, replaced and operated by, and shall be kept in good repair and condition and good operating condition, by the Property Owner.

6. Permittee's rights and obligations, as referred to in this Right of Use Permit, shall include:

a. The installation of the Force Main;

b. The installation of the dual grinder pumps and emergency generator described above

("the Sewer Project").

7. Prior to exercising its rights granted to Permittee by this Right of Use Permit, Permittee shall present construction plans and diagrams for Permittee's Sewer Project. Such plans or diagrams, and any reasonably required specifications, shall be presented to the City's Public Works Department, and to the City's Department of Community Development.

8. Prior to exercising its rights granted to Permittee hereunder, Permittee agrees to obtain all necessary permits required by the City of Columbia, which pertain the work for the Sewer Project and Permittee's Project hereinabove described, and particularly which pertain to any work being done in the right-of-way of the City's alley hereinabove described.

9. If the Force Main is ever abandoned, all rights herein granted shall cease and terminate and Permittee shall have no further right or interest in the City's right-of-way of any kind or nature whatsoever, except that, upon such abandonment, Permittee remains responsible for all of

Permitted's Force Main and other facilities and structures left in place and any costs to remove them or otherwise restore the surface of the alleyway to good repair and condition.

10. This Right of Use Permit shall not in any manner or respects restrict the rights of the City to use its right-of-way or restrict the right of the City to grant easements to other entities providing public utility service, telephone service, internet service, or any other service of any kind or nature whatsoever.

11. If the Force Main is damaged by reason of any work performed by City within the alley, or with respect to any City utilities or installations or other installations located within the right-of-way of the alley, or by any work performed by any other entity with respect to any other installations located within the right-of-way for the alley, then all obligations to maintain, repair and replace the Force Main shall remain with the Property Owner.

12. If at any time during construction, repair, modification or relocation of any utilities or utility lines or installations or sewer lines or installations existing within the right-of-way for the above described alley, Permittee shall relocate the Force Main at its expense.

13. Permittee agrees, by exercising its rights under this Permit, that if the Force Main or any part of Permittee's Sewer Project becomes damaged in any way, whether negligently or intentionally, by the construction, repair, modification or relocation of any utility line or sewer or other installation located within the alley right-of-way, Permittee will repair or replace the Force Main at its own costs and expense and will hold the City harmless from any cost associated with any repair or replacement or other cost associated with damage to the Force Main.

14. This Permit shall remain in effect until canceled by the City, which shall be obligated to notify Permittee six (6) months in advance of any such cancellation.

15. All of Permittee's rights, duties and obligations under this Permit shall run with Permittee's Property. All of Permittee's rights, duties and obligations under this Permit shall run with Permittee's Property and shall accrue to the Permittee and its successors in ownership of Permittee's Property (all of whom are collectively referred to herein as "the Property Owner").

16. The Property Owner will at all times indemnify, defend, save and hold harmless the City from all suits, actions, claims and causes of action for personal injuries or property damages (including but not limited to the City's own property) arising out of the Forced Main or associated with the Forced Main or its location in the right-of-way for the alley, or its use, keeping, maintenance, repair or replacement or any matters which are in any manner or respect related to the Forced Main.

17. If the 8" Main hereinabove described is ever replaced by a New Sewer Main ("the New Sewer Main"), then the Property Owner will, at the Property Owner's expense, and upon demand by the City, as promptly as reasonably practicable, connect the sewer for Permittee's Project, the Lofts on Broadway Project hereinabove described, which will be placed on Permittee's Property, to the New Sewer Main, and will abandon the use of the Force Main.

