

**RIGHT OF USE LICENSE PERMIT**

**(Skywalk Airspace between Existing Hotel Tower and New Hotel Tower)**

**THIS RIGHT OF USE LICENSE PERMIT** (“Permit”) by and between, **Broadway Lodging Two, LLC**, a limited liability company organized under the Missouri Limited Liability Company Act (“Licensee”), and the **City of Columbia, Missouri**, a constitutional charter municipality of the State of Missouri (“City”) is made effective as of the date that this Permit is last signed by both parties (“Effective Date”).

**RECITALS:**

**WHEREAS**, Licensee, or an affiliated entity of Licensee, owns a tract of land at or near 1111 Broadway, Columbia, Missouri, legally described as follows:

All of Lot 1-A of the Final Plat of Hickman’s Addition, Plat No. 1-A, a minor replat subdivision located in the southwest quarter of Section 7, Township 48 North, Range 12 West, Columbia, Boone County, Missouri dated August 15, 2011, recorded in Plat Book 45 at Page 31 and containing .50 acres more or less

and which contains a structure currently operated as a hotel (the “Existing Hotel Tower”); and

**WHEREAS**, Licensee owns a second tract of land at or near 1104 East Walnut, Columbia, Missouri, legally described as follows:

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

and upon which Licensee desires to construct a second hotel structure (the “New Hotel Tower”).

**WHEREAS**, the City of Columbia owns a parking structure at or near 1106 East Walnut, Columbia, Missouri legally described as follows:

All of Lot Two (2) and Lot Three (3) of Short Street Garage Plat 2, a replat of Short Street Garage as Recorded in Book 46 Page 5, dated October 2011, said Short Street Garage Plat 2 being recorded in Book 46 at Page 10 of the land records of Boone County, Missouri

(the “Short Street Parking Garage”).

**WHEREAS**, Licensee has requested consent from City authorizing the use of certain City property, consisting of portions of the City Right-of-Way adjacent to the New Hotel Tower, in order for Licensee to construct, install, maintain, and/or operate certain private facilities or improvements described and depicted in **Exhibit A**, attached to this Permit and incorporated herein by reference (the “Private Facilities”); and

**WHEREAS**, Licensee understands and agrees that it is the intention of City that this Permit does not grant a lease or an easement, and does not create any type of transferable business interest in

City property for the benefit of Licensee, and does not subordinate City's use of the property to Licensee; and

**WHEREAS**, City and Licensee desire to provide for the terms and conditions under which such Permit may be granted for Licensee to use such Right-of-Way and City owned property;

**NOW THEREFORE**, this Permit is granted subject to the following conditions and stipulations:

## **SECTION 1. GENERAL**

**1.1 Preservation of Police Power Authority.** Any rights granted to Licensee pursuant to this Permit are subject to the authority of the City to adopt and enforce ordinances necessary to the health, safety, and welfare of the public with which Licensee may be required to comply.

**1.2 Permit Subject to Provisions of City Code.** Licensee agrees as a part of issuance of this Permit to abide by applicable provisions of the City Code of the City of Columbia, Missouri, and to be subject to the enforcement by the City as provided therein. This Permit may establish Licensee obligations that are supplementary to the City Code, and except as specifically set forth herein nothing in this Permit shall be deemed to waive any obligation or requirement applicable to Licensee authorized or established by the City Code.

## **SECTION 2. GRANT OF AUTHORITY TO USE THE RIGHT-OF-WAY**

**2.1 Nature of Rights Granted by this Permit.** This Permit shall not convey title to Licensee, equitable or legal, in the Right-of-Way or City owned property, and gives only a license to occupy Right-of-Way or City owned property for the purposes and for the period stated in and subject to the requirements of this Permit. This Permit also shall not grant the right to use facilities owned or controlled by the City or a third-party without the separate consent of the City or such third-party owning or controlling the facilities, nor shall it excuse Licensee from obtaining appropriate access or agreements before locating on facilities controlled or owned by the City or a third party.

**2.2 Grant.** Licensee is hereby granted the nonexclusive license to construct, operate, and maintain the Private Facilities in, through and along the City's Right-of-Way or City owned property described in **Exhibit B** of this Permit (the "Right-of-Way"), subject to the terms and conditions of this Permit. The City specifically reserves the right to grant, at any time, such additional agreements or other rights to use the Right-of-Way or City owned property for any purpose and to any other person, including itself, as it deems appropriate, subject to applicable federal and state law. Following the expiration of the Term set forth in Section 3, the City may revoke this Permit at will, at any time, for any reason or no reason at all, subject to notice of such revocation. As a condition of this grant, Licensee is required to obtain and maintain any permit, license certification, grant, registration or any other authorization required by any appropriate governmental entity, including the City.

