

REDEVELOPMENT AGREEMENT

among the

CITY OF COLUMBIA, MISSOURI

and

BROADWAY LODGING TWO, LLC

and

COLUMBIA TIF CORPORATION TWO

dated as of

_____, 2018

BROADWAY HOTEL PHASE TWO REDEVELOPMENT PLAN & PROJECT

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- Exhibit A – Redevelopment Area
- Exhibit B – Redevelopment Proposal
- Exhibit C – Reimbursable Redevelopment Project Costs
- Exhibit D – Form of Certificate of Substantial Completion
- Exhibit E – Form of Certification of Reimbursable Redevelopment Project Costs
- Exhibit F – Form of TIF Notes
- Exhibit G – Annual Compliance Report

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (this “*Agreement*”) is made and entered into as of this ____ day of _____, 2018, by and among the **CITY OF COLUMBIA, MISSOURI**, an incorporated political subdivision of the State of Missouri (the “*City*”), **BROADWAY LODGING TWO, LLC**, a Missouri limited liability company (the “*Developer*”), and **COLUMBIA TIF CORPORATION TWO**, a Missouri corporation (the “*TIF Recipient*”). (All capitalized terms used but not otherwise defined herein shall have the meanings ascribed in **Article I** of this Agreement.)

RECITALS

A. On March 17, 2008, the City Council of the City adopted Ordinance No. 19851 establishing the Tax Increment Financing Commission of the City of Columbia, Missouri (the “TIF Commission”).

B. On May 21, 2017, the City published in the *Columbia Daily Tribune*, a newspaper of general circulation within the City, a notice soliciting proposals for the redevelopment of the Redevelopment Area.

C. The Developer submitted its redevelopment proposal (the “*Redevelopment Proposal*”) for the Redevelopment Area to the City on April 26, 2017.

D. Following a public hearing held on October 4, 2017 and October 30, 2017, the TIF Commission voted against recommending that the City Council approve the Broadway Hotel Phase Two Redevelopment Plan (the “*Redevelopment Plan*”) and the redevelopment project described in the Redevelopment Plan (the “*Redevelopment Project*”).

E. On December 4, 2017, after due consideration of the TIF Commission’s recommendation, the City Council adopted Ordinance No. 023408 (the “*TIF Ordinance*”) approving the Redevelopment Plan, designating the Redevelopment Area, approving the Redevelopment Project and adopting tax increment financing within the Redevelopment Area.

F. On _____, 2018, the City Council adopted Ordinance No. ____ designating the Developer as developer of the Redevelopment Project and authorizing the City to enter into this Agreement.

G. The City Council hereby determines that the acceptance of the Redevelopment Proposal, the implementation of the Redevelopment Project and the fulfillment generally of this Agreement are in the best interests of the City, and the health, safety, morals and welfare of its residents, and in accord with the public purposes specified in the Redevelopment Plan.

H. Pursuant to provisions of the TIF Act, the TIF Ordinance and Ordinance No. ____, the City is authorized to enter into this Agreement, to issue TIF Obligations as evidence of the City’s obligation to pay certain Redevelopment Project Costs incurred in furtherance of the Redevelopment Plan and the Redevelopment Project, and to pledge TIF Revenues to the payment of the TIF Obligations.

AGREEMENT

Now, therefore, in consideration of the premises and promises contained herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. As used in this Agreement, the following words and terms shall have the following meanings:

“Agreement” means this Redevelopment Agreement, as the same may be from time to time modified, amended or supplemented in writing by the parties hereto.

“Bond Counsel” means Gilmore & Bell, P.C., St. Louis, Missouri, or an attorney at law or a firm of attorneys acceptable to the City of nationally recognized standing in matters pertaining to the tax-exempt nature of interest on obligations issued by states and their political subdivisions duly admitted to the practice of law before the highest court of any state of the United States of America or the District of Columbia.

“Bond Proceeds” means the gross cash proceeds from the sale of TIF Bonds before payment of Issuance Costs, together with any interest earned thereon.

“Certificate of Substantial Completion” means a document, substantially in the form of **Exhibit D** attached hereto, provided by the Developer to the City evidencing the Developer’s and/or the TIF Recipient’s satisfaction of all obligations and covenants to complete the Work. The Certificate of Substantial Completion does not constitute a final occupancy certificate, final inspection certificate, or other documentation required by the City’s municipal code to occupy the Redevelopment Project.

“Certification of Reimbursable Redevelopment Project Costs” means a document, substantially in the form of **Exhibit E** attached hereto, provided by the TIF Recipient to the City evidencing Reimbursable Redevelopment Project Costs incurred by the Developer and/or the TIF Recipient.

“City” means the City of Columbia, Missouri, an incorporated political subdivision of the State of Missouri.

“City Council” means the City Council of the City.

“City Manager” means the City Manager of the City or his or her designee.

“Construction Inspector” means such licensed engineer or architect either employed by or retained and designated by the City from time to time at the City’s sole cost and expense, and/or such individuals as may be designated to carry out inspections on behalf of the City’s community development and public works departments.

“Construction Plans” means plans, drawings, specifications and related documents, and construction schedules for the construction of the Work, together with all supplements, amendments or

corrections, submitted by the Developer and approved by the City in accordance with the City's code and this Agreement.

“Developer” means Broadway Lodging Two, LLC, a Missouri limited liability company, and its permitted successors or assigns in interest.

“EATS Account” means an account of the Special Allocation Fund into which 50% of the Economic Activity Taxes are deposited pursuant to Section 99.845 of the TIF Act.

“Economic Activity Taxes” shall have the meaning ascribed to such term in Section 99.805 of the TIF Act, but not including any taxes that are excluded from tax increment financing by Missouri law (including but not limited to taxes imposed on sleeping rooms).

“Extraordinary Costs Fund” means the fund of that name described in **Section 6.5**.

“Final Certified Amount” means an amount, certified by the City after the City verifies the actual Project Costs submitted pursuant to **Section 4.1.5**, equal to (1) if the verified actual Project Costs are equal to or greater than \$20,250,000, the Maximum Reimbursement Amount, or (2) if the verified actual Project Costs are less than \$20,250,000, the Maximum Reimbursement Amount less \$1 for every \$5 that the verified actual Project Costs are less than \$20,250,000.

“Governmental Approvals” means all re-zoning or other zoning changes, site plan approvals, conditional use permits, variances, building permits, architectural review or other subdivision, zoning or similar approvals required for the implementation of the Redevelopment Project.

“Issuance Costs” means (1) all costs reasonably incurred by the City in furtherance of the issuance of TIF Obligations including but not limited to the fees and expenses of financial advisors and consultants, the City's attorneys (including City's counsel, special TIF counsel and Bond Counsel), the City's administrative fees and expenses (including planning and revenue study consultants), underwriters' discounts and fees, the costs of printing any TIF Obligations and any official statements relating thereto, the costs of credit enhancement, if any, capitalized interest, debt service reserves and the fees of any rating agency rating any TIF Obligations, and (2) all costs up to \$30,000 reasonably incurred by the Developer in furtherance of the issuance of TIF Obligations.

“Maximum Reimbursement Amount” means the lump sum of \$2,064,949 plus Issuance Costs.

“Note Ordinance” means the ordinance(s) of the City to be adopted by the City Council necessary to authorize the TIF Obligations, any trust indenture relating thereto, and all related ordinances, resolutions and proceedings.

“Payments in Lieu of Taxes” shall have the meaning ascribed to such term in Section 99.805 of the TIF Act.

“PILOTS Account” means an account of the Special Allocation Fund into which Payments in Lieu of Taxes are deposited pursuant to Section 99.845 of the TIF Act.

“Prime Rate” means the prime rate reported in the “Money Rates” column or any successor column of *The Wall Street Journal*, currently defined therein as the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks. If *The Wall Street Journal* ceases publication of the Prime Rate, then “Prime Rate” shall mean the “prime rate” or “base rate” announced by Bank of America, N.A., or any successor thereto.

“*Project Costs*” means the total amount spent or expected to be spent by the Developer and/or TIF Recipient to construct the Work.

“*Project Fund*” means the Project Fund created in the Note Ordinance.

“*Property*” means all of the real property (including, but not limited to, all options held by third parties, fee interests, leasehold interests, tenant-in-common interests and such other like or similar interests) and existing improvements in the Redevelopment Area, other than and excluding any public rights-of-way and easements that the Developer determines in its reasonable judgment are not necessary for the implementation of the Redevelopment Project and the completion of the Work.

“*Redevelopment Area*” means the area described in **Exhibit A** attached hereto and incorporated by reference.

“*Redevelopment Plan*” means the plan entitled “Broadway Hotel Phase Two Redevelopment Plan & Project,” as approved by the City Council pursuant to the TIF Ordinance, as such plan may from time to time be amended in accordance with the TIF Act.

“*Redevelopment Project*” means the redevelopment project described in the Redevelopment Plan.

“*Redevelopment Project Costs*” shall have the meaning assigned to such term in Section 99.805 of the TIF Act.

“*Redevelopment Proposal*” means the proposal submitted by the Developer to the City on “April 26, 2017, which is attached as **Exhibit B** and incorporated by reference herein, as amended by and subject to the provisions of the Redevelopment Plan and this Agreement.

“*Reimbursable Redevelopment Project Costs*” means those Redevelopment Project Costs that are reimbursable under **Article IV** hereof, as described in **Exhibit C** attached hereto.

“*Special Allocation Fund*” means the Broadway Hotel Phase Two Special Allocation Fund, created by the TIF Ordinance, into which TIF Revenues are from time to time deposited in accordance with the TIF Act.

“*TIF Act*” means the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 to 99.865 of the Revised Statutes of Missouri, as amended.

“*TIF Analyst*” means Stifel, Nicolaus & Company, Incorporated, or such other financial advisor as may be retained by the City from time to time.

“*TIF Bonds*” means Tax Increment Revenue Bonds authorized and issued by the City in accordance with the TIF Act and this Agreement.

“*TIF Commission*” means the Tax Increment Financing Commission of the City of Columbia, Missouri.

“*TIF Notes*” means tax increment revenue notes issued by the City pursuant to and subject to this Agreement and the Note Ordinance in substantially the form as set forth in **Exhibit F**, to evidence the

City's limited obligation to repay Reimbursable Redevelopment Project Costs incurred by the Developer and/or TIF Recipient on behalf of the City in accordance with the TIF Act and this Agreement.

"TIF Obligations" means TIF Bonds, TIF Notes or other obligations, singly or in series, issued by the City pursuant to the TIF Act and in accordance with this Agreement.

"TIF Ordinance" means Ordinance No. 023408 adopted by the City Council on December 4, 2017, pursuant to which tax increment financing is adopted within the Redevelopment Area.

"TIF Recipient" means Columbia TIF Corporation Two, a Missouri corporation, and its successors and assigns.

"TIF Revenues" means, collectively, Payments in Lieu of Taxes and 50% of the Economic Activity Taxes.

"Upscale Hotel" means a hotel that is operated and furnished consistent with hotel chains designated as "Upscale Chains" by STR Global. Examples of Upscale Hotel brands are DoubleTree by Hilton, Hotel Indigo, Crowne Plaza, Homewood Suites, and Hyatt Place.

