

Introduced by _____ Council Bill No. R 130-13

A RESOLUTION

authorizing a parking space license agreement with Collegiate Housing Partners for the lease of parking spaces in the Fifth Street and Walnut Street parking garage.

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

SECTION 1. The City Manager is hereby authorized to execute a parking space license agreement with Collegiate Housing Partners for the lease of parking spaces in the Fifth Street and Walnut Street parking garage. The form and content of the agreement shall be substantially as set forth in "Attachment A" attached hereto and made a part hereof as fully as if set forth herein verbatim.

ADOPTED this _____ day of _____, 2013.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

UNRESERVED PARKING SPACE LICENSE AGREEMENT
City of Columbia – 5th & Walnut Parking Garage
(50 Spaces)

This contract parking agreement is made and entered into this ____ day of _____, 2013, by and between the **City of Columbia, Missouri**, a municipal corporation (hereinafter “**Licensor**” or “**City**”), and **Collegiate Housing Partners, LLC**, (hereinafter “**Licensee**”):

WHEREAS, Licensee desires to construct a six (6) story one-hundred three (103) unit maximum student housing development at or near 5th Street and Conley Avenue known as The Residences at Fifth and Conley (hereinafter “**Development**”); and

WHEREAS, in a typical development project of the size and scope of the proposed Development, the zoning code of the City would require +/- 249 parking spaces; and

WHEREAS, Licensee has determined it will provide approximately 124 on-site vehicle parking spaces within the Development and is required to make additional provisions for off-site parking to comply with the city code parking space requirements for the Development; and

WHEREAS, the City desires to require an additional fifty (50) parking spaces dedicated for the Development as a planned development with additional transportation and parking concerns addressed through additional means, including but not limited to on site off-street parking, on-street parking, bicycle parking, transit passes, and on-site rental of eco-friendly vehicles; and

WHEREAS, City has parking spaces available at the city-owned parking garage located at the intersection of 5th Street and Walnut (hereinafter “**Parking Garage**”); and

WHEREAS, the parties desire to provide for the terms and conditions upon which the City will provide and the Licensee will obtain fifty (50) parking spaces for tenants of the Development;

NOW THEREFORE, in order to provide and protect the health, safety and welfare of the public and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **LICENSE**. Subject to the terms and conditions of this Agreement, City grants Licensee a license to use, in common with other users, licensees and the public, a portion of the Parking Garage. Licensee

may use and occupy fifty (50) unreserved non-designated parking spaces (hereinafter "**Parking Spaces**") in the Parking Garage on the indicated dates at the indicated times for the rental rates state herein for the following express purposes and no other purpose: Parking is for normal passenger vehicles only, including pick-up trucks and passenger vans provided they meet height restrictions of the Parking Garage. The City shall in no manner be obligated to provide any particular parking spaces. This license is not transferable to anyone other than tenants, guests and agents of Licensee and may not be assigned to anyone other than a subsequent property owner without prior written consent of the City. Nothing contained herein shall prevent a collateral assignment by Licensee to a lender or subsequent purchaser of the property, neither of which shall require consent from the City.

2. TERM/DAYS/HOURS. Licensee is authorized to park in the Parking Garage seven (7) days per week, twenty-four (24) hours per day. This license shall be from year-to-year beginning the 1st calendar day of the first month during which the Development becomes occupied by tenants, through the last day of the calendar month in the 20th year following that date (hereinafter "**Original Term**") and shall automatically renew for successive one year terms (hereinafter "**Renewal Terms**") thereafter unless sooner terminated by City or modified by the parties by mutual written agreement as herein provided. Neither party may reduce the number of Parking Spaces required under the terms of this agreement during the first two (2) years of the Original Term. Licensee shall not have a right to unilaterally terminate this agreement during the remainder of the Original Term, but may reduce the number of parking spaces which it is obligated to lease as provided in Paragraph 5 hereof. Licensee may terminate the agreement sixty (60) days prior to the expiration of any Renewal Term by providing written notice to Licenser.

3. PAYMENTS. The annual price paid by Licensee for each of the Parking Spaces shall be the then current annual rates charged by the City for corresponding parking spaces within the Parking Garage. Such fees shall be paid annually, in advance, to the City of Columbia Finance Department within fourteen (14) days of invoice. The annual rate at the time of entering into this agreement in the Parking Garage is: \$550 for an uncovered space \$605 and \$715 for a covered space. If Licensee fails to make the annual payment when due, City has the option to invoice Licensee and Licensee shall pay, in advance, for twelve (12) months at the then current monthly rate. In the event Licenser installs an access gate or other device(s) requiring utilization of an access card, entry device or other feature requiring an additional fee, Licensee shall also be responsible for payment of any necessary security deposits, fees and replacement fees for such devices installed and/or issued by City.

