

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into on the last date executed by a party as indicated on the signature pages below, by and between **Broadway Lodging Two, LLC**, a limited liability company organized under the Missouri Limited Liability Company Act (“Owner”), and the **City of Columbia, Missouri**, a constitutional charter municipality of the State of Missouri (“City”). The City and the Owner may hereinafter be collectively referred to as the Parties and individually as a Party.

### **RECITALS**

**WHEREAS**, Owner holds title to a parcel of land located at or near 1106 East Walnut in the City of Columbia, Missouri described in the attached **Exhibit A**. (the “Subject Property”); and

**WHEREAS**, Owner desires to develop the Subject Property for a new hotel project which will connect to an existing hotel tower located at or near 1111 Broadway; and

**WHEREAS**, when fully developed, the Subject Property is anticipated to consist of approximately 73,000 square feet of space with approximately 80 guest rooms (the “Project”); and

**WHEREAS**, the parties desire to set forth responsibility for the construction and dedication of certain public improvements associated with development of the Subject Property in this Agreement;

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

1. **Contingencies.** This Agreement is contingent upon issuance of a building permit to Owner to construct the Project.

2. **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 Owner and all of such successors and assigns.

3. **Owner's Obligations for Development.**

a) Walnut Street Frontage.

Owner will remove the existing parking spaces located on Walnut Street adjacent to the Subject Property and shall construct new half-street improvements on Walnut Street adjacent to the Subject Property consisting of a half street right of way width of no less than twenty-three feet (23') when measured from the centerline, an additional curb lane for temporary standing of vehicles of no less than eight and one-half feet (8 ½') in width, and a sidewalk of no less than seven and one half feet (7 ½') in width, including back of curb, as shown in the attached drawings depicted on **Exhibit B** attached hereto.

b) Alley Improvements.

Owner will construct half-street improvements in the Alley adjacent to the south side of the Subject Property.

c) Other Improvements.

Owner will remove the retaining wall and sidewalk located on the Short Street Garage Property adjacent to the east side of the Subject Property and replace with a public sidewalk and improvements as shown on the attached drawings depicted on **Exhibit C** attached hereto. Owner shall repair any damage, aesthetic or structural, which occurs as a result of the removal and replacement of such sidewalk.

d) Short Street Garage Sidewalk Awning.

Owner is hereby granted the permission to remove the awning attached to the Short Street Garage which is located over the sidewalk and replace it following construction of the Project. Owner shall ensure that reinstallation following

construction of the Project shall occur in a good and workmanlike manner such that the removal and reinstallation is not visible and there is no damage to the awning structure removed and reinstalled by Owner on the Short Street Garage. Owner shall reimburse the City for any and all expenses associated with repair of the Short Street Garage and/or the awning removal and replacement. The removal and replacement of the Short Street Garage awning is depicted on **Exhibit D** attached hereto.

4. **Construction and Bonding of Improvements.** Except as otherwise expressly indicated herein, all public improvements required under the regulations of the City or this Agreement must be constructed in accordance with the City's Street, Storm Sewer, and Sanitary Sewer Specifications and Standards, as may be amended, or any successor specifications and standards adopted by the City together with any final construction plans approved by the City prior to construction of such facilities. Construction plans must include a thorough geotechnical study performed by a qualified geotechnical engineer who must certify that the proposed site development does not pose unacceptable risks to public safety or infrastructure. In connection with construction, the Owner shall be required to post bonds or other security as required by the city code. Owner is responsible for obtaining all necessary easements to construct improvements related to Owner's Development of the Subject Property.

5. **Recording.** The City shall cause this Development Agreement to be recorded with the Recorder of Deeds of Boone County, Missouri, at the cost and expense of the Owner.

6. **Amendments.** Any amendment to this Agreement must be in writing and must be executed by the City and the Owner, 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 Owner by this Agreement. Oral modifications or amendments of this Agreement are of no force or effect.

7. **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 Owner or any affiliate of Owner, any person claiming through Owner, 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.