"Work" means all work necessary to construct the Redevelopment Project, including: (1) the demolition of the existing building within the Redevelopment Area; (2) the development and construction of a hotel tower consisting of approximately 80 sleeping rooms and associated meeting and banquet spaces; (3) construction of related public infrastructure improvements, and (4) all other Work described in the Redevelopment Proposal or reasonably necessary to effectuate the intent of this Agreement.

ARTICLE II

ACCEPTANCE OF PROPOSAL

2.1 Developer Designation.

(a) The City hereby selects the Developer to perform the Work in accordance with the Redevelopment Plan, the Redevelopment Proposal and this Agreement. The Developer has designated the TIF Recipient as the manager for the Redevelopment Project, and as such, the TIF Recipient shall perform the Work in accordance with the Redevelopment Plan, the Redevelopment Proposal and this Agreement. The Developer and the TIF Recipient shall have joint and several liability for the requirements under this Agreement of each other.

(b) To the extent of any inconsistency among the foregoing, the parties agree that the more restrictive document shall govern so long as the more restrictive document does not constitute a change to the Redevelopment Plan or Redevelopment Project as would require further hearing pursuant to the TIF Act.

2.2 Developer to Advance Costs. The Developer and/or TIF Recipient agree to advance all Redevelopment Project Costs as necessary to acquire the Property and to complete the Work, all subject to the Developer's right to abandon the Redevelopment Project and terminate this Agreement as set forth in **Section 7.1** hereof. Additionally, and not by way of limitation:

(a) *Advances under TIF Application and Preliminary Funding Agreement.* The Developer has heretofore paid a TIF application fee of \$10,000 to the City and advanced,

pursuant to a Preliminary Funding Agreement between the City and the Developer, the sum of \$55,000 for certain Redevelopment Project Costs comprised of planning, legal, financial, administrative and other costs associated with the Redevelopment Project. The obligations of the parties under the Preliminary Funding Agreement are deemed fully performed and shall be merged into and superseded by this Agreement.

(b) *Advances Upon Execution of Agreement.* Upon execution of this Agreement, the Developer and/or TIF Recipient agree to advance to the City a sum equal to the costs incurred by the City for legal, financial and other consultants associated with the Redevelopment Project to the extent that such costs are not already provided for by subsection (a) above. Payment of any advance under this Section will not waive any application fee or other cost to the Developer associated with any Governmental Approval required by the City's municipal code.

(c) *Advances Upon Issuance of Notes.* Upon the initial issuance of TIF Notes, the Developer and/or TIF Recipient agree to pay to the City an amount equal to the sum of all amounts that the City has expended for the payment of legal, financial and other consultants associated with the Redevelopment Project and the amount of fees and expenses incurred by the City relating to the issuance of the TIF Notes, less all amounts paid under subsections (a) and (b) above. If the sums paid under subsections (a) and (b) above exceeds the total sum the City has expended as of the earlier of (i) the date of issuance of the TIF Notes or (ii) the date twenty-four (24) months from the date of this Agreement, then upon such date, the City shall remit to the Developer such difference, if any.

(d) *Advances to be Reimbursable.* All funds advanced by the City, the Developer and the TIF Recipient under this Section shall constitute Issuance Costs and as such shall represent Reimbursable Redevelopment Project Costs to be reimbursed from the proceeds of TIF Obligations or otherwise from TIF Revenues pursuant to this Agreement.

ARTICLE III

CONSTRUCTION OF THE REDEVELOPMENT PROJECT; CITY APPROVALS

3.1 Control of Property. The Developer represents that it controls or has the option to acquire all of the Property required for the construction of the Redevelopment Project.

3.2 Developer and TIF Recipient to Construct the Redevelopment Project. The Developer and the TIF Recipient shall carry out the Work in a good and workmanlike manner in accordance with the terms of this Agreement, including but not limited to architectural, design and landscaping elements of a quality not less than as set forth in the Redevelopment Proposal.

3.2.1 Project Construction Schedule. The Developer and the TIF Recipient shall commence and complete each of its obligations under this Agreement with respect to the Redevelopment Project in accordance with the following schedule (which dates may be extended pursuant to **Section 7.6**):

<u>Activity</u>	<u>Time for Performance</u>
Close on private financing	December 31, 2018
Commence construction (as evidenced by the expenditure of \$250,000 in hard construction costs, verified to the satisfaction of the City, and receipt of building permit)	April 1, 2019
Substantially complete construction (as evidenced by City's acceptance of Certificate of Substantial Completion)	October 1, 2020

3.2.2 Construction Contracts; Insurance. The Developer and the TIF Recipient may enter into one or more construction contracts to complete the Work. All construction contracts entered into by or on behalf of the Developer or the TIF Recipient shall state that the contractor has no recourse against the City in connection with the contractor's construction of the Work or any portion thereof. Prior to the commencement of construction of the Work, the Developer and the TIF Recipient shall obtain or shall require that any such contractor obtain workers' compensation, comprehensive public liability and builder's risk insurance coverage in amounts required by the City and as provided in **Section 7.9** hereof and shall deliver evidence of such insurance to the City. The Developer and the TIF Recipient shall require that such insurance be maintained by any such contractor for the duration of the construction of the Work.

3.2.3 Competitive Bids; Prevailing Wage; Excessive Unemployment. The Developer and the TIF Recipient shall comply with all applicable State and local laws relating to the construction of the Redevelopment Project, including, but not limited to, Section 107.170 of the Revised Statutes of Missouri, as amended, and laws relating to the payment of prevailing wages, competitive bidding and the employment of Missouri residents during times of excessive unemployment.

3.2.4 Governmental Approvals. The City agrees to cooperate with the Developer and the TIF Recipient and to process and timely consider all complete applications for the Governmental Approvals as received, all in accordance with the applicable City ordinances and laws of the State.

3.2.5 Federal Work Authorization Program. Simultaneously with the execution of this Agreement, the Developer and the TIF Recipient shall provide the City with affidavits and documentation meeting the requirements of Section 285.530, RSMo.

3.3 Construction Plans.

3.3.1 Standards. The Construction Plans shall be prepared or approved by a professional engineer or architect licensed to practice in the State of Missouri. The Construction Plans and all construction practices and procedures with respect to the Work shall be in conformity with all applicable state and local laws, ordinances, orders and regulations, including, but not limited to, any performance, labor and material payment bonds required for public improvements.

3.3.2 Changes. During the progress of the Work the Developer and the TIF Recipient may make such reasonable changes as site conditions or orderly development may dictate or as may be necessary or desirable, in the sole determination of the Developer and the TIF Recipient, to enhance the economic viability of the Redevelopment Project and as may be in furtherance of the general objectives of the Redevelopment Plan.

3.4 Certification of Substantial Completion. Promptly after substantial completion of the Work in accordance with the provisions of this Agreement, the Developer will furnish to the Construction Inspector a Certificate of Substantial Completion so certifying. The Construction Inspector shall, within 45 days following delivery of the Certificate of Substantial Completion, carry out such inspections as he deems necessary to verify to his reasonable satisfaction the accuracy of the certifications contained in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be deemed accepted by the Construction Inspector unless, prior to the end of such 45-day period after delivery to the Construction Inspector of the Certificate of Substantial Completion, the Construction Inspector furnishes the Developer with specific written objections to the status of the Work, describing such objections and the measures required to correct such objections in reasonable detail. Upon acceptance of the Certificate of Substantial Completion by the Construction Inspector or upon the lapse of 45 days after delivery thereof to the Construction Inspector without any written objections thereto, the Developer may record the Certificate of Substantial Completion with the Boone County Recorder, and the same shall constitute evidence of the satisfaction of the Developer's agreements and covenants to perform the Work. The Certificate of Substantial Completion shall be in substantially the form attached as **Exhibit D** hereto and incorporated by reference herein.

ARTICLE IV

REIMBURSEMENT OF REDEVELOPMENT COSTS

4.1 City's Obligation to Reimburse TIF Recipient.

4.1.1 Reimbursement. The City agrees to reimburse the TIF Recipient for the verified Reimbursable Redevelopment Project Costs in the amounts and as set forth on **Exhibit C**, but not to exceed the Final Certified Amount. Reimbursement to the TIF Recipient shall only come from TIF Revenues and the proceeds of TIF Obligations and not from any other funds of the City. The TIF Notes shall evidence the City's obligation to reimburse the TIF Recipient for such verified Reimbursable Redevelopment Project Costs. The City hereby pledges, subject to annual appropriation to the extent required by law, the TIF Revenues to the repayment of the TIF Notes.

4.1.2 Developer Costs Reimbursed to TIF Recipient. The Developer hereby directs the City to, subject to the limits of **Section 4.1.1**, reimburse the TIF Recipient for all verified Reimbursable Redevelopment Project Costs incurred by the Developer.

4.1.3 Note Information. Immediately prior to the issuance of TIF Notes under **Section 5.1**, the TIF Recipient shall provide the following information to the City:

- (a) the most current project budget; and
- (b) verifiable evidence showing that the Developer and the TIF Recipient have collectively expended at least \$250,000 in hard construction costs toward the completion of the Redevelopment Project.

4.1.4 Issuance. Promptly upon receipt of such information, subject to the provisions of **Section 5.1**, the City shall issue the TIF Notes in an amount equal to the Maximum Reimbursement Amount. However, once the Final Certified Amount is calculated pursuant to **Section 4.1.5** below, the maximum principal amount of the TIF Notes will be reduced to the Final Certified Amount. If draws on the TIF Notes already exceed the Final Certified Amount at the time of its calculation, such portion of the TIF Notes exceeding the Final Certified Amount will be cancelled.

4.1.5 Calculation of Final Certified Amount; TIF Bond Information. Within six months of the City's acceptance of the Certificate of Substantial Completion, the Developer and the TIF Recipient shall provide to the City (a) the most current project budget, including actual Project Costs incurred, (b) such other documentation as the City shall reasonably require of the Developer and/or the TIF Recipient in order to (1) verify the actual Project Costs incurred and to calculate the Final Certified Amount, (2) for the TIF Analyst to properly advise the City regarding the proposed bond issue and (3) for the City to obtain an opinion of Bond Counsel regarding the proposed TIF Bonds, and (c) documentation, in form and substance acceptable to Bond Counsel, consenting to the disclosure of confidential sales tax data for purposes of the TIF Bond issuance and satisfying statutory reporting requirements. If the City does not provide a written challenge to any of the actual Project Costs submitted by the Developer or the TIF Recipient within 45 days of the receipt of the current project budget, such actual Project Costs shall be deemed verified for purposes of calculating the Final Certified Amount. The City may retain such consultants as it deems necessary in connection with such verification, the cost of which shall be initially borne by the City, but which is subject to reimbursement pursuant to **Section 6.2** hereof.