18. The Permittee recognizes the substantial needs of the City to improve the sewer lines and infrastructure which will serve the Permittee's Property and the Building, as well as the downtown City of Columbia area, and the Permittee is, therefore, willing to contribute to the City upon the approval of this Right of Use Permit by the City Council, and the execution of this Development Agreement by the City, and the granting to the Permittee of a Land Disturbance Permit for, and Building Permit for (and as a condition to the City's granting such Permits) Permittee's Property and Building, a monetary Contribution of Fifty Thousand Dollars (\$50,000.00), in cash, in current funds, to be used by the City to contribute to the costs of the City for the improvement of the sewer lines and other utility infrastructure serving Permittee's Property and Building and Downtown Columbia, generally, in such manner and at such times as the City finds to be appropriate; provided however, that if, within twenty-four (24) months of the granting by the City of the last to be issued by the City of this Right of Use Permit, such Land Disturbance Permit and such Building Permit, the City Council of the City adopts an amendment (interim or permanent) of Section 29-15 of the City's Ordinances (Central Business District) which will cause the Permittee's Intended Use of its Building to become anything other than a Permitted Use within the Zoning District within which the Permittee' Property is located, then in such event, the said Contribution shall be immediately refunded by the City to the Permittee. "The Permittee's Intended Use of the Building" is to be the placement of retail business facilities on the first floor/street level of the Building, and the placement of thirty-two (32) Apartment Units ("the Apartment Units") on floors 2, 3, 4 and 5 of the Building, which such Apartment Units will include thirty-two (32) residential Apartment Units, twenty-eight (28) of which will be one bedroom Apartment Units and four (4) of which will be two bedroom Apartment Units, meaning the Permittee's Intended Use of the Building will provide for retail space on the first floor and Apartment Units which will have thirty-six (36) beds. The Permittee additionally agrees with the City that the Permittee will continue to lease from the City, for such current rental rates and upon such terms and conditions as shall from time to time be required by the City, forty (40) parking spaces within the City's Short Street parking garage, and will provide such parking spaces to the Tenants of such Apartment Units, and will also provide such Tenants with forty (40) bus passes, which shall be obtained from the City together with the parking spaces.

IN WITNESS WHEREOF, the City of Columbia, Missouri has caused this Right of Use Permit to be executed in its name and on its behalf by its duly authorized officers on the day and year first above written, and Permittee has caused this Right of Use Permit to be executed in its name and on its behalf by its duly authorized Manager (Permittee being a Manager managed limited liability company) on the day and year first above written.

**CITY:**  
**City of Columbia, Missouri:**

By: \_\_\_\_\_  
Mike Matthes, City Manager

ATTEST:

\_\_\_\_\_  
Sheela Amin, City Clerk

Approved as to form:

\_\_\_\_\_  
Nancy Thompson, City Counselor

**PERMITTEE:**  
**BMT of Columbia, LLC**, a Missouri limited liability  
company

By: \_\_\_\_\_  
Travis H. McGee, is Manager

**Exhibit 1** - Legal Description  
**Exhibit 2** - Diagram

**EXHIBIT 1**

The following described real estate situated in Columbia, Boone County, Missouri:

A tract of land consisting of Lot One (1) and Two (2) of Gordon's Plat and Subdivision of Lots Two Hundred Twenty-three (223) and Two Hundred Twenty-four (224) in the original town, now City of Columbia, Missouri, the Developer's Land being shown and described as Lots One (1) and Two A (2A) of survey recorded in Book 552, Page 693 of the Real Estate Records of Boone County, Missouri

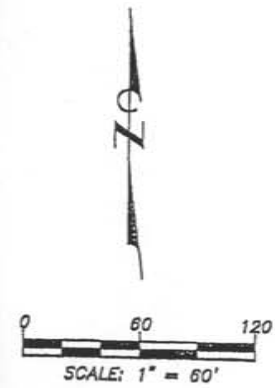
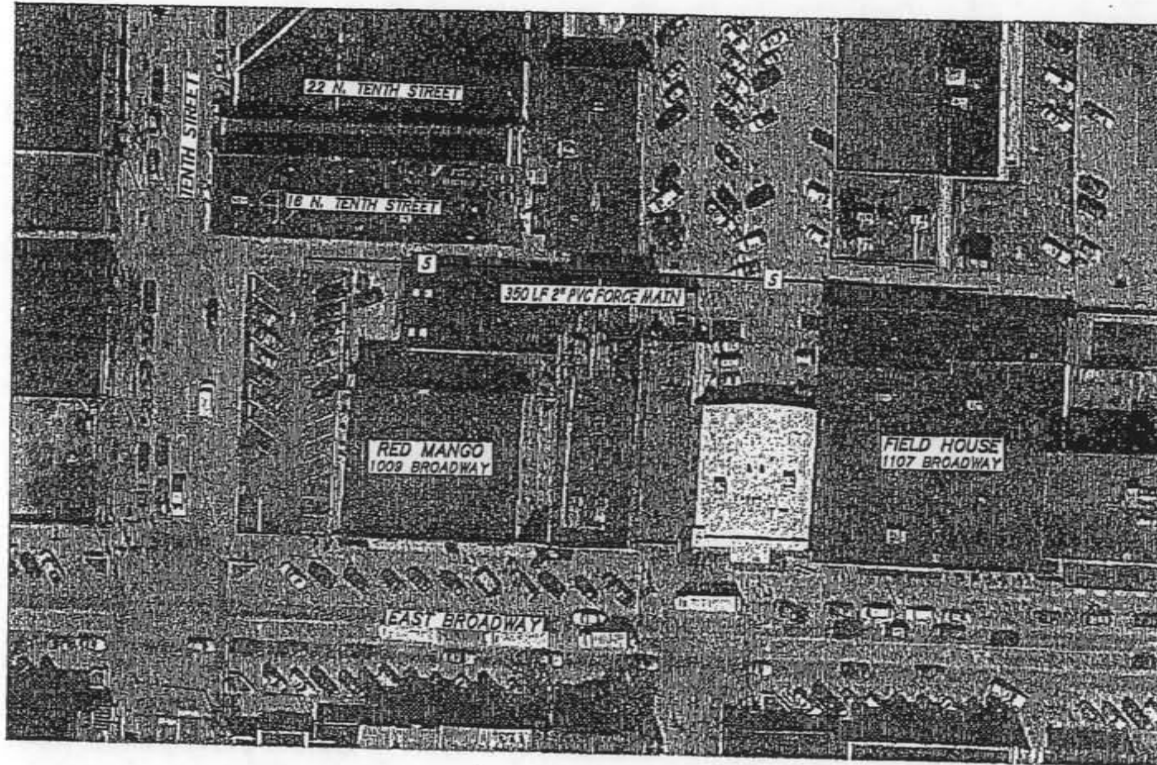
[Such Developer's Land being currently used as a surface, motor vehicle parking lot, and being located on the northeast corner of Tenth and Broadway in Columbia, Boone County, Missouri]



