

## MEMORANDUM AND AGREEMENT OF LEASE OF PARKING RIGHTS

This Memorandum and Agreement of Leases and Parking Rights (“Agreement”) is made and entered into on the last date executed by a party as indicated on the signature pages below, by and between **Cherry Street Hotel, LLC**, a limited liability company organized under the Missouri Limited Liability Company Act (“Leasee”), and the **City of Columbia, Missouri**, a constitutional charter municipality of the State of Missouri (“City”). The City and the Leasee may hereinafter be collectively referred to as the Parties and individually as a Party.

### RECITALS

**WHEREAS**, Leasee holds title to a parcel of land located at or near 1005 Cherry Street in the City of Columbia, Missouri described in the attached **Exhibit A** (hereinafter the “Subject Property”); and

**WHEREAS**, Leasee desires to develop the Subject Property for a new hotel project; and

**WHEREAS**, when fully developed, the Subject Property is anticipated to consist of approximately 72,600 square feet of space with approximately 140 guest rooms (the “Project”); and

**WHEREAS**, City owns a parking garage located at the intersection of Tenth Street and Cherry Street adjacent to the Subject Property described in the attached **Exhibit C** (hereinafter the “Garage”); and

**WHEREAS**, the Parties desire to provide for the terms and conditions upon which the City will provide and Leasee will obtain ninety-nine (99) parking spaces for the Project;

**NOW, THEREFORE**, in view of the foregoing Recitals and in consideration of the mutual promises, declarations, covenants and agreements of the City and Leasee as hereinafter set forth, the Parties hereby agree as follows:

1. **Agreement to Run with the Land.** The provisions of this Agreement will constitute covenants running with the entirety of the Subject Property and each and every part of the Subject Property, and will bind the current Leasee and all of such successors and assigns.

2. **Parking Garage Spaces.**

With respect to the Garage, the Leasee shall have the following rights and obligations:

- a. The City shall provide for the exclusive use of the Leasee thirty-one (31) specific parking spaces (the “Hotel Only Spaces”) within the Garage in substantially the same locations as shown on **Exhibit B** attached hereto. The Hotel Only Spaces shall be on Level C of the Garage and shall be clearly marked by signage (at the sole cost and expense of Leasee) as being exclusively for use by Leasee. The City shall also provide an additional sixty-eight (68) unreserved, non-designated parking spaces (“Non-designated Spaces”) for use by the Leasee, in common with other authorized users of the Garage. Non-designated spaces shall not be in any specific spaces or labeled as such within the Garage and shall be subject to the same terms, conditions, rules and restrictions as apply to annual parking permit holders in such Garage. The thirty-one (31) Hotel Only Spaces and sixty-eight (68) Non-designated Spaces shall consist of a total of ninety-nine (99) parking spaces within the Garage and shall collectively be referred to herein as the Project Spaces. The City shall use its good faith efforts to prohibit the use of the Hotel Only Spaces by anyone other than the Leasee and the Non-designated Spaces by anyone other than authorized users.
- b. All of the Project Spaces shall be available to the Leasee as of the opening date of the Project. The Leasee shall give no less than ninety (90) days’ notice to the City of the opening date of the Project. The parties acknowledge the parking spaces in the Garage are currently leased to other customers of the City and the Garage is at full capacity. The City agrees it will lease any vacated spaces to Leasee as a first priority, beginning immediately after the effective date of the Agreement. Following the effective date of this Agreement, Leasee agrees to accept and pay for all Non-designated Spaces as they become available at the rates described herein, up to a maximum of sixty-eight (68) spaces (the Pre-opening Lease Period). Upon the opening date of the Project, if the Leasee shall not have procured sixty-eight (68) Non-designated Spaces by utilizing the priority list, the City shall take such action in order to provide Leasee with access to sixty-eight (68) Non-designated Spaces as of said opening date.
- c. The Leasee shall pay to the City for the Project Spaces as follows:

- i. For the Hotel Only Spaces payment shall be the then current monthly rate for a parking permit to park a vehicle in a reserved parking space in the Garage, as amended from time to time by the City Council, which at the time this Agreement is entered into is One hundred twenty dollars (\$120) per month per space.
- ii. For the Non-designated Spaces payment shall be the then current monthly rate for a parking permit to park in a non-reserved parking space in the Garage, as amended from time to time by the City Council, which at the time this Agreement is entered into is Eighty dollars (\$80) per month per space.