4.2 Reimbursements Limited to Reimbursable Redevelopment Project Costs; TIF Recipient's Right to Substitute. Nothing in this Agreement shall obligate the City to issue TIF Obligations to reimburse the TIF Recipient for any cost that is not incurred pursuant to Section 99.820.1 of the TIF Act or that does not qualify as a "redevelopment project cost" under Section 99.805(14) of the TIF Act. Costs incurred by the Developer or the TIF Recipient will be eligible for reimbursement upon compliance with the following procedures:

4.2.1 Submission. The TIF Recipient may submit to the City, no more frequently than once per calendar month, a Certificate of Reimbursable Redevelopment Project Costs in substantially the form attached as **Exhibit E** hereto. Such Certificate of Reimbursable Redevelopment Project Costs shall be accompanied by itemized invoices, receipts or other information that will demonstrate that the cost has been incurred and qualifies for reimbursement pursuant to this Agreement. The parties agree that each of the categories of costs set forth in **Exhibit C** attached hereto constitute Reimbursable Redevelopment Project Costs that are eligible for reimbursement in accordance with the TIF Act and this Agreement. The TIF Recipient shall not be limited in reimbursement to the amounts shown for each such category but shall be entitled to reimbursement for Reimbursable Redevelopment Project Costs from any of the categories set forth on **Exhibit C**, without regard to the maximum amounts set forth for each category provided that the total aggregate amounts reimbursed do not exceed the Maximum Reimbursement Amount.

4.2.2 Approval of Reimbursable Redevelopment Project Costs. The City shall notify the TIF Recipient in writing within 30 days after each submission of its approval or disapproval of the costs identified in each Certificate of Reimbursable Redevelopment Project Costs. If the City reasonably determines that any cost identified as a Reimbursable

Redevelopment Project Cost is not a Reimbursable Redevelopment Project Cost under this Agreement, the City shall so notify the TIF Recipient in writing within 30 days after the submission, identifying the ineligible cost and the basis for determining the cost to be ineligible. The TIF Recipient shall then have the right to identify and substitute other Redevelopment Project Costs as Reimbursable Redevelopment Project Costs, which shall be included with a supplemental application for payment submitted within 15 days after the City's notification of any ineligible costs. The City shall then review and notify the TIF Recipient in writing within 30 days after submission of its approval or disapproval of the costs identified in the supplemental application for payment.

4.2.3 Confirmation of Costs. The TIF Recipient shall provide such information as the City may request for the City to confirm that any cost qualifies under this Agreement and has been incurred and paid by the Developer or the TIF Recipient. The City may retain such consultants as it deems necessary in connection with such review, the cost of which shall be initially borne by the City, but which is subject to reimbursement pursuant to **Section 6.2** hereof.

4.3 City's Obligations Limited to Special Allocation Fund and Bond Proceeds. Notwithstanding any other term or provision of this Agreement, TIF Notes issued by the City to the TIF Recipient for Reimbursable Redevelopment Project Costs are payable only from the PILOTS Account and the EATS Account of the Special Allocation Fund and from Bond Proceeds and from no other source.

ARTICLE V

TIF OBLIGATIONS

5.1 Issuance of TIF Notes. The City agrees to issue TIF Notes, in the form substantially similar to **Exhibit F** hereto, to reimburse the TIF Recipient for Reimbursable Redevelopment Project Costs up to the Maximum Reimbursement Amount.

5.1.1 Terms. The TIF Notes shall bear interest at a fixed rate equal to 6.65%. All TIF Notes shall have a stated maturity equal to the longest period permissible under the TIF Act. Interest on the TIF Notes shall be compounded semi-annually.

5.1.2 Conditions Precedent to Issuance of TIF Notes. No TIF Notes shall be issued until such time as the City has received from the Developer and the TIF Recipient (a) evidence that the Developer and the TIF Recipient have closed or, simultaneously with the issuance of the TIF Notes, will close, on the private financing for all Redevelopment Project Costs to be paid by the Developer and the TIF Recipient within the Redevelopment Area; (b) evidence of not less than a 15% equity investment in the form of cash or cash equivalent; and (c) a Certificate of Reimbursable Redevelopment Project Costs in substantially the form attached as **Exhibit E** hereto.

5.1.3 Procedures for Endorsements of TIF Notes. Within 15 business days after acceptance by the City of each Certificate of Reimbursable Redevelopment Project Costs, the City shall issue, subject to the limitations of **Article IV** and **Section 5.1** hereof, endorsements to the TIF Notes evidencing additional advances for the reimbursement of Reimbursable Redevelopment Project Costs. Upon the acceptance by the City of a Certificate of Reimbursable Redevelopment Project Costs and the endorsement to the TIF Notes as provided herein, the TIF Recipient shall be deemed to have advanced funds necessary to purchase such TIF Notes and the City shall be deemed to have deposited such funds in the Project Fund and shall be deemed to

have reimbursed the TIF Recipient in full for such costs from the amounts deemed to be on deposit in the Project Fund from time to time.

5.1.4 Holdback from Issuance of TIF Notes. The City shall be entitled to withhold endorsement or issuance of the final 10% of the maximum amount of the City's obligation to reimburse the TIF Recipient calculated pursuant to **Section 4.1** until the City has accepted the Certificate of Substantial Completion.

5.2 TIF Bonds.

5.2.1 Issuance. The City may, in its sole discretion, issue TIF Bonds in an amount sufficient to refund all of the outstanding TIF Notes. If the TIF Analyst determines that the amount of TIF Revenues are not sufficient to refund all of the TIF Notes (based on actual and projected receipts of TIF Revenues, debt service coverage tests, and such other factors as the TIF Analyst determines are appropriate), then, if and only if the TIF Recipient consents in writing to an issuance of bonds in an amount less than sufficient to refund all of the outstanding TIF Notes, which TIF Recipient may grant or withhold such consent in its sole, absolute, and unmitigated discretion and, should it grant consent, it shall identify the terms of the issuance acceptable to TIF Recipient and any subsequent issuance by the City shall be in substantially the same form as that to which consent was granted by TIF Recipient, (1) the City may issue TIF Bonds in the maximum amount possible (in the TIF Analyst's sole opinion), and (2) the TIF Recipient shall fully subordinate the repayment of principal and interest on any remaining TIF Notes (the "*Subordinate Notes*") to the payment of all interest and principal due and owing on the TIF Bonds, and shall agree to the reissuance of any such Subordinate Notes as taxable obligations. Notwithstanding anything to the contrary herein, the aggregate principal amount of the TIF Bonds and the Subordinate Notes shall not be greater than the lesser of the Maximum Reimbursement Amount or the Final Certified Amount.

5.2.2 Net Proceeds. The net proceeds of any TIF Bonds (after the payment of Issuance Costs, capitalized interest and required reserve funds) shall be used first to refund the TIF Notes. If the proceeds from the initial issue of TIF Bonds are not sufficient to refund all of the TIF Notes, the City will, in compliance with the provisions of the trust indenture authorizing the initial issue of TIF Bonds, from time to time diligently pursue the issuance of TIF Bonds in an amount sufficient to refund the Subordinate Notes, provided that the market conditions for such TIF Bonds are such that the payment terms of the TIF Bonds are sufficiently favorable that reasonably prudent city financial officers or agents would undertake such a refunding or refinancing of the Subordinate Notes.

5.2.3 Subordinate Note Terms. The Subordinate Notes shall have the same maturity and have the same outstanding principal amount as the TIF Notes that they redeem; however, the interest rate on the Subordinate Notes shall not exceed the interest rate on the TIF Bonds. All such Subordinate Notes shall be payable as to principal and interest according to the terms set forth in **Sections 5.1** and **6.2** of this Agreement, except that the payment of principal and interest on the Subordinate Notes shall be fully subordinate to the payment of principal and interest on the TIF Bonds.

5.3 Cooperation in the Issuance of TIF Obligations. The Developer and the TIF Recipient covenant to cooperate and take all reasonable actions necessary to assist the City and its Bond Counsel, underwriters and financial advisors in the preparation of offering statements, private placement memorandum or other disclosure documents and all other documents necessary to market and sell the TIF Obligations, including providing sufficiently detailed estimates of Reimbursable Redevelopment Project

Costs so as to enable Bond Counsel to render its opinion as to the tax-exemption of TIF Obligations. The Developer will not be required to disclose to the general public or any investor the rent payable under any such lease or, except for the disclosure of sales tax information required under **Section 4.1.5**, any proprietary or confidential financial information pertaining to the Developer, its tenants or the leases with its tenants. However, upon the execution of a confidentiality agreement acceptable to the Developer, the Developer will provide such information to the City's financial advisors, underwriters and their counsel to enable such parties to satisfy their due diligence obligations. Such compliance obligation shall be a covenant running with the land, enforceable as if any subsequent transferee thereof were originally a party to and bound by this Agreement.

5.4 City to Select Consultants; Term and Interest Rate. The City may select the Bond Counsel, underwriters, financial advisors and consultants as the City deems necessary for the issuance of the TIF Bonds. The final maturity of the TIF Bonds shall not exceed the maximum term permissible under the TIF Act. The TIF Bonds shall bear interest at such rates, shall be subject to redemption and shall have such terms as the City shall reasonably determine in conformance with the terms of this Agreement.

ARTICLE VI

SPECIAL ALLOCATION FUND; COLLECTION AND USE OF TIF REVENUES

6.1 Creation of Special Allocation Fund.

(a) The City agrees to cause its Finance Director or other financial officer to maintain the Special Allocation Fund, and within such fund a "PILOTS Account," an "EATS Account" and such further accounts or subaccounts as the Finance Director may deem appropriate in connection with the administration of the Special Allocation Fund pursuant to this Agreement. Subject to the requirements of the TIF Act and, with respect to Economic Activity Taxes, subject to annual appropriation by the City Council, the City will, promptly upon receipt thereof, deposit all Payments in Lieu of Taxes from the Redevelopment Area into the PILOTS Account and 50% of all Economic Activity Taxes into the EATS Account of the Special Allocation Fund.

(b) Notwithstanding anything to the contrary contained herein, the Parties agree that the City may enter into a cooperation agreement with any taxing district that levies Economic Activity Taxes within the Redevelopment Area, whereby, in lieu of the deposit of such Economic Activity Taxes in the EATS Account and distribution back to such taxing district as provided in **Section 6.2(a)**, such taxing district may retain its Economic Activity Taxes so long as (1) the City has declared the surplus contemplated by **Section 6.2(a)** and (2) the taxing district provides the City with an accounting of the Economic Activity Tax revenues that would otherwise be deposited into the EATS Account.

(c) The City will take such actions as it deems reasonable to cause the Boone County Assessor and the Boone County Collector to perform all duties required to be performed pursuant to Section 99.845 of the TIF Act.