F:\CURRENT\DRAWINGS\MM\A\512649\12249 FORCE MAIN.DWG 4/4/2014

EXHIBIT

2



LOFTS ON BROADWAY  
 TENTH STREET  
 FORCE MAIN EXHIBIT  
 COLUMBIA, MISSOURI  
 APRIL 4, 2014  
 SHEET 1 OF 1



*Engineering Surveys & Services*  
 1113 Fay Street  
 Columbia, Missouri  
 573 - 449 - 2646  
 Missouri Engineering Corporation # 2004020311

RIGHT OF USE PERMIT

KNOW ALL MEN BY THESE PRESENT that on this 10<sup>th</sup> day of April, 2014 the City of Columbia, a municipal corporation, in consideration of the sum of ten dollars (\$10.00) and other considerations to it paid, does hereby permit **BMT of Columbia, LLC**, their heirs and/or assigns (hereinafter referred to as "Permittee") to enter upon the following described lands owned by the City of Columbia and located within the right of way of N. Tenth Street and E. Broadway, Columbia, County of Boone, State of Missouri, and more particularly described as follows, to wit:

Install and maintain private storm sewers within the right of way of N. Tenth Street and E. Broadway, at 1007 E. Broadway, further shown by the diagram attached to this right of use permit.

This permit is subject to the following conditions and stipulations:

1. This permit is for the exclusive purpose of construction, improvement, operation and maintenance of storm sewers in the right of way of N. Tenth Street and E. Broadway, at 1007 E. Broadway.
2. This permit does not grant Permittee or any of its officers, agents or employees the right to cut, break, excavate or damage the street pavement of N. Tenth Street or Broadway without City of Columbia consent.
3. Permittee will be responsible for the costs of any future repairs, maintenance or replacements which is the result from Permittee's use under this Right of Use Permit.
4. Prior to exercising its right granted herein, the Permittee shall present construction plans or diagrams locating the proposed infrastructure to the City Public Works Department and City Water and Light Department and any existing utility company using facilities located within the limits of the Permit.
5. Prior to exercising its right granted hereunder, Permittee agrees to obtain all necessary permits required by the City of Columbia pertaining to work being done in the right of way.
6. If the storm sewers are ever abandoned, all rights herein granted shall cease and terminate and Permittee shall have no further right of interest therein except that, upon abandonment, Permittee remains responsible for all of Permittee's facilities structures left in place and any costs to remove them or store them or to otherwise clean up easement.
7. If at any time during construction, repair, modification or relocation of the storm sewers or any utility existing in the easement at the time this permit is granted, is necessary which would require relocation of the storm sewers, the Permittee shall relocate the storm sewers at their own expense.
8. The Permittee agrees by exercising its rights under this permit that if the storm sewers become damaged in any way, whether negligently or intentionally by the construction, repair, modification or relocation of any utility existing in the easement at the time this permit is granted it will repair or replace the storm

sewers at their own cost and hold the City of Columbia harmless for any of the costs associated with the repair or replacement or any other costs associated with the damage to the facilities.

9. This permit shall remain in effect until canceled by the City of Columbia, which shall be obligated to notify the Permittee six (6) months in advance of cancellation.