8. **Third Party Actions.** Owner will have the right, but not the obligation to assume the costs of defense of any action or proceeding initiated by a third party challenging this Agreement, the zoning or rezoning of the Subject Property, or any other actions or transactions

contemplated by this Agreement (including, without limitation, to settle or compromise any claim or action for which Owner has assumed the defense) with counsel of Owner's choosing and the City and Owner agree that so long as no conflicts of interest exist between them, the same attorney or attorneys may simultaneously represent the City and Owner in any such proceeding. In no event will the City have any liability to Owner for damages or otherwise in the event that all or any part of this Agreement, the ordinances approving any part of the development are challenged or declared invalid or unconstitutional in whole or in part by a final (as to which all rights of appeal have been exhausted or expired) judgment of a court of competent jurisdiction, and, in the event Owner elects not to assume such defense and costs, the City will have no obligation to defend or to assume the costs of defense of any such action.

9. **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 Owner:

Broadway Lodging Two, LLC  
Attn: David Parmley  
5 McBride and Son Center  
Chesterfield, MO 63005

If Notice to City:

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

With a copy to:

Van Matre, Harrison, Hollis,  
Taylor & Elliott, P.C.  
1103 E Broadway  
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.

10. **Hold Harmless.** Owner 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 Owner, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Owner may be liable, in the activities performed, or failed to be performed, by Owner 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.

11. **Insurance.** Owner must provide, at its sole expense, and maintain during all times in which Owner is constructing public improvements pursuant to this Agreement commercial general liability insurance with a reputable, qualified, and financially sound company licensed to do business in the State of Missouri, and unless otherwise approved by the City, with a rating by Best of not less than "A," that will protect the Owner, the City, and the City's officials, officers, and employees from claims which may arise from operations under this Agreement, whether such operations are by the Owner, its officers, directors, employees and agents, or any subcontractors of Owner. This liability insurance must include, but will not be limited to, protection against claims arising from bodily and personal injury and damage to property, resulting from all Owner operations, products, services or use of automobiles, or construction equipment. The amount of insurance required herein must be in no event less than the individual and combined sovereign immunity limits established by § 537.610 RSMo. for political subdivisions; provided that nothing herein will be deemed to waive the City's sovereign immunity. An endorsement must be provided which states that the City is named as an additional insured and stating that the policy will not be cancelled or materially modified so as to be out of compliance with the requirements of this Section, or not renewed without 30 days advance written notice of such event being given to the City.

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 Owner from complying with all applicable laws and requirements.

16. **Authorized Employees.** Owner acknowledges that Section 285.530, RSMo, prohibits any business entity or employer from knowingly employing, hiring for employment, or continuing to employ an unauthorized alien to perform work within the State of Missouri. Owner therefore covenants that it is not knowingly in violation of Section 285.530(1), RSMo, and that it will not knowingly employ, hire for employment, or continue to employ any unauthorized aliens to perform work on any project which is the subject of this Agreement, and that its employees are lawfully eligible to work in the United States. Owner will execute an Immigration Law Compliance Affidavit in substantially the same form as attached hereto in Exhibit E and will cause any person or entity performing work on any public infrastructure project to confirm compliance with Section 285.530(1) and execute an Immigration Law Compliance Affidavit.

17. **Inspection.** Upon reasonable prior notice, the City may conduct such periodic inspections of the projects herein, including any applicable phase, as may be generally provided in the applicable law or regulation for inspection thereof pursuant to comply with the terms of this Agreement. The Owner shall not deny the City and its officers, employees, agents and independent contractors the right to inspect upon reasonable prior written request, all engineering or construction contracts or documents pertaining to the construction of the public infrastructure or any applicable phase thereof.

18. **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.

19. **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.

20. **Entire Agreement.** This Agreement contains the entire and complete agreement between the City and the Owner with respect to the requirements imposed upon the Owner for the providing of certain rights-of-way and interests in land, and the construction and installation of certain improvements, all as hereinabove described in the Recitals for this Agreement and the above numbered paragraphs of this Agreement. Parties agree that this Agreement constitutes a

lawful contract between the Parties and Owner 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.

**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

STATE OF MISSOURI

)

) ss

COUNTY OF BOONE

)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019 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  
BROADWAY LODGING TWO, LLC

\_\_\_\_\_  
David Parmley, Manager

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

ATTEST:

\_\_\_\_\_  
Secretary or Witness

STATE OF MISSOURI            )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019 before me, a notary public of the State of Missouri appeared David Parmley, the manager of said Broadway Lodging Two, 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.