6.2 Application of TIF Revenues. The City will apply the TIF Revenues to the repayment of TIF Notes as provided in the Note Ordinance and this Agreement. Such money shall be applied (either by the City Finance Director or other financial officer or, at the option of the City, by a bond trustee or paying agent on behalf of the City) first from the EATS Account and then from the PILOTS Account, as follows:

- (a) Declare as surplus all Economic Activity Taxes on deposit in the EATS Account and distribute such monies to the applicable taxing districts in the manner provided in the TIF Act;
- (b) Payment to the United States of America of an amount sufficient to pay arbitrage rebate, if any, owed with respect to the TIF Obligations under Section 148 of the Internal Revenue Code of 1986, as amended, including any costs of calculating arbitrage rebate;
- (c) Payment of fees and expenses owing to a bond trustee or paying agent, if any, in connection with any TIF Notes;
- (d) Payment of fees and expenses of the City in connection with the general administration of this Agreement, provided such amount shall not exceed \$3,000 per year;
- (e) Subject to the provisions of **Section 6.5** below, payment of (1) \$7,500 per year during the first two years that TIF Revenues are deposited into the Special Allocation Fund and (2) \$5,000 per year thereafter, into the Extraordinary Costs Fund;
- (f) Payment of interest or any scheduled principal becoming due and payable on the TIF Notes on each interest payment date; and
- (g) Payment or redemption of principal on the TIF Notes.

The City agrees that the officer of the City at any time charged with the responsibility of formulating budget proposals will be directed to include in the budget proposal submitted to the City Council for each fiscal year that TIF Obligations are outstanding a request for an appropriation of all moneys on deposit in the Special Allocation Fund for application to the payment of the principal amount, premium, if any, and interest of the TIF Obligations.

The City will apply the TIF Revenues to the payment of TIF Bonds in the manner set forth in the trust indenture for the TIF Bonds.

6.3 Cooperation in Determining TIF Revenues.

- (a) The Developer (or its successor(s) in interest as an owner or owner(s) of the affected portion(s) of the Property) shall:
 - (1) require each “seller” (as that term is defined in Section 144.010(10) of the Revised Statutes of Missouri, as amended) located on the Property that has multiple business operations within the City to file a separate Missouri Department of Revenue Form 53-1 for each location in order to separately identify and declare all sales taxes originating within the Redevelopment Area;
 - (2) supply or cause to be promptly supplied to the City, copies of State sales tax returns filed with Missouri Department of Revenue promptly after filing by “sellers” (as that term is defined in Section 144.010(10) of the Missouri Revised Statutes, as amended) located on the Property;
 - (3) inform the City in writing each month as to the amount of total sales reported on the State sales tax returns described in (a)(1) above that are attributable to the sales or charges for

sleeping rooms paid by transient guests of hotels and motels (and upon request of the City, provide evidence to the City's satisfaction that such sales figures are accurate);

(4) make good faith efforts to assist the City in compiling any information that the City must publicly report, including, without limitation, the information required by Section 99.865.1 of the TIF Act;

(5) upon written request of the City, supply or cause to be promptly supplied to the City, copies of monthly invoices received for utility services provided to the Property including, but not limited to electric, natural gas, and telephone services; and

(6) request any purchaser or transferee of real property and any lessee or other user of real property located within the Redevelopment Area to designate sales subject to sales taxes pursuant to Chapter 144 of the Revised Statutes of Missouri, as amended, to be reported as originating from the Redevelopment Area to the fullest extent permitted by law (including reasonable efforts to negotiate for the inclusion of a clause so providing in the leases of the Property).

(b) The Developer and the TIF Recipient hereby waive any claim to utility tax revenues and hereby agree to bring no suit, claim or other action against the City seeking the deposit of utility tax revenues into the Special Allocation Fund.

6.4 Obligation to Report TIF Revenues. Any purchaser or transferee of real property located within the Property, and any lessee or other user of real property located within the Property required to pay TIF Revenues, shall use all reasonable efforts to timely furnish to the City such documentation as is required by **Section 6.3** hereof. So long as any TIF Obligations are outstanding, the Developer shall cause such obligation to be a covenant running with the land and shall be enforceable as if such purchaser, transferee, lessee or other user of such real property were originally a party to and bound by this Agreement.

6.5 Extraordinary Costs Fund. The City shall create a separate fund known as the Extraordinary Costs Fund to receive the portion of TIF Revenues described in **Section 6.2(d)**. Moneys in this fund may be used by the City, in its sole discretion, for either (a) the payment (including reimbursement to the City) of extraordinary expenses related to the Redevelopment Plan, this Agreement or the TIF Obligations, including but not limited to the costs of defending audits initiated by the Internal Revenue Service, assessed value contests concerning property within the Redevelopment Area, or other litigation initiated or threatened against the City, or (b) the payment of debt service on the TIF Obligations. Notwithstanding anything in **Section 6.2** to the contrary, if the balance of the Extraordinary Costs Fund is equal to or greater than \$30,000 and the City does not expect to incur extraordinary costs in the next year, the City shall notify the Developer and the TIF Recipient that further deposits will not be made into the Extraordinary Costs Fund; but the City may at any time thereafter reinstate annual payments of \$5,000 to the Fund if the City has incurred or expects to incur extraordinary costs that will cause the balance of the Extraordinary Costs Fund to be less than \$30,000. The City shall provide reasonable documentation to the Developer and the TIF Recipient of all extraordinary costs incurred or expected to be incurred prior to reinstating the \$5,000 annual payments.

6.6 Jobs Requirement.

(a) The Developer agrees that it and its affiliates will create additional Jobs at the Broadway Hotel and the new tower within the Redevelopment Project as follows: 37 additional Jobs by the end of the first full calendar quarter following commencement of operations at the new tower.

(b) If the Developer and its affiliates fail to create at least 37 additional Jobs at the Broadway Hotel and the new tower within the Redevelopment Project by the end of the first full calendar quarter following commencement of operations at the new tower, Developer shall send notice of such failure to the City and shall endeavor to create such additional Jobs during the next full calendar quarter; and then, the next full calendar quarter if Developer fails to create such additional jobs within the second calendar quarter. Developer shall have no more than three calendar quarters following commencement of operations at the new tower to comply with the obligation to create 37 additional Jobs. In the event that Developer shall fail to create such additional Jobs after three full calendar quarters have elapsed following commencement of operations at the new tower and upon receiving notice from the City stating that Developer is in default with respect to its jobs creation obligations, the Developer shall be in default.

(c) To determine compliance with this Section, the Developer shall file with the City, following the completion of the first full calendar quarter after commencement of operations at the new tower and, if necessary, continuing for the next two calendar quarters thereafter in the event that the Jobs creation obligation shall not have been met, a Compliance Report in the form attached hereto as **Exhibit G**. The Developer agrees to provide reasonable access to the payroll records of the Developer and its affiliates for purposes of verifying the number of Jobs.

(d) For purposes of this Section, “Job” means a full-time equivalent position. A full-time equivalent position shall be an employee employed on average for 30 hours during a week at the Broadway Hotel and/or at the new tower. The number of Jobs created shall be the total number of Jobs existing during a payroll period within any of the three calendar quarters as permitted in **Section 6.6(b)** above following commencement of operations at the new tower less the average number of Jobs existing during the period which is the first two calendar quarters of the four quarters occurring prior to commencement of operations at the new tower. In other words, the “baseline” for determining Job creation shall be the number of full-time equivalents in the first half of the year prior to opening thereby excluding the six months immediately prior to opening from the calculation. Positions filled by workers who are not directly employed by the Developer or an affiliate do not qualify as “Jobs” for purposes of this definition.

ARTICLE VII

GENERAL PROVISIONS

7.1 Developer’s Right of Termination. At any time prior to the delivery of the Certificate of Substantial Completion for the Work, the Developer may, by giving written notice to the City, abandon the Redevelopment Project and terminate this Agreement and the Developer’s obligations hereunder if the Developer determines, in its sole discretion, to discontinue the Redevelopment Project for any reason. Any termination by the Developer shall also be deemed a termination by the TIF Recipient.

7.2 City’s Right of Termination. The City may terminate this Agreement at any time prior to the delivery and acceptance of the Certificate of Substantial Completion if the Developer defaults in or breaches any provision of this Agreement and fails to cure such default or breach pursuant to **Section 7.5** hereof.

7.3 Results of Termination. If this Agreement is terminated pursuant to **Section 7.1** or **Section 7.2**, then:

(a) the City shall have no further obligation to reimburse the TIF Recipient for any amounts advanced by the Developer or the TIF Recipient under this Agreement, or costs otherwise incurred or paid by the Developer or the TIF Recipient;

(b) any amounts on deposit or escrowed pursuant to **Section 2.2** shall be returned to the Developer or the TIF Recipient, as applicable, within ten (10) days of termination of this Agreement; and

(c) any TIF Notes issued in connection with the Redevelopment Project shall be deemed null, void and cancelled if no Certificate of Substantial Completion has been approved for the Work.

7.4 Successors and Assigns.

(a) This Agreement shall be binding on and shall inure to the benefit of the parties named herein and their respective heirs, administrators, executors, personal representatives, successors and assigns.

(b) Without limiting the generality of the foregoing, all or any part of the Property or any interest therein may be sold, transferred, encumbered, leased, or otherwise disposed of at any time, and the rights of the Developer or the TIF Recipient named herein or any successors in interest under this Agreement or any part hereof may be assigned at any time before, during or after redevelopment of the Redevelopment Project, whereupon the party disposing of its interest in the Property or assigning its interest under this Agreement shall be thereafter released from further obligation under this Agreement (although any such Property so disposed of or to which such interest pertains shall remain subject to the terms and conditions of this Agreement), provided that:

(1) until a Certificate of Substantial Completion has been accepted or deemed accepted by the City, the fee title to the Property may not be sold, transferred or otherwise disposed of and the rights, duties and obligations of the Developer and/or the TIF Recipient under this Agreement may not be assigned in whole or in part without the prior written approval of the City, and

(2) after a Certificate of Substantial Completion has been accepted or deemed accepted by the City, fee title to the Property may not be sold, transferred or otherwise disposed of and the rights, duties and obligations of the Developer under this Agreement may not be assigned in whole or in part without the prior written approval of the City unless (i) as part of such transfer an entity with experience managing at least five Upscale Hotels is retained to manage and operate the hotel located on the Property and (ii) documentation of such experience is provided to the City at least 30 days prior to the consummation of the sale, transfer or disposition.

(c) Prior to any sale, transfer or other disposition of all or any portion of the Property or any interest therein to an organization exempt from payment of ad valorem property taxes, such organization shall be required to agree not to apply for an exemption from payment of such property taxes for a period ending on the earlier of the date that all TIF Obligations are paid in full or 23 years from the date that the TIF Ordinance was adopted by the City. This requirement shall be a covenant running with the land and shall be enforceable for such period as if such purchaser or other transferee or possessor thereof were originally a party to and bound by this Agreement.

(d) Notwithstanding anything to the contrary, the Developer agrees to notify the City in writing of any proposed sale, transfer or other disposition of real property located within the Redevelopment Area or any interest therein as to which the Developer has knowledge no less than 10 days prior to the date of said sale, transfer or other disposition, excluding leases of less than 10 years. Said notice shall specify the name and address of the person so acquiring any or all of such real property or any interest therein and shall identify the parcel or parcels to be sold, transferred or otherwise disposed, whether by voluntary transfer or otherwise.

(e) Notwithstanding any permitted sale, transfer or disposition allowed pursuant to this Section, the Ownership Group (as defined in **Section 7.11**) will still be subject to a Transfer Fee under **Section 7.11**, if any is due under the terms thereof.