**2.3 Use of Right-of-Way; Police Powers; Licensee's Use Subordinate.** Licensee shall construct and maintain its Private Facilities in accordance with all applicable federal, state and local laws, codes and ordinances, including all permit requirements and fee payments, in effect as of the Effective Date or adopted after the Effective Date. The City makes no express or implied

representation or warranty regarding its rights to authorize the installation or construction of Licensee's Private Facilities on any particular segment of Right-of-Way or City owned property. The burden and responsibility for making all such determinations in advance of construction or installation shall be entirely upon Licensee. The use of the Right-of-Way or City owned property authorized by this Permit shall in all matters be subordinate to the City's use of and rights to the same, and Licensee shall be limited to such uses as have been expressly granted to Licensee by the City.

**2.4 No Interference.** Licensee shall construct and maintain its Private Facilities to be so located, constructed and maintained as to cause minimum interference with the proper use of all Right-of-Ways and City owned property and so as not to materially interfere with other users of the Right-of-Way or City owned property. Except as may otherwise be provided, Licensee shall provide reasonable notice to all adjacent property owners affected by the proposed work prior to commencement of such work. All construction and maintenance by Licensee or its subcontractors shall be performed in accordance with generally accepted industry standards and any standard specifications, drawings, and procedures adopted by the City, and any permits issued by the City.

**2.5 Licensee Responsible for Costs.** Licensee shall be responsible for all reasonable, actual and documented costs incurred by the City that are directly associated with Licensee's installation, maintenance, repair, operation, use, and replacement of its Private Facilities within the Right-of-Way or on City owned property that are not otherwise accounted for as part of the permit fees established pursuant to the City Code. Cost billed to Licensee may include a reasonable charge for City staff time. Costs due to the City shall be due immediately upon the City providing Licensee an invoice for payment and any costs due to the City that are more than thirty days (30) past due shall bear interest at a rate of one and one-half percent (1.5%) per month until paid in full. Any costs, license fees, or other compensation required herein shall be in addition to, not in lieu of, all taxes, charges, assessments, licenses, fees and impositions otherwise applicable that are or may be imposed by the City. Licensee acknowledges that any costs, license fees, or other compensation required herein shall in no way be deemed a tax of any kind.

### **SECTION 3. TERM AND COMPENSATION**

**3.1 Term.** This Permit shall remain in effect for the period of time set forth in **Exhibit C**, attached hereto and incorporated by reference ("Term"), subject to earlier termination, forfeiture or revocation as provided in this Permit.

**3.2 Compensation.** In addition to any cost reimbursement or other permit fees imposed by the city, Licensee shall pay the City the sums set forth on **Exhibit C** for issuance of this license Permit.

### **SECTION 4. THE PRIVATE FACILITIES**

**4.1 Permits Required.** This Permit does not grant Licensee or any of its officers, agents or employees the right to cut, break, excavate or damage the street or sidewalk pavement within the Right-of-Way or property depicted on **Exhibit B** without City consent. Prior to exercising its right granted hereunder, Licensee agrees to obtain all necessary permits required by the City of Columbia pertaining to the work being done in the Right-of-Way or on City owned property. Additionally, the Licensee shall present its construction plans or diagrams locating the proposed Private Facilities to

the City Public Works Department and City Water and Light Department and any existing utility company using facilities located within Right-of-Way or property depicted on **Exhibit B**. Licensee shall excavate in or install Private Facilities in the Right-of-Way or on City owned property in locations and in a manner only as authorized by a specific permit granted by the City.

**4.2 Responsibility for Private Facilities.** Licensee will be responsible for all costs of any future repairs, maintenance or replacements to the Private Facilities. Licensee shall keep the Private Facilities in good working order and condition and shall not permit the Private Facilities to deteriorate to a state of disrepair or to become a nuisance to the public health, safety, and general welfare.

**4.3 Abandonment of Private Facilities.** If the Private Facilities are ever abandoned or removed by Licensee, all rights herein granted shall cease and terminate and Licensee shall have no further right of interest therein except that, upon abandonment, Licensee remains responsible for all of Licensee's Private Facilities left in place and any costs to remove the Private Facilities, store the Private Facilities, or to otherwise restore and/or clean up affected Right-of-Way or City owned property. If the Private Facilities are abandoned and removed by the City, Licensee must take possession of the Private Facilities within ninety (90) days of removal, otherwise the City may take possession and dispose of the Private Facilities in its sole discretion.

**4.4 Relocation or Reinstallation of Facilities.** The City may, in its exercise of the public interest, require that Licensee, at Licensee's sole cost and expense, relocate or reinstall any of Licensee's Private Facilities. The City shall give reasonable notice of such requirement to Licensee, including the location of facilities to be relocated and a reasonable time to relocate such facilities. Licensee shall forthwith remove or relocate such facilities within the reasonable time provided by the City in its written notice. The cost of such relocation, removal, or reinstallation of the Facilities shall be the exclusive obligation of said Licensee without expense to the City. If the Licensee fails to relocate the Private Facilities within the time set forth in the City's notice, the City may relocate or remove the Private Facilities and bill the Licensee for any such costs incurred by the City in relocating or removing the Private Facilities.