Notwithstanding the foregoing, in no event shall the prices paid by Leasee for the Project Spaces be more than the average monthly rate of the then current rates charged by the City for the corresponding parking spaces within the parking garages owned by the City within the downtown area of the City. Leasee may take advantage of annual and quarterly payment discounts offered by the City from time to time provided such payment is made in full in advance of the due date thereof. Leasee shall be responsible for payment of the Project Spaces at such time as such spaces are dedicated to the use of Leasee regardless of whether or not Leasee's project construction is complete or whether or not patrons of the project utilize the Project Spaces.

- d. Leasee shall be responsible (at the sole cost and expense of Leasee) to integrate with any gate arm system or other system designed to restrict entry and exit to the Garage installed in the Garage either presently or at any future time.
- e. In the event of any damage or destruction to the Garage which prohibits the use of the Project Spaces, the City shall as soon as practicable make any repairs as may be necessary to allow the use of such spaces by Leasee and shall make available the equivalent number of parking spaces at one or more alternate locations within the City. During any such period of non-use by Leasee, any payments due from Leasee to the City shall not abate, rather the payments due from Leasee to the City shall be the lesser of the then current rates being paid by Leasee for the use of the respective spaces or the average of the amounts charged at that time by the City for the type of spaces provided by the City at the alternative locations.



- f. The use of each of the Project Spaces granted to Lessee shall be leases from the City to Lessee for the use of each such space by Lessee for a period of twenty (20) years (the "Space Leases"), subject to earlier termination or extension as hereinafter described. Said twenty (20) year term shall be in addition to the Pre-opening Lease Period applicable to the Non-designated Spaces and shall commence on the opening date of the Project and end on the date which is twenty (20) years later (the "Space Leases Term"). Lessee will have the option to enter into a new lease at rates determined by the City upon expiration of the Space Leases Term. Either party may begin lease negotiations one (1) year before the expiration of the term of the Space Leases Term. Any of the Space Leases shall terminate upon the earlier of the following to occur:
  - i. Lessee sends ninety (90) days written notice to the City of its desire for such termination, which identifies the Space Leases that are terminated and the effective date of such termination; provided, however, the Lessee shall not have a right to unilaterally terminate any of the Space Leases within the first five (5) years of the Space Leases Term.
  - ii. The Space Leases Term ends.

3. **Articles Left in Vehicles are at the Vehicle Owner's Risk; No Security Provided.** Lessee 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. Lessee 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 Garage or to protect individuals using the Garage, or vehicles or property in the Garage, from criminal activities.

4. **Rules and Regulations.** Lessee and its tenants, guests and agents utilizing the Garage shall be subject to the rules and regulations enacted by the City and its Parking Utility for utilization of the Garage as may be in effect or amended from time to time. Lessee expressly agrees to provide notice to its tenants, guest and agents of such rules and regulations.

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

6. **Temporary Closure of Garage or Reconstruction of Garage.** The City reserves the right to close the Parking Garage for repairs, maintenance and replacement. When closing the Garage, the City will seek to avoid any inconveniences to customers and shall make available the equivalent number of parking spaces at one or more alternate locations within the City. During any such period of non-use by Leasee, any payments due from Leasee to the City shall not abate, rather the payments due from Leasee to the City shall be the lesser of the then current rates being paid by Leasee for the use of the respective spaces or the average of the amounts charged at that time by the City for the type of spaces provided by the City at the alternative locations.

7. **Default.** An event of default shall be deemed to occur should any of the following events happen:

- a. Failure of Leasee to timely pay any fee or invoice;
- b. Repeated failure of Leasee, or of its tenants, guests or agents, to obey the rules of the City concerning matters of security, safety, or preservation of the Garage, during the term of the Agreement; or
- c. Failure of the Leasee 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 Leasee fifteen (15) days written notice of such default and grant Leasee thirty (30) days to cure such default, after which if said default continues, City may, at its sole option, notify the Leasee 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. Leasee shall be responsible for payment of any monthly permit fees up to and including the date of termination.