(f) Notwithstanding anything to the contrary contained herein, the TIF Recipient may transfer or the assign the TIF Notes, as permitted by the TIF Notes.

7.5 Remedies. Except as otherwise provided in this Agreement and subject to the Developer's and the City's respective rights of termination, in the event of any default in or breach of any term or conditions of this Agreement by either party, or any successor, the defaulting or breaching party (or successor) shall, upon written notice from the other party specifying such default or breach, proceed immediately to cure or remedy such default or breach, and, shall, in any event, within 30 days after receipt of notice, commence to cure or remedy such default. In case such cure or remedy is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to proceedings to compel specific performance by the defaulting or breaching party.

7.6 Force Majeure. Neither the City, the Developer, the TIF Recipient nor any successor in interest shall be considered in breach or default of their respective obligations under this Agreement, and times for performance of obligations hereunder shall be extended by the number of days of delay caused by force majeure, including, without limitation, damage or destruction by fire or casualty; strike; lockout; civil disorder; war; restrictive government regulations; lack of issuance of any permits and/or legal authorization by the governmental entity necessary for the Developer or the TIF Recipient to proceed with construction of the Work or any portion thereof (but only if the Developer or the TIF Recipient files all necessary documentation relating thereto in a timely manner); shortage or delay in shipment of material or fuel; acts of God; unusually adverse weather; or other causes beyond the parties' reasonable control, including but not limited to, any litigation, court order or judgment resulting from any litigation affecting the validity of the Redevelopment Plan, the Redevelopment Project or the TIF Obligations; provided that such event of force majeure shall not be deemed to exist as to any matter initiated or unreasonably sustained by the Developer or the TIF Recipient, and further provided that the Developer or the TIF Recipient notifies the City in writing within 30 days of the commencement of such claimed event of force majeure.

7.7 Notices. Any notice, demand or other communication required by this Agreement to be given by either party hereto to the other shall be in writing and shall be sufficiently given or delivered if dispatched by certified United States first class mail, postage prepaid, or delivered personally,

(a) In the case of the Developer, to:

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

with a copy to:

Van Matre, Harrison, Hollis, Taylor, Elliott, and Hicks, P.C.
1103 East Broadway
Columbia, Missouri 65201
Fax: (573) 875-0017
Attn: Robert Hollis

(b) In the case of the TIF Recipient, to:

Columbia TIF Corporation Two
#5 McBride & Sons Center Drive
Chesterfield, Missouri 63005
Attn: David Parmley

with a copy to:

Van Matre, Harrison, Hollis, Taylor, Elliott, and Hicks, P.C.
1103 East Broadway
Columbia, Missouri 65201
Fax: (573) 875-0017
Attn: Robert Hollis

(c) In the case of the City, to:

City of Columbia
P.O. Box 6015
701 E. Broadway
Columbia, Missouri 65201
Fax: (573) 431-2598
Attn: City Manager

with a copy to the City Attorney at the same address, and with another copy to:

Gilmore & Bell, P.C.
One Metropolitan Square
211 N. Broadway, Suite 2000
St. Louis, Missouri 63102
Fax: (314) 436-1166
Attn: Mark Grimm

or to such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

7.8 Conflict of Interest. No member of the City Council, the TIF Commission, or any branch of the City's government who has any power of review or approval of any of the Developer's or the TIF Recipient's undertakings, or of the City's contracting for goods or services for the Redevelopment Area, shall participate in any decisions relating thereto which affect that member's personal interests or the interests of any corporation or partnership in which that member is directly or indirectly interested. Any person having such interest shall immediately, upon knowledge of such possible conflict, disclose, in writing, to the City Council the nature of such interest and seek a determination by the City Council with respect to such interest and, in the meantime, shall not participate in any actions or discussions relating to the activities herein proscribed.

7.9 Insurance; Damage or Destruction of Redevelopment Project.

(a) The Developer or the TIF Recipient will cause there to be insurance as hereinafter set forth at all times during the process of constructing the Work and continuing (with respect to (ii) and (iii) below) so long as any TIF Obligations are outstanding. The Developer or the TIF Recipient shall, from time to time at the request of the City, furnish the City with proof of payment of premiums on:

(i) Builder's risk insurance, written on the so called "Builder's Risk - Completed Value Basis," in an amount equal to one hundred percent (100%) of the projected insurable value of the Work at the date of completion, and with coverage available in non-reporting form on the so called "all risk" form of policy;

(ii) Property and casualty insurance to keep the Redevelopment Project constantly insured against loss or damage by fire, lightning and all other risks covered by the extended coverage insurance endorsement then in use in the State in an amount equal to the Full Insurable Value thereof (subject to reasonable loss deductible clauses). "Full Insurable Value" means the actual replacement cost of the Redevelopment Project, as renovated and rehabilitated pursuant to this Agreement;

(iii) Comprehensive general liability insurance (including operations, operations of subcontractors, completed operations and contractual liability insurance) together with an owner's and contractor's policy, with coverages of not less than the current absolute statutory waivers of sovereign immunity in Sections 537.600 and 537.610 of the Revised Statutes of Missouri, as amended. Further, the policy shall be adjusted upward annually, to remain at all times not less than the inflation-adjusted sovereign immunity limits as published in the Missouri Register on an annual basis by the Department of Insurance pursuant to Section 537.610 of the Revised Statutes of Missouri, as amended; and

(iv) Workers' compensation insurance, with statutorily required coverage.

(b) The policies of insurance required pursuant to clauses (i), (ii) and (iii) above shall be in form and content satisfactory to the City and shall be placed with financially sound and reputable insurers licensed to transact business in the State of Missouri with a general policy holder's rating of not less than A- and a financial rating of A- as rated in the most current available "Best's" insurance reports. The policies of insurance delivered pursuant to clauses (ii) and (iii) above shall contain an agreement of the insurer to give not less than thirty (30) days advance written notice to the City in the event of cancellation of each such policy or change affecting the coverage thereunder. The Developer or the TIF Recipient shall deliver to the City evidence of all insurance to be maintained hereunder.

(c) In the event of destruction or damage to the Redevelopment by fire or other casualty, during the completion of the Work or thereafter during the term of this Agreement so long as any TIF

Obligations are outstanding, the insurance proceeds (after deducting any expenses incurred in the collection thereof) shall be applied to the restoration, reconstruction and repair of the Redevelopment Project to at least the value and substantially the same character as prior to the damage or destruction.

7.10 Contest of Assessed Valuation. In consideration for the incentives and benefits provided by this Agreement, the Developer agrees that neither it nor any successor in title or interest to any of the real property within the Redevelopment Area will formally challenge or appeal the assessed valuation of such real property until the City adopts an ordinance terminating tax increment financing within the Redevelopment Area; provided, (a) the foregoing shall not apply while any tax-exempt TIF Obligations are outstanding, and (b) the foregoing shall not bind the Developer or any successor if the assessed valuation is more than 1% greater than the projected assessed valuation of such property for the applicable year, as shown in the cost-benefit analysis prepared in connection with the approval of the Redevelopment Plan.

7.11 Transfer Fee Due Upon Change in Ownership.

(a) For the purposes of this Section, the following capitalized terms shall have the meaning ascribed to each:

“Adjusted Costs” means all costs incurred by the Ownership Group both before and after the date of this Agreement in connection with the ownership, restoration, construction, repair, or other improvement to the Redevelopment Area increased by any operating losses realized by the Ownership Group up to the date of the Qualifying Ownership Transfer, as calculated by the TIF Analyst, and decreased by the principal amount paid by the City on any TIF Notes up to the date of the Qualifying Ownership Transfer.

“Annual Rate of Return” means the average annual rate of return that would be realized by the Ownership Group after a Qualifying Ownership Transfer. The Annual Rate of Return will be calculated by the TIF Analyst in the manner customarily used by the TIF Analyst for such calculations. The Ownership Group shall provide all necessary information to the TIF Analyst for the TIF Analyst to perform this calculation.

“Excess Profit Calculation” means (1) if the Annual Rate of Return is less than or equal to 12.5%, \$0, or (2) if the Annual Rate of Return is greater than 12.5%, an amount, calculated by the TIF Analyst, that when subtracted from the Net Profits results in an Annual Rate of Return of 12.5%. The Ownership Group shall provide all necessary information to the TIF Analyst for the TIF Analyst to perform this calculation.

“Net Profits” means the gross proceeds resulting from a Qualifying Ownership Transfer less Adjusted Costs and less any transactional costs to be paid by the Developer as part of the Qualifying Ownership Transfer, including, without limitation, commissions, closing costs and title costs. The Ownership Group shall provide all necessary information to the TIF Analyst for the TIF Analyst to perform this calculation.

“Hotel Project” means the hotel tower consisting of approximately 80 sleeping rooms and associated meeting and banquet spaces to be developed as part of the Redevelopment Project.

“Ownership Group” means any company, corporation, partnership or other entities, which are majority owned by David Parmley.

“*Qualifying Ownership Transfer*” means any (1) transfer of greater than 50% of the ownership of the Hotel Project by the Ownership Group to an Unrelated Entity, or (2) long term lease, contract or other agreement from the Ownership Group that allows for an Unrelated Entity to receive substantially all of the profits resulting from the operation of the Hotel Project. No option contract or right of first refusal will fall within the scope of clause (1) until such options or rights are exercised. A management or operation agreement with a hotel management company will not fall within the scope of clause (2) so long as the Ownership Group, after payment of any debt service due on private financing for the Redevelopment Project, receives at least 10% of the profits from the operation of the Hotel Project.

“*Transfer Fee*” means the fee paid by the Ownership Group to the City as a result of a Qualifying Ownership Transfer pursuant to this Section.

“*Unrelated Entity*” means any company, corporation, partnership or other entities that are not majority controlled by (1) David Parmley, (2) a successor in interest to any of such persons or entities controlled thereby by reason of will or probate or (3) a successor in interest to any such persons or entities controlled thereby by reason of foreclosure or bankruptcy.

(b) If at anytime during the term of this Agreement, the Ownership Group participates in a Qualifying Ownership Transfer that results in a positive Excess Profit Calculation, the Ownership Group shall pay a Transfer Fee to the City. The Transfer Fee will be equal to a percentage of the Excess Profit Calculation (but not to exceed the total TIF assistance received by the Developer), as shown below, plus such actual costs incurred by the City in calculating the Transfer Fee:

<u>Qualifying Ownership Transfer Closing Date</u>	<u>Transfer Fee as % of Excess Profit Calculation</u>
Within 5 years from date of Agreement	75%
Within 6-10 years from date of Agreement	50%
Within 11-15 years from date of Agreement	25%
More than 15 years from date of Agreement	10%

7.12 Inspection. The Developer and the TIF Recipient shall allow authorized representatives of the City access to the Work site from time to time upon reasonable advance notice prior to the completion of the Work for reasonable inspection thereof. The Developer and the TIF Recipient shall also allow the City and its employees, agents and representatives to inspect, upon request, all architectural, engineering, demolition, construction and other contracts and documents pertaining to the construction of the Work as the City determines is reasonable and necessary to verify the Developer’s and the TIF Recipient’s compliance with the terms of this Agreement.