4. ISSUANCE AND DISPLAY OF PARKING PERMITS. City shall issue fifty (50) parking permits to Licensee for distribution to its tenants, guests and agents, which must be displayed at all times for any vehicle utilizing the Parking Garage. Licensee is responsible for the parking permits issued by the City, which may not be duplicated by Licensee. A fee may be assessed for any lost, stolen, or damaged permits. The Director of Public Works and the Licensee may, from time to time, consent to adjustment of the manner of issuance and display of such parking permits as may be necessary or desirable for the convenience of the parties and not in conflict with the Rules and Regulations adopted by the City for operation of the Parking Garage.

5. REDUCTION IN REQUIRED NUMBER OF PARKING SPACES. After the first two (2) years of the Original Term, the parties may, by mutual agreement, reduce or eliminate the number of Parking Spaces provided to Licensee hereunder in the event City finds there is sufficient parking elsewhere to meet the needs of Licensee or there is insufficient demand for such parking by the Development as set forth in this section. Licensee may request a reduction of up to twenty-five (25) Parking Spaces upon proof shown that it has actively marketed the parking permits to its tenants and such tenants have not purchased the parking permits from Licensee. A request by Licensee to reduce the parking requirement by more than twenty-five (25) Parking Spaces shall require Licensee to obtain and provide City with a list of tenants and the make/model/license plate number of every vehicle driven by each tenant together with the parking location and parking permit number assigned to each tenant's vehicle. Failure of Licensee to distribute the parking permits or of Licensee's tenants, guests or agents to utilize the parking permits shall NOT be conclusive evidence of the demand or impact of the Development does not require the number of Parking Spaces required under this Agreement. Any reduction in the required number of parking spaces during the Original Term shall be approved by the City Council and shall require a written amendment to this Agreement.

6. ARTICLES LEFT IN VEHICLES ARE AT THE VEHICLE OWNER'S RISK / NO SECURITY PROVIDED. Licensee understands and expressly agrees that the City will not accept the vehicle in bailment or for safekeeping; nor shall the City be responsible for loss or damage to any vehicle or its contents by fire, vandalism, theft or any other cause, nor for loss, damage or injury by or to other customers or any other individual personal injury of any nature. Licensee expressly acknowledges that the City shall have no duty to provide security, and expressly does not assume any obligation to provide for the security of the Parking Garage or to protect individuals using the Parking Garage, or vehicles or property in the Parking Garage, from criminal activities.

7. RULES AND REGULATIONS. Licensee and its tenants, guests and agents utilizing the Parking Garage shall be subject to the rules and regulations enacted by the City and its Parking Utility for utilization of the Parking Garage as may be in effect or amended from time to time. Licensee expressly agrees to provide notice to its tenants, guest and agents of such rules and regulations.

8. DEFAULT AND TERMINATION. An event of default shall be deemed to occur should any of the following events happen:

- a. failure of Licensee to timely pay any fee or invoice required by this agreement;
- b. repeated failure of Licensee, or of its tenants, guests or agents, to obey the rules of the City concerning matters of security, safety, or preservation of the Parking Garage, during the term of the Agreement; or
- c. failure of the Licensee to comply with any other term or condition of this Agreement, including any addenda or amendments hereto.

In the event of default, the City shall provide Licensee fifteen (15) days written notice of such default and grant Licensee thirty (30) days to cure such default, after which if said default continues, City may,

at its sole option, notify the Licensee in writing that it elects to terminate this Agreement immediately without further penalty or liability to the City and in such event City may retain all fees previously paid, or the City may elect to specifically enforce the terms and conditions of this Agreement.

9. FORCE MAJEURE/OCCUPANCY DISRUPTION. If either the Parking Garage or Development or any portion of either structure shall be destroyed or damaged by fire or other calamity or order of a government authority at the Federal, State, or local levels, so as to prevent the use of either structure for the purposes and during the periods specified in this Agreement, or if the use of either the Parking Garage or Development shall be prevented by acts of God, strikes, lockouts, or other industrial disturbances; acts of public enemies; material or labor restriction by any governmental authority, civil riot, flood, drought or any other cause beyond the reasonable control of Licensee or the City, then this Agreement may be terminated by either party upon at least five (5) days written notice, if practicable, to the other party that an event of "Force Majeure" has occurred and prevented performance. In the event of a termination by reason of "Force Majeure", the neither party shall be liable or responsible to the other party for any damages caused thereby, except that any unearned portion of payments due hereunder shall abate, or, if previously paid, shall be refunded within sixty (60) days of the date notice was given under this section.