8. **Amendments.** Any amendment to this Agreement must be in writing and must be executed by the City and the Leasee, and any future owner of any part of the Subject Property who would otherwise be obligated to perform any of the requirements imposed upon the Leasee by this Agreement. Oral modifications or amendments of this Agreement are of no force or effect.

9. **Remedies.** The parties to this Agreement may, either in law or equity, by suit, action, mandamus or other proceedings in court, seek declaratory relief, enforce and compel specific performance of this Agreement, provided that in no event will the City have any liability in damages, costs (including attorneys' fees) or any other monetary liability to Leasee or any affiliate of Leasee, any person claiming through Leasee, or to their respective successors, assigns, heirs and personal representatives in respect of any suit, claim, or cause of action arising out of this Agreement or any of the actions or transactions contemplated herein.



10. **Notices.** All notices between the parties hereto must be in writing and must be sent by certified or registered mail, return receipt requested, by personal delivery against receipt or by overnight courier, will be deemed to have been validly served, given or delivered immediately when delivered against receipt or Three (3) business days after deposit in the mail, postage prepaid, or One (1) business day after deposit with an overnight courier, and must be addressed as follows:

If Notice to Lessee:

Cherry Street Hotel, LLC  
Attn: Jonathan Odle  
4215 Philips Farm Rd, Ste 109  
Columbia, MO 65201

If Notice to City:

City of Columbia  
Attn: Director of Public Works  
701 E. Broadway  
Columbia, MO 65201

With a copy to:

Bush & Patchett, LLC  
Attn: Kerry Bush  
4240 Phillip Farm Rd, Suite 9  
Columbia, MO 65201

City of Columbia  
Attn: City Counselor  
701 E Broadway  
Columbia, MO 65201

Each party will have the right to specify that notice is to be addressed to another address by giving to the other party ten (10) days written notice thereof.

11. **Hold Harmless.** Lessee at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, elected officials, boards, commissions, officers, employees, attorneys, and agents from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, from the action or inaction of Lessee, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Lessee may be liable, in the activities performed, or failed to be performed, by Lessee under this Agreement or in the development of the Subject property, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. The indemnification, duty to defend and hold harmless obligations set forth in this Section will survive for a period of five (5) years from the date of expiration or termination of this Agreement.

12. **Sovereign Immunity.** Nothing in this Agreement shall constitute or be construed as a waiver of the City's governmental or official immunity or its officers or employees from liability or suit pursuant to Section 537.600 RSMo.

13. **No Third Party Beneficiaries.** There are no third party beneficiaries to this Agreement.

14. **Failure or Delay to Enforce.** No failure to exercise or delay in exercising any right hereunder on the part of any Party to this Agreement shall operate as a waiver thereof, and no single or partial exercise of any right of such Party shall preclude any other or further exercise of such right or the exercise of any other right.

15. **Power of the City.** Notwithstanding anything set forth in this Agreement to the contrary, no provision contained herein shall in any manner diminish or usurp the inherent rights and powers of the City to act in its capacity as a public body. All financial obligations of the City shall be subject to future appropriation of the City in accordance with applicable laws and requirements. Further, nothing herein shall relieve Leasee from complying with all applicable laws and requirements.

16. **Attorney 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.

17. **Governing Law.** This Agreement will be construed according to the laws of the State of Missouri. The Parties will comply with all local, state, and federal laws and regulations relating to the performance of this Agreement.

18. **Venue.** Any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, must be instituted only in the Circuit Court of Boone County, Missouri.

19. **Execution.** This Agreement may be signed in one or more counterparts, each of which shall be deemed as original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.

20. **Entire Agreement.** Parties agree that this Agreement constitutes a lawful contract between the Parties and Leasee hereby acknowledges and agrees that this Agreement and provisions of the City's Code of Ordinances applicable to this Agreement constitute lawful exercises of the City's authority and police power. 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.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURES TO FOLLOW]**



**IN WITNESS WHEREOF**, the Parties have executed this Agreement and shall be effective on the last day and year indicated below.

CITY OF COLUMBIA, MISSOURI




\_\_\_\_\_  
City Manager

Dated: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Nancy Thompson, City Counselor/rgt 

STATE OF MISSOURI

)

) ss

COUNTY OF BOONE

)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021 before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and City Manager acknowledged this instrument to be the free act and deed of the City.