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

My commission expires:



**EXHIBIT A**  
**LEGAL DESCRIPTION**

All of Lot Three (3) of Ditter Subdivision as shown by the Plat thereof recorded in Plat Book 36 at Page 64 of Boone County, Missouri, containing .25 acres more or less

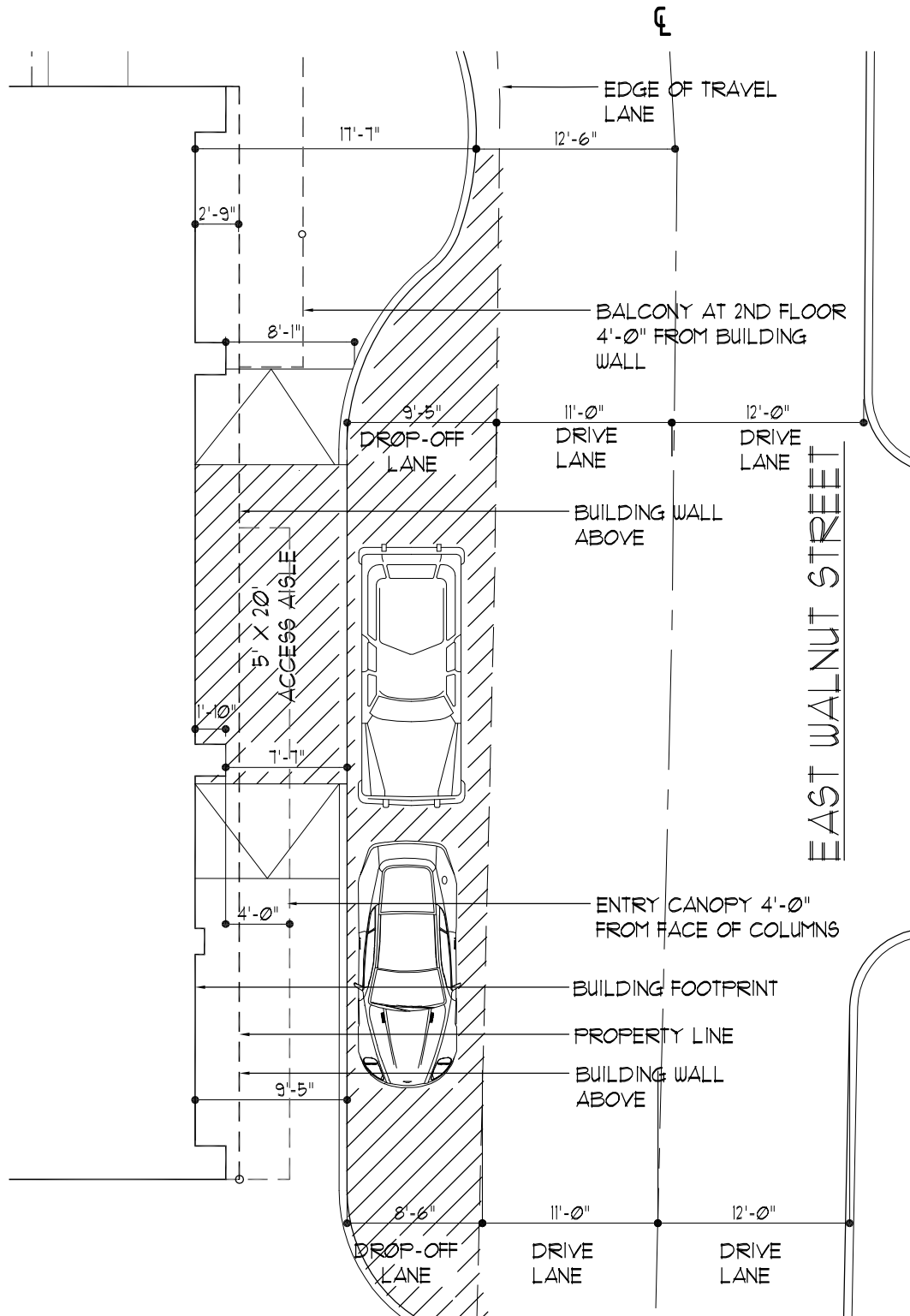
**EXHIBIT B**  
**WALNUT STREET IMPROVEMENTS**

[Insert excerpt from Partial Site Plan Sheet A1.1 of the Architectural Plans.]