10. RIGHT TO EJECT. The City reserves the right to eject or cause to be ejected from the Parking Garage any person engaging in or conducting him/herself in a manner disruptive, abusive or offensive to other patrons at or in the Parking Garage. Neither the City, nor any of its officers, agents or employees shall be liable to Licensee for any damages that may be sustained by Licensee through the City's exercise of such right.

11. TEMPORARY CLOSURE OF GARAGE. The City reserves the right to close the Parking Garage for repairs and maintenance. When closing the Parking Garage, the City will seek to avoid any inconveniences to customers. No refunds will be given when the Parking Garage is closed for periods of five (5) consecutive days or less. Any such closure that causes the number of parking spaces available to the Development to be fewer than required by the Rezoning shall not result in a violation of the term, requirements, or conditions of the Rezoning. Any such shortfall in parking shall not be deemed as a violation of any of the terms of the Rezoning or other permits or City Ordinances or other such regulatory requirements related to parking for the Development.

12. TOWING. The parties agree that City, or its assigns, shall have the right, without further notice to Licensee or to Licensee's tenants, employees or guests, to have towed any vehicle that is parked in the Parking Garage illegally or in violation of posted signs.

13. MATTERS NOT COVERED. Any decision concerning a matter not specifically covered by this Agreement, on subject matters reasonably inferable from the terms of this Agreement which do not substantially change the terms of this Agreement, shall rest solely within the reasonable discretion of the Director of Public Works for the City.

14. ENTIRE AGREEMENT. Should any clause, paragraph, sentence or section of this Agreement be determined to be void, illegal or otherwise unenforceable by a court of competent jurisdiction, the

remaining provisions of the Agreement shall not be rendered void and enforceable as a result but rather shall remain in full force and effect.

15. BINDING EFFECT/OBLIGATIONS RUN WITH THE LAND/NO ASSIGNMENT. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns and, as applicable, to heirs and legal representatives of the parties hereto. The obligations herein shall run with the land and written notice thereof by Licensee to any subsequent owner of the Development shall be required, subject to earlier termination or extension as herein described. Licensee may not assign its rights, obligations or duties hereunder to anyone other than a subsequent owner of the land without first receiving the written consent of the City. A covenant, suitable for recording, shall be executed and filed by Licensee in the land records of Boone County evidencing the obligations contained herein.

16. LIABILITY AND INDEMNIFICATION. Licensee shall defend, indemnify and hold harmless the City, and its officials, employees, and agents against any claims, causes of action, liability, or damages, including reasonable attorneys' fees, for (a) bodily injury or death to any person, and (b) damage to property of any person, including, but not limited to that of the City's or Licensee's agents or employees, resulting directly from, or caused by, the willful misconduct or negligence of Licensee or Licensee's agents, employees, contractors, or parking permit holders.

17. NON WAIVER. The City's acceptance of payment or failure to complain of any action, non-action or default of Licensee, whether singular or repetitive, shall not constitute a waiver of any of the City's rights. If Licensee's payment of any sum due the City is accompanied by written conditions or is represented by Licensee to be a settlement or satisfaction of any obligation, the City may accept and deposit such moneys without being bound by such conditions or representations unless the City expressly agrees to such conditions or satisfaction in a separate written instrument. The City's waiver of any right, or any default of Licensee's, shall not constitute a waiver of any other right or constitute waiver of any other default or any subsequent default. The City's agents and representatives do not have authority to make any changes to this Agreement except by authorized written amendments authorized by the City Council.

18. ATTORNEY'S FEES. If the City is required to file suit to collect any amount owed it under this Agreement, the City shall be entitled to collect costs and reasonable attorney's fees for its prosecution of the suit.

19. ENTIRE AGREEMENT/AMENDMENTS. This Agreement constitutes the entire Agreement between the parties, and supersedes any and all previous written or oral agreements or representations between the parties. This Agreement may only be amended in writing signed by both parties.

20. JURISDICTION/VENUE. This Agreement is made under the laws of the State of Missouri, and any disputes that arise under or related to this Agreement shall be governed by the laws of Missouri, without regard to conflicts of law principles. Venue for any legal action involving this Agreement shall be in Boone County, Missouri.