7.13 Choice of Law. This Agreement shall be taken and deemed to have been fully executed, made by the parties in, and governed by the laws of State of Missouri for all purposes and intents.

7.14 Entire Agreement; Amendment. The parties agree that this Agreement constitutes the entire agreement between the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of the parties.

7.15 Counterparts. This Agreement is executed in multiple counterparts, each of which shall constitute one and the same instrument.

7.16 Severability. If any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

7.17 Representatives Not Personally Liable. No elected or appointed official, agent, employee or representative of the City shall be personally liable to the Developer or the TIF Recipient and no owner, member, manager, agent, employee or representative of the Developer or TIF Recipient shall be personally liable to the City in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligations under the terms of this Agreement.

7.18 Legal Actions. During such time as the TIF Recipient is the owner of the TIF Notes, if a third party brings an action against the City or the City's officials, agents, employees or representatives contesting the validity or legality of the Redevelopment Area, the Redevelopment Plan, the TIF Obligations, or the ordinance approving this Agreement, the Developer or the TIF Recipient may, at its option, assume the defense of such claim or action (including, without limitation, to settle or compromise any claim or action for which the Developer or the TIF Recipient has assumed the defense) with counsel of the Developer's or the TIF Recipient's choosing. Likewise, if during such time as the TIF Recipient is the owner of the TIF Notes, the Developer, the TIF Recipient or the City determines that it is necessary or desirable to bring an action against the State or any political subdivision to enforce the proper deposit of TIF Revenues into the Special Allocation Fund, the Developer or the TIF Recipient may, at its option, enforce such action with counsel of the Developer's or the TIF Recipient's choosing. The parties expressly agree that so long as no conflicts of interest exist between them, the same attorney or attorneys may simultaneously represent the City and the Developer in any such proceeding; provided, the Developer or the TIF Recipient, as applicable, and its counsel shall consult with the City throughout the course of any such action. The City, the Developer and the TIF Recipient shall each be responsible for their own costs in connection with such action. All costs of any such action, whether incurred by the City, the Developer or the TIF Recipient, shall be deemed to be Reimbursable Redevelopment Project Costs and reimbursable from any amounts in the Special Allocation Fund.

7.19 Release and Indemnification. The indemnifications and covenants contained in this Section shall survive termination or expiration of this Agreement.

7.19.1 Notwithstanding anything herein to the contrary, the City and its governing body members, officers, agents, servants, employees and independent contractors shall not be liable to the Developer or the TIF Recipient for damages or otherwise in the event that all or any part of the TIF Act, or any ordinance, order or resolution adopted in connection with either the TIF Act, this Agreement or the Redevelopment Plan, 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 Developer or the TIF Recipient is prevented from enjoying the rights and privileges hereof.

7.19.2 The Developer and the TIF Recipient release from and covenant and agree that the City and its governing body members, officers, agents, servants, employees and independent contractors shall not be liable for, and agree to indemnify and hold harmless the City, its governing body members, officers, agents, servants, employees and independent contractors against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from construction of the Work including any and all claims arising from the ownership of the Property, including, but not limited to, location of hazardous wastes, hazardous materials or other environmental contaminants on the Property, including all costs of defense,

including attorneys fees, except for those matters arising solely from the gross negligence or willful misconduct of the City and its governing body members, officers, agents, servants, employees and independent contractors.

7.19.3 The City and its governing body members, officers, agents, servants and employees shall not be liable for any damage or injury to the persons or property of the Developer or the TIF Recipient or their respective officers, agents, servants or employees or any other person who may be about the Property or the Work except for matters arising solely from the gross negligence or willful misconduct of the City and its governing body members, officers, agents, servants and employees.

7.19.4 All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any of its governing body members, officers, agents, servants or employees in their individual capacities.

7.19.5 No official, employee or representative of the City shall be personally liable to the Developer or the TIF Recipient (1) in the event of a default or breach by any party under this Agreement or (2) for any amount or any TIF Obligations which may become due to any party under the terms of this Agreement.

7.19.6 The Developer and the TIF Recipient release from and covenant and agree that the City, its governing body members, officers, employees, agents and independent contractors shall not be liable for, and agree to indemnify and hold the City, its governing body members, officers, employees, agents and independent contractors, harmless from and against any and all suits, interest, claims and cost of attorneys fees incurred by any of them, resulting from, arising out of, or in any way connected with: (1) the Redevelopment Plan or Redevelopment Proposal or their approval, (2) this Agreement, the TIF Obligations, or any other agreement or obligation made in connection therewith and their approvals, as between or among the City, the Developer and/or the TIF Recipient, (3) any legal action brought challenging all or any of the foregoing or challenging or counterclaiming in any eminent domain action with respect to the Property, (4) the construction of the Work, (5) the negligence or willful misconduct of the Developer or the TIF Recipient, their respective employees, agents or independent contractors in connection with the management, development, redevelopment and construction of the Work, (6) the compliance by the Developer and the TIF Recipient with all applicable state, federal and local environmental laws, regulations, ordinances and orders, (7) underground storage tanks located on or about the Property, (8) friable asbestos or asbestos-containing materials at, on or in the Property, (9) the operation of all or any part of the Property, or the condition of the Property, including, without limitation, any environmental cost or liability, or (10) negotiations, inspections, acquisitions, preparations, construction, leasing, operations, and other activities of Developer, the TIF Recipient or their agents in connection with or relating to the Redevelopment Project or the Property; except that the foregoing release and indemnification shall not apply in the case of such liability arising directly and solely from the gross negligence or willful misconduct of the City or its authorized governing body members, officers, employees, agents and independent contractors or which arises out of matters undertaken by the City following termination of this Agreement. Nothing in this paragraph shall be construed to impose any obligation on the Developer or the TIF Recipient with respect to any land not owned by the Developer or the TIF Recipient (except for the joint and several liability imposed pursuant to **Section 2.1**).

7.20 Survival. Notwithstanding the expiration, termination or breach of this Agreement by either party, the agreements contained in **Article VI, Sections 7.9, 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, 7.16, 7.17, 7.18, 7.19,** and **Article VIII** of this Agreement shall, except as otherwise expressly set forth herein, survive such expiration, termination or breach of this Agreement by either party.

7.21 Enforcement of Agreement. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the parties shall be entitled to obtain an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof.

ARTICLE VIII

REPRESENTATIONS OF THE PARTIES

8.1 Representations of the City. The City makes the following representations and warranties, which are true and correct on the date hereof:

8.1.1 Due Authority. The City has full constitutional and lawful right, power and authority, under current applicable law, to execute and deliver and perform the terms and obligations of this Agreement, and all of the foregoing have been or will be duly and validly authorized and approved by all necessary City proceedings, findings and actions. Accordingly, this Agreement constitutes the legal valid and binding obligation of the City, enforceable in accordance with its terms.

8.1.2 No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

8.1.3 No Litigation. To the best of the City's knowledge, no litigation, proceedings or investigations are pending or, to the knowledge of the City, threatened against the City with respect to the Redevelopment Project or this Agreement. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the City, threatened against the City seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the City to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the City of, the terms and provisions of this Agreement.

8.1.4 Governmental or Corporate Consents. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution and delivery by the City of this Agreement.

8.1.5 No Default. No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the City under this Agreement.

8.2 Representations of the Developer. The Developer makes the following representations and warranties, which representations and warranties are true and correct on the date hereof:

8.2.1 Due Authority. The Developer has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the Developer herein, and such execution and delivery has been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the Developer, enforceable in accordance with its terms.

8.2.2 No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

8.2.3 No Litigation. No litigation, proceedings or investigations are pending or, to the knowledge of the Developer (including the knowledge of any member of the Developer executing this Agreement), threatened against the Developer (or any member of the Developer) or the Redevelopment Project. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the Developer (including the knowledge of any member of the Developer executing this Agreement), threatened against the Developer (or any member of the Developer) seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the Developer (or any member of the Developer) to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the Developer (or any member of the Developer) of, the terms and provisions of this Agreement.

8.2.4 Governmental or Corporate Consents. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the Developer of this Agreement, except for consents that must be secured subsequent to the execution of this Agreement.

8.2.5 No Default. No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the Developer under this Agreement, or any other material agreement or material instrument to which the Developer is a party or by which the Developer is or may be bound.

8.2.6 Compliance with Laws. The Developer is in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations as contemplated by this Agreement.

8.2.7 Accuracy of Project Data. The Developer has provided certain financial and other information regarding the Redevelopment Project in the form of the Redevelopment Proposal and in such materials intended to supplement, update or amend the financial and other information contained in the Redevelopment Proposal (the "*Project Data*"). The parties agree that Project Costs, project rents and other financial information included within the Project Data

will change, and such changes may be material. Nevertheless, the Developer represents that, as of the date hereof, the Project Data is, to the best of the Developer's knowledge, information and belief, a true and accurate projection of the same, and the Project Data does not omit any information which is necessary to be included in order to make the Project Data not misleading in any material respect as of the date hereof.

8.2.8 Guarantee of Obligations.

(a) The Developer shall either (1) maintain a Liquid Net Worth of at least \$1,000,000, (2) provide a guaranty (in form and substance reasonably acceptable to the City's legal counsel) of the Developer's obligations to indemnify the City, as provided in this Agreement, by an entity having a Liquid Net Worth of at least \$1,000,000, or (3) provide evidence of contractual liability insurance (in form and substance reasonably acceptable to the City and its legal counsel) covering the Developer's obligations to indemnify the City, as provided in this Agreement, by an insurance company with a rating by a reputable rating agency indicating excellent or superior financial strength (i.e., an A.M. Best rating of "A-" or better). For purposes of this Section, "Net Worth" shall mean total liquid assets less total liabilities as reported on the financial statements of the Developer (or the guarantor, as the case may be) pursuant to generally accepted accounting principles.

(b) If the Developer's obligations are secured pursuant to (a)(1) or (a)(2), then simultaneously with the delivery of this Agreement and annually thereafter prior to the delivery of the Certificate of Substantial Completion, the Developer shall provide to the City either financial statements or evidence of continued insurance, as applicable, demonstrating compliance with paragraph (a). Such financial statements shall either be (1) audited by an independent certified public accounting firm, acceptable to the City, or (2) if audited financial statements are not prepared, then in the same form as are prepared for the Developer's lenders and acceptable to the City. In either case, the financial statements shall be accompanied by a certificate, acceptable to the City, signed by the Developer's (or the guarantor's, as the case may be) chief financial officer to the effect that (A) the financial statements present fairly and accurately the financial position of the Developer (or the guarantor) as of the dates indicated and the results of its operations for the periods specified, (B) such financial reports and statements have been prepared in conformity with generally accepted accounting principles consistently applied in all material respects to the periods involved and (C) the Developer (or the guarantor) has not, since the close of the period for which the financial statements were prepared, incurred any material liabilities which are not reflected thereon and there has been no material adverse change since such date in the financial position of the Developer (or the guarantor).