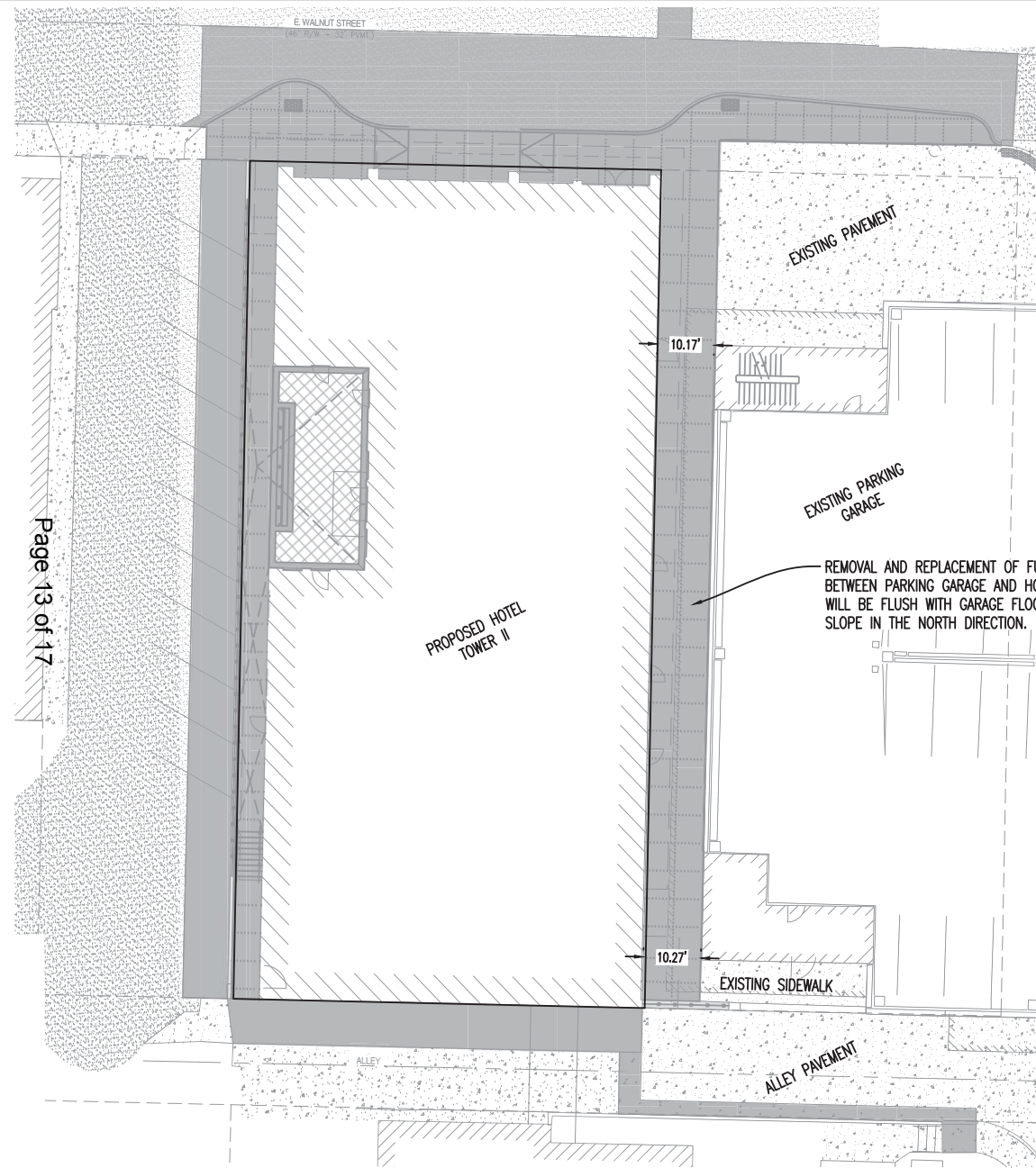
803 MOUNT MORIAH  
SUITE 100B  
MEMPHIS, TN 38117  
(901) 683-7175 p.  
(901) 683-2385 f.  
llw@llwarchitects.com

DEVELOPMENT AGREEMENT  
EXHIBIT B



**EXHIBIT C**  
**SHORT STREET GARAGE SIDEWALK IMPROVEMENTS**

[Insert Crockett depiction of “East Sidewalk between Garage and Hotel Tower II”]



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## COLUMBIA BROADWAY II

### EAST SIDEWALK BETWEEN GARAGE AND HOTEL TOWER II

SCALE: 1" = 20'