**4.5 Protection of Public Facilities/Improvements and Restoration to the Land.** Licensee shall be responsible for all damages to the Right-of-Way or City owned property and any public facilities caused directly or indirectly by Licensee's construction, operation, and maintenance of the Private Facilities in, through and along the City's Right-of-Way or on City owned property. If the Licensee fails to repair or restore the Right-of-Way, City property, or public facilities promptly after causing such damage, the City may repair or restore the Right-of-Way, City property or public facilities and bill the Licensee for any such costs incurred by the City in so repairing or restoring. Licensee shall perform all restoration and repairs in manner consistent with standards and specification provided by the City and shall guarantee for a period of four (4) years following any construction activity the restoration of the Right-of-Way or City owned property against sagging, buckling, deterioration, and other premature failures of the restoration in any area where Licensee restored the Right-of-Way or City owned property. Licensee shall take measures to prevent damage to any facilities or improvements on adjacent land to the Right-of-Way or City owned property. If any damage is caused by Licensee, its employees, contractors or agents, Licensee shall ensure the damage to such land or property is repaired, the land is restored and any damaged property is repaired or replaced, to the satisfaction of the property's owner. Except as specifically set forth herein, the Licensee shall restore damaged areas to the satisfaction of City, including but limited to

the following: bringing the ground to its original contour and removing all ruts; reseeding or re-sodding or re-pouring any surface disturbed; replace any trees or landscaping; and replacing any improvements of City or others. Unless otherwise directed by the Director of Public Works, all repairs and restoration of Right-of-Way shall be completed in accordance with the City of Columbia *Street, Storm Sewer, and Sanitary Specifications and Standards*, as may be amended, or other successor documents, on file with the Director of Public Works and the building codes in effect at the time of any such construction.

**4.6 Damage to Private Facilities.** Licensee agrees by exercising its rights under this Permit that if the Private Facilities are damaged in anyway, whether negligently or intentionally by the construction, repair, modification or relocation of any public facilities or utilities located in the right-of-way or on city- owned property, Licensee will be solely responsible for the repair, replacement, or removal of the Private Facilities at the sole cost of Licensee and, except in the case of willful misconduct by the City, will hold the City harmless for any costs associated with the repair, replacement, removal, or any other costs associated with the damage to the Private Facilities.

## **SECTION 5. TRANSFER OF AGREEMENT OR FACILITIES**

**5.1 Transfer of Permit.** Except as provided in Section 5.2 below, Licensee shall not sell, transfer, lease, or assign this Permit or its rights under this Permit, in whole or in part, without obtaining the City's prior consent. Notwithstanding the foregoing sentence, Licensee may transfer or assign this Permit or its rights under this Permit, in whole or in part, with prior written notice to the City if to: (a) any entity controlling, controlled by or under common control with Licensee; (b) any surviving successor entity or newly created successor entity in the event of a merger, reorganization or consolidation involving Licensee. The City reserves the right to be reimbursed for its reasonable costs relating to a transfer of ownership. Licensee shall not change its name under which it does business with the public without providing at least 30 days prior notice to the City.

**5.2 Licensee as Abutting Land Owner.** If Licensee is the fee owner of land ("Abutting Land") directly abutting the Right-of-Way or City owned property described in **Exhibit B**, this Permit may be transferred to heirs, assigns, part owners, mortgagors, tenants and successors in interest of Licensee to the Abutting Land with the written consent of the Director of Public Works, notwithstanding Subsection 5.1 above. Such consent of the Director of Public Works shall not be unreasonably withheld.

## **SECTION 6. REVOCATION, TERMINATION AND FORFEITURE OF LICENSE AND PRIVILEGE.**

**6.1 Forfeiture.** In case of failure on the part of the Licensee, its successors and assigns, to comply with any of the provisions of this Permit, or if the Licensee, its successors and assigns, should do or cause to be done any act or thing prohibited by or in violation of the terms of this Permit, including the provisions of the City's Code of Ordinances, this Permit shall be subject to forfeiture. In the event of forfeiture, all rights and privileges permitted to Licensee, its successors and assigns herein and all rights hereunder shall cease, terminate and become null and void.

Prior to issuance of a Notice of Forfeiture, the City Manager shall give a written notice of an Intent to Declare Forfeiture that shall set forth in detail the neglect or failure complained of by the City and the time frame in which the City expects the failure to be cured. Such time for cure shall

not be less than thirty (30) days, except in the case of emergency or imminent threat to the public health, safety or welfare as determined in the sole discretion of the City Manager. If the default is cured to the satisfaction of the City and the Licensee is otherwise in compliance with the Permit the forfeiture of the Permit will be avoided.