(c) The Developer agrees to provide immediate written notice to the City when (1) if its obligations are secured pursuant to (a)(1) or (a)(2), the Developer's (or the guarantor's, if applicable) Liquid Net Worth falls below \$1,000,000 or (2) if its obligations are secured pursuant to (a)(3), the cancellation, termination, expiration or modification of the applicable contractual liability policy occurs.

8.3 Representations of the TIF Recipient. The TIF Recipient makes the following representations and warranties, which representations and warranties are true and correct on the date hereof:

8.3.1 Due Authority. The TIF Recipient has all necessary power and authority to execute and deliver and perform the terms and obligations of this Agreement and to execute and deliver the documents required of the TIF Recipient herein, and such execution and delivery has

been duly and validly authorized and approved by all necessary proceedings. Accordingly, this Agreement constitutes the legal valid and binding obligation of the TIF Recipient, enforceable in accordance with its terms.

8.3.2 No Defaults or Violation of Law. The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions hereof do not and will not conflict with or result in a breach of any of the terms or conditions of any corporate or organizational restriction or of any agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing.

8.3.3 No Litigation. No litigation, proceedings or investigations are pending or, to the knowledge of the TIF Recipient (including the knowledge of any member of the TIF Recipient executing this Agreement), threatened against the TIF Recipient (or any member of the TIF Recipient) or the Redevelopment Project. In addition, no litigation, proceedings or investigations are pending or, to the knowledge of the TIF Recipient (including the knowledge of any member of the TIF Recipient executing this Agreement), threatened against the TIF Recipient (or any member of the TIF Recipient) seeking to restrain, enjoin or in any way limit the approval or issuance and delivery of this Agreement or which would in any manner challenge or adversely affect the existence or powers of the TIF Recipient (or any member of the TIF Recipient) to enter into and carry out the transactions described in or contemplated by the execution, delivery, validity or performance by the TIF Recipient (or any member of the TIF Recipient) of, the terms and provisions of this Agreement.

8.3.4 Governmental or Corporate Consents. No consent or approval is required to be obtained from, and no action need be taken by, or document filed with, any governmental body or corporate entity in connection with the execution, delivery and performance by the TIF Recipient of this Agreement, except for consents that must be secured subsequent to the execution of this Agreement.

8.3.5 No Default. No default or event of default has occurred and is continuing, and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute a default or an event of default in any material respect on the part of the TIF Recipient under this Agreement, or any other material agreement or material instrument to which the TIF Recipient is a party or by which the TIF Recipient is or may be bound.

8.3.6 Compliance with Laws. The TIF Recipient is in compliance with all valid laws, ordinances, orders, decrees, decisions, rules, regulations and requirements of every duly constituted governmental authority, commission and court applicable to any of its affairs, business, operations as contemplated by this Agreement.

[Remainder of Page Intentionally Left Blank.]

IN WITNESS WHEREOF, the City, the Developer and the TIF Recipient have caused this Agreement to be executed in their respective names, and the City has caused its seal to be affixed thereto and attested, as of the date first above written.

CITY OF COLUMBIA, MISSOURI

(SEAL)

Attest:

By: _____
Mike Matthes
City Manager

Sheela Amin
City Clerk

Approved as to Form:

Nancy Thompson
City Counselor

STATE OF MISSOURI)
) **SS**
COUNTY OF BOONE)

On this ___ day of _____, 2018, before me appeared **MIKE MATTHES**, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the **CITY OF COLUMBIA, MISSOURI**, an incorporated political subdivision of the State of Missouri, and that the seal affixed to the foregoing instrument is the seal of said City, and said instrument was signed and sealed in behalf of said City by authority of its City Council, and said **MIKE MATTHES** acknowledged said instrument to be the free act and deed of said City.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Name: _____
Notary Public - State of Missouri
Commissioned in _____

(SEAL)

My Commission Expires:

BROADWAY LODGING TWO, LLC

By: _____
Name: David Parmley
Title: Manager

STATE OF MISSOURI)
) **SS**
COUNTY OF BOONE)

On this ____ day of _____, 2018, before me appeared **DAVID PARMLEY** to me personally known, who, being by me duly sworn, did say that he is the Manager of **BROADWAY LODGING TWO, LLC** a Missouri limited liability company, and that he is authorized to sign the instrument on behalf of said company, and acknowledged to me that he executed the within instrument as said company’s free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Name: _____
Notary Public - State of Missouri
Commissioned in _____

(SEAL)

My Commission Expires:

COLUMBIA TIF CORPORATION TWO

By: _____
Name: David Parmley
Title: President

STATE OF MISSOURI)
) **SS**
COUNTY OF BOONE)

On this ____ day of _____, 2018, before me appeared **DAVID PARMLEY** to me personally known, who, being by me duly sworn, did say that he is the President of **COLUMBIA TIF CORPORATION TWO**, a Missouri corporation, and that he is authorized to sign the instrument on behalf of said corporation, and acknowledged to me that he executed the within instrument as said company's free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Name: _____
Notary Public - State of Missouri
Commissioned in _____

(SEAL)

My Commission Expires:

EXHIBIT A

REDEVELOPMENT AREA

Lot 3 of Ditter Subdivision as shown by Plat dated January 31, 2002, and recorded in the records of the Recorder of Deeds of Boone County, Missouri as Document Number 24263 on August 20, 2002 in Book 36, Page 64.

EXHIBIT B

REDEVELOPMENT PROPOSAL

[On file in the office of the City Manager]

EXHIBIT C

REIMBURSABLE REDEVELOPMENT PROJECT COSTS

<u>Redevelopment Plan & Project Cost Items</u>	<u>Cost</u>
Demolition/Site Costs/Parking/Construction	\$1,814,949
Professional Services	250,000
TOTAL	\$2,064,949

EXHIBIT D

**FORM OF
CERTIFICATE OF SUBSTANTIAL COMPLETION**

CERTIFICATE OF SUBSTANTIAL COMPLETION

The undersigned, Broadway Lodging Two, LLC (the “Developer”), pursuant to that certain Redevelopment Agreement dated as of _____, 2018 among the City of Columbia, Missouri (the “City”), the Developer and the Columbia TIF Corporation Two (the “Agreement”), hereby certifies to the City as follows:

1. As of _____, 20__, the construction, renovation, repairing, equipping and constructing of the Work (as defined in the Agreement) has been substantially completed in accordance with the Agreement.

2. The Work has been performed in a workmanlike manner and in accordance with the Construction Plans (as those terms are defined in the Agreement).

3. Lien waivers for applicable portions of the Work have been obtained.

4. This Certificate of Substantial Completion is being issued by the Developer to the City in accordance with the Agreement to evidence the Developer’s satisfaction of all obligations and covenants with respect to the Work.

5. The City’s acceptance (below) or the City’s failure to object in writing to this Certificate within 45 days of the date of delivery of this Certificate to the City (which written objection, if any, must be delivered to the Developer prior to the end of such 45 day period), and the recordation of this Certificate with the Boone County Recorder of Deeds, shall evidence the satisfaction of the Developer’s agreements and covenants to perform the Work with respect to which this Certificate relates.

This Certificate shall be recorded in the office of the Boone County Recorder. This Certificate is given without prejudice to any rights against third parties which exist as of the date hereof or which may subsequently come into being.

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

IN WITNESS WHEREOF, the undersigned has hereunto set his/her hand this ____ day of _____, 20__.

BROADWAY LODGING TWO, LLC

By: _____
Name: _____
Title: _____

ACCEPTED:

CITY OF COLUMBIA, MISSOURI

By: _____

(Insert Notary Form(s) and Legal Description)

EXHIBIT E
FORM OF
CERTIFICATION OF REIMBURSABLE REDEVELOPMENT PROJECT COSTS

Certification of Reimbursable Redevelopment Project Costs

TO: City Manager
City of Columbia
701 E. Broadway
Columbia, Missouri 65201

Re: Broadway Hotel Phase Two Redevelopment Plan & Project

Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Redevelopment Agreement dated as of _____, 2018 (the "Agreement") among the City, the Developer and the TIF Recipient. In connection with said Agreement, the undersigned hereby states and certifies that:

1. Each item listed on Schedule 1 hereto is a Reimbursable Redevelopment Project Cost and was incurred in connection with the construction of the Redevelopment Project.
2. These Reimbursable Redevelopment Project Costs have been have been paid by the Developer or the TIF Recipient and are reimbursable under the TIF Ordinance and the Agreement.
3. No item listed on Schedule 1 has been previously paid or reimbursed from money derived from the Special Allocation Fund or any money derived from any project fund established pursuant to the Note Ordinance, and no part thereof has been included in any other certificate previously filed with the City.
4. There has not been filed with or served upon the Developer or the TIF Recipient any notice of any lien, right of lien or attachment upon or claim affecting the right of any person, firm or corporation to receive payment of the amounts stated in this request, except to the extent any such lien is being contested in good faith.
5. All necessary permits and approvals required for the portion of the Work for which this certificate relates have been issued and are in full force and effect.
6. All Work for which payment or reimbursement is requested has been performed in a good and workmanlike manner and in accordance with the Agreement.
7. The Developer or the TIF Recipient is not in default or breach of any term or condition of the Agreement.

Dated this ____ day of _____, ____.

COLUMBIA TIF CORPORATION TWO

By: _____
Name: _____
Title: _____

Approved for Payment this ____ day of _____, ____:

CITY OF COLUMBIA, MISSOURI

By: _____
Name: _____
Title: _____

EXHIBIT F
FORM OF TIF NOTES

***THIS NOTE OR ANY PORTION HEREOF MAY BE TRANSFERRED, ASSIGNED OR
NEGOTIATED ONLY AS PROVIDED IN THE HEREIN DESCRIBED NOTE ORDINANCE.***

UNITED STATES OF AMERICA
STATE OF MISSOURI

Registered
No. R-___

Registered
Up to \$_____
(See **Schedule A** attached)

CITY OF COLUMBIA, MISSOURI

TAXABLE TAX INCREMENT REVENUE NOTE
(BROADWAY HOTEL PHASE TWO PROJECT)
SERIES A

Rate of Interest: 6.65%

Maturity Date: _____, 2040

REGISTERED OWNER:

PRINCIPAL AMOUNT: See **SCHEDULE A** attached hereto.

The **CITY OF COLUMBIA, MISSOURI**, an incorporated political subdivision duly organized and validly existing under the Constitution and laws of the State of Missouri (the “City”), for value received, hereby promises to pay to the Registered Owner shown above, or registered assigns, the Principal Amount shown from time to time on **Schedule A** attached hereto on the Maturity Date shown above unless called for redemption prior to the Maturity Date, and to pay interest thereon from the effective date of registration shown from time to time on **Schedule A** attached hereto or from the most recent Interest Payment Date to which interest has been paid or duly provided for (computed on the basis of a 360-day year of twelve 30-day months) at the Rate of Interest set forth above. Interest shall be payable semiannually on March 1 and September 1 in each year (each, an “Interest Payment Date”), beginning on the first Interest Payment Date following the initial transfer of moneys to the Special Allocation Fund. Interest which remains unpaid on any Interest Payment Date shall be compounded semiannually.