21. NOTICES. Any notice under this Agreement shall be given by certified mail, overnight mail, or by personal delivery, and shall be effective upon receipt. Notice shall be sent to the address for the receiving party as designated herein:

For Licensee: Collegiate Housing Partners, LLC
7711 Bonhomme, Suite 350
St. Louis, MO 63105

For City: City of Columbia
Attn: City Manager
701 E Broadway
PO Box 6015
Columbia, MO 65205

22. AGENT'S AUTHORIZATION. The persons executing this Agreement represent and warrant that they have full authority to execute this Agreement on behalf of his or her respective party.

WHEREFORE, this Agreement is executed by the parties hereto to be effective as of the date first above written.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

Attest:

Sheela Amin, City Clerk

Approved at to Form:

By: _____
Nancy Thompson, City Counselor

COLLEGIATE HOUSING PARTNERS, LLC

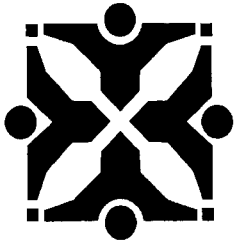
By: _____
Brandt Stiles, Authorized Agent

Exhibit A

Legal Description of the Property

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 13, ALL OF TOWNSHIP 48 NORTH, RANGE 13 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING PART OF THE LAND DESCRIBED BY THE WARRANTY DEEDS RECORDED IN BOOK 3831, PAGE 110, BOOK 1578, PAGE 576, BOOK 2800, PAGE 99, BOOK 1071, PAGE 640, AND BOOK 3197, PAGE 136, AND BEING ALL OF LOTS 1, 2, 3, 4, 5, & 6 OF BROADHEAD PLACE RECORDED IN PLAT BOOK 2, PAGE 45 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SURVEY RECORDED IN BOOK 316, PAGE 547, AND WITH THE NORTH LINE THEREOF, N 81°28'55"W, 380.14 FEET TO THE NORTHWEST CORNER OF SAID SURVEY AND THE EAST RIGHT-OF-WAY LINE OF FOURTH STREET; THENCE LEAVING THE LINES OF SAID SURVEY AND WITH SAID EAST RIGHT-OF-WAY LINE, N 5°47'00"E, 120.66 FEET; THENCE 22.99 FEET ALONG A 15.00 FOOT-RADIUS CURVE TO THE RIGHT, SAID CURVE HAVING A CHORD N 49°41'05"E, 20.80 FEET; THENCE S 86°24'50"E, 86.94 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF CONLEY AVENUE; THENCE LEAVING SAID EAST RIGHT-OF-WAY LINE OF FOURTH STREET AND WITH SAID SOUTH RIGHT-OF-WAY LINE, S 81°18'05"E, 286.16 FEET TO THE WEST RIGHT-OF-WAY LINE OF FIFTH STREET; THENCE LEAVING SAID SOUTH RIGHT-OF-WAY LINE OF CONLEY AVENUE AND WITH SAID WEST RIGHT-OF-WAY LINE, S 0°39'45"E, 9.10 FEET; THENCE S 9°23'00"W, 133.80 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.25 ACRES.



Source: Law 

Agenda Item No:

To: City Council

From: City Manager and Staff 

Council Meeting Date: July 1, 2013

Re: Parking Space License Agreement with Collegiate Housing Partners

EXECUTIVE SUMMARY:

Staff has prepared an agreement with Collegiate Housing Partners (CHP) that would require CHP to purchase 50 parking spaces in the Fifth Street and Walnut Street parking garage for a minimum of two years. After two years, the parties may amend the agreement based on application and proof shown by CHP that fewer spaces are necessary to meet the need of the development.

DISCUSSION:

The agreement between the City and CHP addresses the concerns of staff and the Planning and Zoning Commission relating to parking for the residential housing structure proposed by CHP. This agenda item is directly related to the rezoning request of CHP for PUD-90 to construct "The Residences at 5th & Conley" project. If the Council does not approve the rezoning, this item will be withdrawn.

Under the terms of the agreement, CHP would be required to purchase 50 parking permits during the first two years of the project. Thereafter, the owner would have the right to request a reduction in the requirement by supplying evidence to the City Council that the number of permits required under the agreement are not utilized nor warranted based on demand of the tenants or that the tenants are being provided adequate parking through other sources (such as the University). The student housing development is on the edge of the University of Missouri campus and will be offering bus passes, increased bicycle parking, and a shared vehicle in an effort to reduce the need for vehicles by its tenants.

FISCAL IMPACT:

None.

VISION IMPACT:

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

5.3.1 Strategy: Use the city's development planning process to promote socio-economically diverse, mixedused neighborhoods that are supported by citywide bicycle, pedestrian, and transit systems to reduce the need for automobile commuting.

SUGGESTED COUNCIL ACTIONS:

Passage of the resolution.

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 #	5.3.1
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 #	