PREPARED BY:

**CROCKETT**

ENGINEERING CONSULTANTS  
1000 W. Nifong Boulevard Building #1  
Columbia, Missouri 65203  
(573) 447-0292

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

Crockett Engineering Consultants, LLC  
Missouri Certificate of Authority  
#2000151304

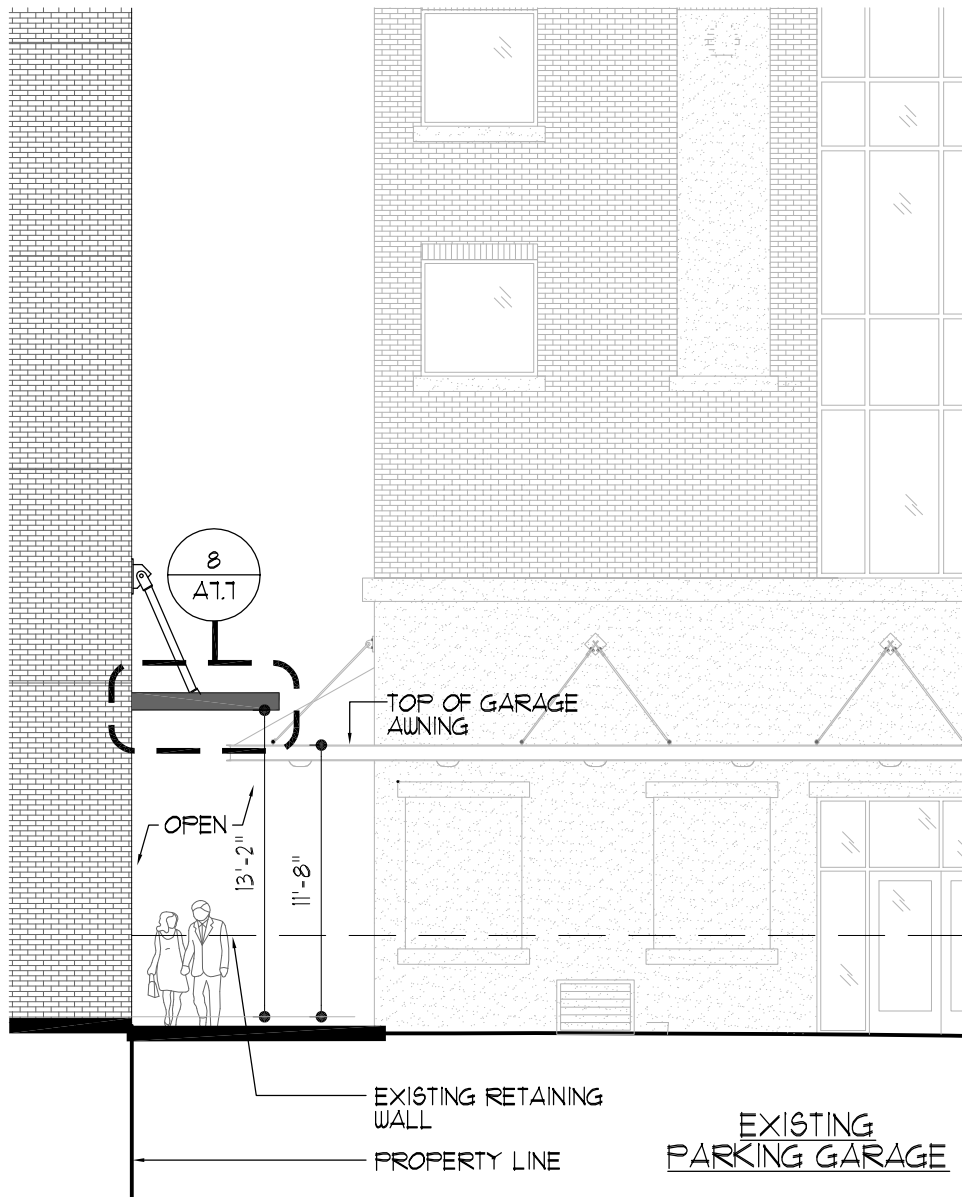
**EXHIBIT D**  
**SHORT STREET GARAGE AWNING REMOVAL AND REPLACEMENT**

[Insert excerpts from South Elevation (Alley) Sheet A3.4 and  
Canopy Section (SE Entry) Detail 8, Sheet A7.7]



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