IN WITNESS WHEREOF, the said Party of the First Part has caused these presents to be signed by its officers the day and year first written above.

**City of Columbia, Missouri**

By: \_\_\_\_\_  
Mike Matthes  
City Manager

**Attest:**

By: \_\_\_\_\_  
Sheela Amin  
City Clerk

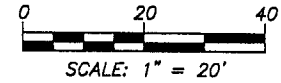
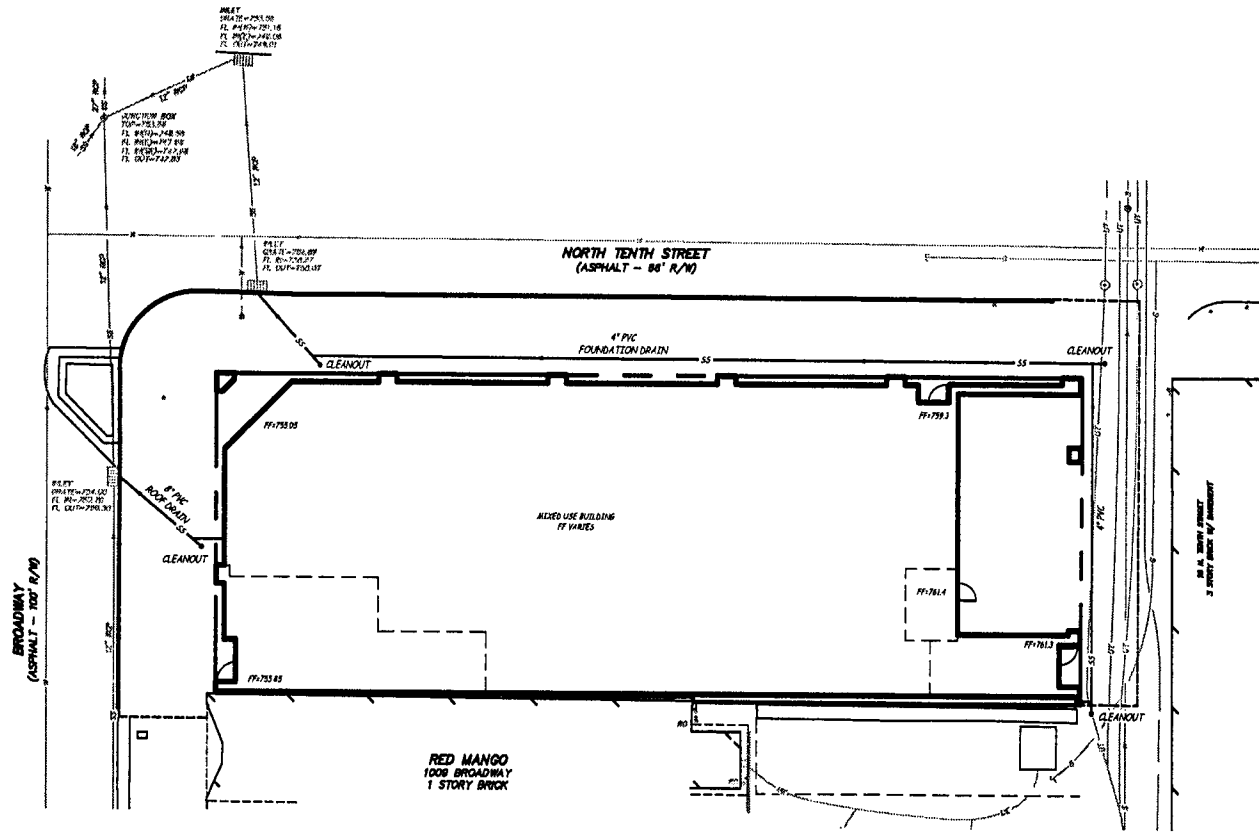
**Approved as to form:**

By: \_\_\_\_\_  
Nancy Thompson  
City Counselor

**BMT of Columbia, LLC**

By:  \_\_\_\_\_  
Travis McGee - Member

F:\ADMINISTRATIVE\ARCHIVES\1144 - 1152\11525112551 STORM SEWER EXHIBIT.DWG 4/10/2014



**LEGEND**

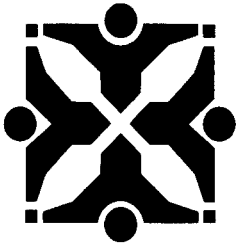
— — — — —	PROPERTY LINE
— — — — —	UNDERGROUND ELECTRIC LINE
— — — — —	UNDERGROUND TELEPHONE LINE
— — — — —	SANITARY SEWER LINE
— — — — —	STORM SEWER LINE
— — — — —	GAS LINE
— — — — —	WATER LINE
— — — — —	PVC POLYVINYL CHLORIDE PIPE
— — — — —	SS PROPOSED STORM SEWER

