

PRELIMINARY FUNDING AGREEMENT

THIS PRELIMINARY FUNDING AGREEMENT (the “Agreement”) is made and entered into as of the ____ day of _____, 2017, by and between the **CITY OF COLUMBIA, MISSOURI** (the “City”) and **BROADWAY LODGING TWO, LLC** (the “Company”).

RECITALS

A. The Company desires to redevelop 1104 East Walnut Street (the “Proposed Redevelopment Area”) through the demolition of the existing building and other improvements thereon and the construction thereon of an approximately 73,000 square foot hotel tower, which would connect to The Broadway hotel.

B. The Company has submitted an Application for Tax Increment Financing (the “Application”) and an application fee of ten thousand dollars (\$10,000) (the “Application Fee”) to the City.

C. The City is willing to explore the feasibility of financing a portion of the costs of developing or redeveloping the Proposed Redevelopment Area through the use of tax increment financing or other economic development incentives, if the Company advances funds, in addition to the Application Fee to pay the City’s costs of exploring such incentives.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Advance of Funds. The City hereby acknowledges receipt from the Company of the Application Fee and an additional deposit of \$10,000 to be used as initial preliminary funding in connection with the consideration by the City of the adoption of tax increment financing or other economic development incentives in the Proposed Redevelopment Area (the “Preliminary Funds”). The City shall use the Preliminary Funds to pay or reimburse the City for payment of actual costs incurred by the City for services provided by such consultants and advisors (including, but not limited to attorneys, planners, and financial consultants) as the City deems advisable regarding the City’s review of redevelopment plans, blight studies and related documents, and negotiation of a redevelopment agreement, and for expenses incurred by the City (such as mailing, publication and similar costs) in connection with the foregoing. The parties acknowledge that such amount is a substantial sum and agree to use their best efforts to work together to reduce the total costs to be paid out of the Preliminary Funds.

2. Disbursement. Subject to the remaining provisions of this Agreement, the City shall disburse Preliminary Funds for fees and expenses incurred or to reimburse the City for fees and expenses previously paid by the City upon receipt of (a) invoices for work performed by consultants and advisors, (b) invoices and/or receipts for out-of-pocket expenses incurred by such parties or the City for the planning, legal and financial work described above, and (c) such other supporting documentation as may be requested by the City. The City shall use reasonable care in ascertaining that the fees and expenses paid from the Preliminary Funds are fair and reasonable.

3. Copies of Disbursement Requests. The Company may request copies of all disbursement records (as maintained pursuant to Section 2 above) detailing costs paid from the Application Fee and from the Preliminary Funds.

4. Consideration of Incentives. Nothing herein shall obligate the City to approve tax increment financing or any other incentives for the Company's proposed project.

5. Company's Right of Termination. The Company may terminate this Agreement at any time in its sole discretion upon giving the City 10 days' written notice; whereupon 10 days following the Company's delivery of said notice this Agreement shall be deemed terminated. Upon receipt of such notice, the City will cease incurring expenditures under this Agreement as soon as reasonably possible. The City shall pay to Company, within 60 days after the Company delivers notice of its termination under this Section, all Preliminary Funds remaining after the City's payment of any fees and expenses submitted pursuant to this Agreement for work performed through the date of termination.

6. City's Right of Termination. The City may terminate this Agreement upon giving the Company 10 days' written notice if (a) a redevelopment agreement is not executed within a reasonable time (as determined by the City in its reasonable discretion) or (b) the initial Preliminary Funds advanced hereunder have been spent and the Company does not provide additional Preliminary Funds to the City. Upon giving such notice under this Section, the City shall cease incurring expenditures under this Agreement. The City shall pay to the Company, within 60 days after the City delivers notice of its termination of this Agreement under this Section, all Preliminary Funds remaining after the City's payment of any fees and expenses submitted pursuant to this Agreement for work performed by the City or its consultants, as specified in Section 1 hereof, through the date of termination.

7. Excess Preliminary Funds. If the City does not expend all the Preliminary Funds as provided herein, the City shall immediately return the remainder to the Company. Notwithstanding anything to the contrary herein, the parties agree that the City shall not return any portion of the Application Fee to the Company, regardless of whether the amount of the Application Fee exceeds the amount of disbursements made by the City pursuant to Section 2 hereof.

8. No Third-Party Beneficiaries. This Agreement constitutes a contract solely between the City and the Company. No third party has any beneficial interest in or derived from this Agreement.

9. Notices. All notices and correspondence hereunder shall be in writing and shall be delivered by hand delivery, facsimile, or first class mail, postage prepaid, to the parties as set forth below:

If to the City:

City of Columbia
City Manager's Office
P.O. Box 6015
Columbia, Missouri 65205
Attention: City Manager

with a copy to:

City of Columbia
Law Department
P.O. Box 6015
Columbia, Missouri 65205
Attention: City Counselor

If to the Company:

Broadway Lodging Two, LLC
#5 McBride & Sons Center Drive
Chesterfield, Missouri 63005
Attention: David Parmley

with a copy to:

Van Matre, Harrison, Hollis, Taylor, & Elliott, P.C.
1103 E. Broadway
Columbia, Missouri 65205
Attn: Robert Hollis, Esq.

10. Miscellaneous.

a. Severability. If any provision of this Agreement is unenforceable, the remainder of this Agreement shall be enforced as if such provision were not contained herein.

b. No Waiver. Failure of any party hereto to enforce its rights hereunder at any time shall not be deemed a waiver of any such rights.

c. Representations and Warranties. The Company and the City each represent and warrant that (i) this Agreement has been duly executed by them or on their behalf, as the case may be, pursuant to due authorization, and is not in violation of any such party's governing documents, charter or ordinances, as the case may be, (ii) no consents are necessary for the execution, delivery, and performance of this Agreement by such party, and (iii) this Agreement is valid, binding and enforceable against such party in accordance with its terms.

d. Assignment. This Agreement may not be assigned by either party without the written consent of the other.

11. Limitation of Liability. Notwithstanding any provision hereof to the contrary, the City and its officials, agents, employees and representatives shall not be liable to the Company for damages or otherwise if this Agreement, any prospective adoption of tax increment financing, the Plan or the Redevelopment Agreement is declared invalid or unconstitutional in whole or in part by the final (as to which all rights of appeal have expired or have been exhausted) judgment of any court of competent jurisdiction, and by reason thereof either the City is prevented from performing any of the covenants and agreements herein or the Company is prevented from enjoying the rights and privileges contemplated hereunder.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Preliminary Funding Agreement to be duly executed as of the date first above written.

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

ATTEST:

Sheela Amin, City Clerk

Approved as to form:

Nancy Thompson, City Counselor

BROADWAY LODGING TWO, LLC

By: _____
David Parmley, Managing Member