Except as otherwise provided herein, the capitalized terms herein shall have the meanings as provided in the Indenture (as hereinafter defined) or the Redevelopment Agreement dated as of _____, 2018 among the City, Broadway Lodging Two, LLC and Columbia TIF Corporation Two (the “Agreement”).

THE OBLIGATIONS OF THE CITY WITH RESPECT TO THIS NOTE TERMINATE ON DECEMBER 3, 2040, WHETHER OR NOT THE PRINCIPAL AMOUNT OR INTEREST

HEREON HAS BEEN PAID IN FULL. REFERENCE IS MADE TO THE INDENTURE FOR A COMPLETE DESCRIPTION OF THE CITY'S OBLIGATIONS HEREUNDER.

The principal of this Note shall be paid at maturity or upon earlier redemption to the person in whose name this Note is registered at the maturity or redemption date hereof, upon presentation and surrender of this Note at the principal corporate trust office of UMB Bank, N.A., as trustee (the "Trustee"). The interest payable on this Note on any Interest Payment Date shall be paid to the person in whose name this Note is registered on the Register at the close of business on the fifteenth day (whether or not a Business Day) of the calendar month next preceding such Interest Payment Date. Such interest shall be payable (a) by check or draft mailed by the Trustee to the address of such registered owner shown on the Register or (b) upon approval of the Trustee, in the case of an interest payment to any registered owner of all of the Notes Outstanding, by electronic transfer to such registered owner upon written notice given to the Trustee and signed by such registered owner, not less than 15 days prior to the Record Date for such interest, containing the electronic transfer instructions including the bank (which shall be in the continental United States), ABA routing number and account number to which such registered owner wishes to have such transfer directed. The principal or redemption price of and interest on the Notes shall be payable by check or draft in any coin or currency that, on the respective dates of payment thereof, is legal tender for the payment of public and private debts.

This Note is one of an authorized series of fully registered notes of the City designated "City of Columbia, Missouri, Taxable Tax Increment Revenue Notes (Broadway Hotel Phase Two Project), Series A," (the "Notes"). The Notes are being issued for the purpose of paying a portion of the Redevelopment Project Costs in connection with the Broadway Hotel Phase Two Redevelopment Plan & Project, under the authority of and in full compliance with the Constitution and laws of the State of Missouri, including particularly the Real Property Tax Increment Allocation Redevelopment Act, Sections 99.800 through 99.865, inclusive, of the Revised Statutes of Missouri, as amended (the "Act"), and pursuant to a Note Indenture dated as of _____, 20__, between the City and the Trustee (said Note Indenture, as amended and supplemented in accordance with the terms thereof, being herein called the "Indenture").

The Notes constitute special, limited obligations of the City payable as to principal, premium, if any, and interest solely from Note proceeds, TIF Revenues (as defined in the Agreement) and investment earnings thereon. TIF Revenues shall be applied to payments on this Note as provided in the Agreement.

Interest on the TIF Notes shall be compounded semi-annually.

The Notes shall not constitute debts or liabilities of the City, the State of Missouri or any political subdivision thereof within the meaning of any constitutional or statutory debt limitation or restriction. Neither the City, the Tax Increment Financing Commission of the City of Columbia, Missouri, the commissioners of said Commission, the officers and employees of the City nor any person executing the Notes shall be personally liable for such obligations by reason of the issuance thereof.

NOTWITHSTANDING ANY PROVISION HEREIN OR IN THE NOTE ORDINANCE TO THE CONTRARY, THE MAXIMUM PRINCIPAL AMOUNT OF THE NOTES MAY BE REDUCED, WHICH MAY RESULT IN THE PARTIAL CANCELLATION OF THE NOTES, AS PROVIDED IN SECTION 4.1.4 OF THE AGREEMENT.

NOTWITHSTANDING ANY PROVISION HEREIN OR IN THE NOTE ORDINANCE TO THE CONTRARY, THE NOTES ARE SUBJECT TO CANCELLATION AND DISCHARGE BY THE CITY IN WHOLE WITHOUT PENALTY UNDER THE CONDITIONS SET FORTH IN SECTIONS 7.1, 7.2 AND 7.3 OF THE AGREEMENT.

The Notes are subject to optional redemption by the City in whole at any time or in part on any Interest Payment Date at a redemption price of 100% of the principal amount of the Notes to be redeemed, plus accrued interest thereon to the date fixed for redemption.

The Notes are subject to special mandatory redemption by the City on any Interest Payment Date, at the redemption price of 100% of the principal amount being redeemed, together with accrued interest thereon to the date fixed for redemption, in an amount equal to the amount which, 40 days prior to each Interest Payment Date (10 days if all of the Notes are owned by the Developer and/or the TIF Recipient), is on deposit in the Special Allocation Fund and which will not be required for the payment of interest on such Interest Payment Date.

The Notes are also subject to special mandatory redemption by the City, in whole but not in part, on any date in the event that moneys in the Special Allocation Fund are sufficient to redeem all of the Notes at a redemption price of 100% of the Notes outstanding, together with accrued interest thereon to the date fixed for redemption.

If any of the Notes are to be called for redemption as aforesaid, notice of redemption, unless waived, is to be given by the Trustee by mailing an official redemption notice by first class mail at least 30 days (10 days if all of the Notes are owned by the Developer and/or the TIF Recipient) and not more than 60 days prior to the date fixed for redemption to the Registered Owner of each Note to be redeemed at the address shown on the Register as of the date of such notice, as more fully described in the Indenture. Notice of redemption having been given as aforesaid, and provided that moneys are on deposit with the Trustee to effect the required redemption, the Notes or portions of Notes so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the City defaults in the payment of the redemption price) such Notes or portions of Notes so called for redemption shall cease to bear interest, shall no longer be secured by the Indenture and shall not be deemed to be Outstanding under the provisions of the Indenture. Any defect in any notice or the failure of any parties to receive any notice of redemption shall not cause any Note called for redemption to remain Outstanding.

Notes shall be redeemed only in the principal amount of \$5,000 or any integral multiple thereof. When less than all of the outstanding Notes are to be redeemed and paid prior to maturity, such Notes shall be selected by the Trustee in \$5,000 units of face value in such equitable manner as the Trustee may determine.

The Notes are issuable in the form of fully-registered Notes in the denomination of \$5,000 or any integral multiple thereof, except with respect to the Note issued with respect to the final Certification of Reimbursable Redevelopment Project Costs, which may be issued in the denomination of \$1,000 or any integral multiple thereof.

This Note may be transferred or exchanged, as provided in the Indenture, only upon the Register, upon surrender of this Note together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or the registered owner's duly authorized agent. THE OWNER HEREOF EXPRESSLY AGREES, BY SUCH OWNER'S ACCEPTANCE HEREOF, THAT THE RIGHT TO TRANSFER, ASSIGN OR NEGOTIATE THIS NOTE SHALL BE LIMITED TO TRANSFER, ASSIGNMENT OR NEGOTIATION TO APPROVED INVESTORS, AS DEFINED BELOW. Accordingly, this Note will be transferable only upon prior delivery to the Trustee of a letter in substantially the form attached to the Indenture as **Exhibit B**, signed by the transferee, showing that such transferee is an Approved Investor. After the Trustee receives the foregoing statement, a new Note of the same maturity and in the same principal amount outstanding as the Note which was presented for transfer or exchange shall be issued to the transferee in exchange therefor as provided in the Indenture, and upon

payment of the charges therein prescribed. The City and the Trustee may deem and treat the person in whose name this Note is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or redemption price hereof and interest due hereon and for all other purposes. For the purposes of this Note, "Approved Investor" means (a) the Developer, (b) the TIF Recipient (c) an "accredited investor" under Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, (d) a "qualified institutional buyer" under Rule 144A promulgated under the Securities Act of 1933, (e) any general business corporation or enterprise with total assets in excess of \$50,000,000 or (f) the Lender.

This Note shall not be valid or binding on the City or be entitled to any security or benefit under the Note Ordinance until the Certificate of Authentication hereon has been executed by the Trustee.

IT IS HEREBY CERTIFIED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of the Notes have existed, happened and been performed in due time, form and manner as required by law.

IN WITNESS WHEREOF, the **CITY OF COLUMBIA, MISSOURI** has executed this Note by causing it to be signed by the manual signature of its Mayor and attested by the manual signature of its City Clerk, and its official seal to be affixed or imprinted hereon, and this Note to be dated as of the effective date of registration as shown on **Schedule A**.

CITY OF COLUMBIA, MISSOURI

By: _____
Mayor

(Seal)

Attest:

City Clerk

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

(Print or Type Name, Address and Social Security Number
or other Taxpayer Identification Number of Transferee)

the within Note and all rights thereunder, and hereby irrevocably constitutes and appoints _____ agent to transfer the within Note on the books kept by the Trustee for the registration thereof, with full power of substitution in the premises.

Dated: _____.

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears on the face of the within Note in every particular.

Signature Guaranteed By:

(Name of Eligible Guarantor Institution)

By: _____
Title: _____

NOTICE: Signature(s) must be guaranteed by an eligible guarantor institution as defined by SEC Rule 17Ad-15 (17 CFR 240.17Ad-15).

SCHEDULE A

CERTIFICATE OF AUTHENTICATION

This Note is one of the Notes described in the within-mentioned Note Ordinance.

<u>Date</u> ⁽¹⁾	<u>Additions to Principal Amount</u>	<u>Principal Amount Paid/Cancelled</u> ⁽²⁾	<u>Outstanding Principal Amount</u>	<u>Authorized Signatory of Trustee</u>
_____, 20__	\$	\$	\$	
_____, 20__				
_____, 20__				
_____, 20__				
_____, 20__				
_____, 20__				
_____, 20__				
_____, 20__				
_____, 20__				
_____, 20__				
_____, 20__				
_____, 20__				
_____, 20__				
_____, 20__				
_____, 20__				

⁽¹⁾ Date of Advance (which constitutes Date of Registration with respect to such portion of the Note) or Interest Payment Date. Advances are limited to one per calendar quarter.

⁽²⁾ A portion of the principal amount of the Notes may be cancelled in order to reduce the maximum principal amount to the Final Certified Amount, as provided in the **Section 4.1.4** of the Agreement.

EXHIBIT G

COMPLIANCE REPORT

Date: _____, 20__

A. COMPANY INFORMATION.

Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Contact: _____ Telephone: _____

Title: _____ Fax: _____

B. EMPLOYMENT INFORMATION.

The actual number of "Jobs" during the payroll period occurring within the applicable, full, calendar quarter of operations at the hotel sites was (a)_____. The average number of Jobs in existence in the first two calendar quarters of the four quarters occurring prior to commencing operations of the new hotel tower was (b)_____. Therefore, the number of new Jobs created is (a) – (b)_____.

Attached is a copy of a report verifying the above calculation containing at a minimum the following information for each Job created:

1. Employee Identification Number or other agreed upon designation.
2. Hire Date.
3. Separation Date.

C. CERTIFICATION.

The undersigned hereby represents and certifies that, to the best knowledge and belief of the undersigned, this Compliance Report contains no information or data, contained herein or in the exhibits or attachments, that is false or incorrect in any material respect.

Dated this ___ day of _____, _____.

Signature: _____

Name: _____

Title: _____