**STORM SEWER EXHIBIT**  
**LOFTS ON BROADWAY**  
 COLUMBIA, MISSOURI  
 APRIL 10, 2014

**Engineering Surveys and Services**  
 1113 Fay Street, Columbia, Missouri 65201  
 573 - 449 - 2646 - www.ESS-Inc.com  
 Missouri Engineering Corporation # 2004005018



ES&S NO. 12551



Source: City Manager 

Agenda Item No:

To: **City Council**  
From: **City Manager and Staff** 

**Council Meeting Date:** April 21, 2014

**Re:** Authorizing Right of Use Permits with BMT of Columbia, LLC for the installation of a 2" sewer force main and storm sewers.

**EXECUTIVE SUMMARY:**

At the request of Councilperson Karl Skala, staff has prepared for Council consideration a Right of Use Permit with BMT of Columbia, LLC for the installation of a 2" sewer force main in the public alleyway running parallel to Broadway and located on the north side of Broadway, and a second Right of Use Permit for the installation of storm sewers that will be placed under the sidewalk in order to connect the building to the street inlets.

**DISCUSSION:**

For information purposes, the "Lofts on Broadway" is planned as a 5 story mixed use building, consisting of retail space on the first floor, and four floors of apartments (maximum of 36 beds, mostly single bedroom units). The project is intended to appeal to professionals who work in the downtown and surrounding area as well as to people who enjoy the urban living experience. There is no parking proposed on site (not required in C2), however, the Permittee has already reserved and is currently paying for forty (40) covered spaces in the Short Street Garage for the residents. The construction project is expected to begin during the second quarter of 2014 and be open for business and residents by the third quarter of 2015.

This permit for the installation of a 2" sewer force main and separate storm sewer will serve the Permittee's project known as the "Lofts on Broadway" to be constructed on what is currently a parking lot located in the northeast quadrant of the intersection of 10th & Broadway. The project itself is not at issue as the parcel is appropriately zoned for the proposed use, plans have been submitted to the City for review, and permits are pending.

The City has the capacity to furnish the necessary utilities to the proposed site with the exception of sewer due to a lack of capacity in the line shown as Project 4 in Attachment A. This line is an 8" sanitary sewer line that runs from approximately 10th Street to 4th Street along the alley just north of Broadway. This line serves adjacent establishments on the north side of Broadway, including several restaurants, Landmark Bank, Commerce Bank and City Hall. At present, it is undersized to adequately serve existing connections which, in the past, created sanitary sewer overflows in the area served. While the expected flows from the "Lofts on Broadway" are expected to be small, City staff has determined that it would be best for these flows not to be added to the current line without major improvement, and to instead direct the flows to a line with more capacity that could sufficiently handle them. If approved, the sewer force main to be constructed by the Permittee will flow sewage from the "Lofts on Broadway" east to the Park Avenue sewer main as shown in Attachment B.

The Permittee has also consented to a \$50,000 contribution to help fund Project 4, which, when constructed by the City would allow the "Lofts on Broadway" to connect to the new improved sewer line.

**FISCAL IMPACT:**

All improvements described will be paid for by the Permittee.

**VISION IMPACT:**

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

6 Vision Statement: 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.

6.2 Goal: Downtown Columbia will have a variety of safe housing options, including new and revitalized units, for all age groups and income levels with easy access to desirable amenities. Development and design guidelines will be instituted.

**SUGGESTED COUNCIL ACTIONS:**

Approval of the Ordinance authorizing the Right of Use Permit with BMT of Columbia, LLC.

<b>FISCAL and VISION NOTES:</b>					
<b>City Fiscal Impact</b> Enter all that apply		<b>Program Impact</b>		<b>Mandates</b>	
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	<b>Vision Implementation impact</b>	
Amount of budget amendment needed	\$0.00	Fiscal Impact on any local political subdivision?	Yes	Enter all that apply: Refer to Web site	
Estimated 2 year net costs:		<b>Resources Required</b>		Vision Impact?	Yes
One Time	\$0.00	Requires add'l FTE Personnel?	No	Primary Vision, Strategy and/or Goal Item #	6.0
Operating/ Ongoing	\$0.00	Requires add'l facilities?	Yes	Secondary Vision, Strategy and/or Goal Item #	6.2
		Requires add'l capital equipment?	No	Fiscal year implementation Task #	