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

\_\_\_\_\_  
Notary Public

My Commission expires:

LICENSEE  
CHERRY STREET HOTEL, LLC

Jonathan Odle, Member  
Dated: 6/24/21

ATTEST:

Secretary or Witness

STATE OF MISSOURI )  
 ) ss  
COUNTY OF BOONE )

On this 24<sup>th</sup> day of June, 2021 before me, a notary public of the State of Missouri appeared Jon Odle, \_\_\_\_\_ member of said Cherry Street Hotel, LLC and known to be to be the person who executed the within agreement on behalf of said limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

[Signature]  
Notary Public

My commission expires: 12/19/2022



**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE SUBJECT PROPERTY**

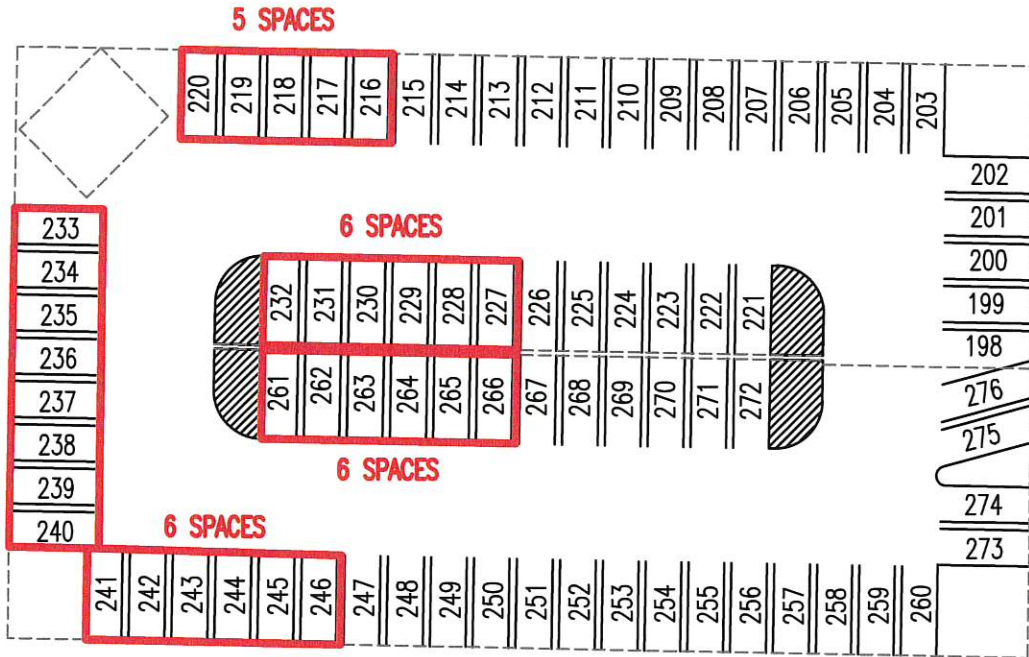
All of Lot One Hundred Fifty-eight (158) and the west sixty-five (65) feet of Lot One Hundred Fifty-nine (159) in the Original Town (now City) of Columbia, Boone County, Missouri



**EXHIBIT B**  
**HOTEL ONLY SPACES**

10TH STREET

8 SPACES



HIT STREET

PREPARED BY:



1000 W. Nifong Blvd., Bldg. 1  
Columbia, Missouri 65203  
(573) 447-0292

[www.crockettengineering.com](http://www.crockettengineering.com)

Crockett Engineering Consultants, LLC  
Missouri Certificate of Authority  
#2000151301



## TOP FLOOR OF PARKING GARAGE

### PARKING REQUEST

SCALE: 1" = 40'

**EXHIBIT C**  
**LEGAL DESCRIPTION OF GARAGE SITE**

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 48 NORTH, RANGE 13 WEST, COLUMBIA, BOONE COUNTY, MISSOURI AND BEING ALL OF LOTS 98 AND 99 AND THE WEST 65 FEET OF LOT 97 ALL OF THE ORIGINAL TOWN OF COLUMBIA, RECORDED IN BOOK A, PAGE 335 AND ALSO SHOWN IN THE SURVEY RECORDED IN BOOK 673, PAGE 16