**6.2 Revocation.** Notwithstanding any provision herein to the contrary, if the City Manager determines, in the City Manager's sole discretion, that the public's health, safety or welfare is at risk by Licensee's continued use of the Permit or any action contravening such Permit, the City Manager may immediately revoke the Permit and have the Licensee notified of such action.

**6.3 Termination.** The City or Licensee may terminate this Permit at the expiration of the Term or the expiration of any renewal term upon six (6) months written courtesy notice to the other party. At the end of the last renewal term, this Permit shall continue on an indefinite basis with no set Term and shall be subject to termination by either the Licensee or City, upon thirty (30) days written courtesy notice to the other party.

**6.4 Removal of Private Facilities.** License shall have a reasonable time to remove its Private Facilities from the Right-of-Way or City owned property following forfeiture, revocation or termination of the Permit. In the event of imminent threat to the public health, safety or welfare, the City Manager may order the immediate removal of such Private Facilities by Licensee and in such instance Licensee shall undertake removal activities immediately and shall proceed without unnecessary delay until such facilities are removed and the Right-of-Way or City owned property is restored. In the event Licensee fails to comply with the order of the City Manager, the City may remove such Private Facilities and the Licensee shall reimburse the City for the cost of removal.

**6.5 Remedies Cumulative.** Nothing herein shall prevent the City from taking any other action or remedy as may be set forth in the City's Code of Ordinances or as may otherwise exist at law. All remedies described in this section are cumulative and in addition to any other rights and remedies to which a party may be entitled at law, in equity or under this Permit.

## **SECTION 7. GENERAL CONDITIONS**

**7.1 Compliance With Laws.** In performing activities and exercising its rights and obligations under this Permit, the Licensee shall comply with all applicable federal, state and local laws, ordinances, regulations and policies, including all laws, ordinances, regulations and policies relating to construction, bonding, insurance, and use of public property.

**7.2 Enforcement; Attorneys' Fees.** The City shall be entitled to enforce the terms and conditions of this Permit through all remedies lawfully available, and Licensee shall pay the City its costs of enforcement, including reasonable attorneys' fees in the event that Licensee is determined judicially to have violated the terms of this Permit.

**7.3 Lien on Property.** In the event Licensee fails to pay any costs, fees or expenses due and owing to City relating to this Permit, including but not limited to the removal of the Private Facilities or any costs of enforcement, such costs may be certified by the City as a lien on the property upon which the New Hotel Tower is constructed and a tax bill may be issued.

**7.4 Relationship of the Parties.** Under no circumstances shall this Permit be construed as one of agency, partnership, joint venture, or employment between the parties.

**7.5 No Cause of Action Against the City.** The Licensee shall have no remedy or recourse whatsoever against the City for any loss, cost, expense, or damage arising from any of the provisions or requirements of this Permit, or because of the enforcement thereof by the City, or for the failure of the City to have the authority to grant, all, or any part, of the rights herein granted; provided that said Licensee expressly acknowledges that it accepted the rights herein granted under this Permit in reliance upon its independent and personal investigation and understanding of the power of authority of the City to grant this Permit; provided further that the Licensee acknowledges by its acceptance of this Permit that it has not been induced to accept this Permit upon any understanding, or promise, whether given verbally or in writing by or on behalf of any party, or by any other person concerning any term or condition of this Permit not expressed herein; provided further that the Licensee acknowledges by the acceptance of this Permit that it has carefully read the provisions, terms, and conditions hereof and all incorporated provisions and is willing to, and does accept, all of the risk attendant to said provisions, terms, and conditions of this Permit.

**7.6 Sovereign Immunity.** Nothing herein shall be deemed to waive the City's sovereign immunity.

## **SECTION 8. INDEMNIFICATION AND INSURANCE.**

**8.1 Indemnification.** Licensee at its sole cost and expense, hereby agrees to indemnify, protect, release, defend (with counsel acceptable to the City) and hold harmless the City, its municipal officials, elected officials, boards, commissions, officers, employees, attorneys, and agents from and against any and all causes of action, claims, demands, all contractual damages and losses, economic damages and losses, all other damages and losses, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, from the action or inaction of Licensee, its agents, representatives, employees, contractors, subcontractors or any other person for whose acts Licensee may be liable, in constructing, operating, maintaining, repairing, restoring or removing facilities, or in carrying on Licensee's business or operations in the City or on the Right of Way or on City owned property, or out of the fact that the City granted this Permit to Licensee, the rights granted to Licensee, or the activities performed, or failed to be performed, by Licensee under this Permit, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. The indemnification, duty to defend and hold harmless obligations set forth in this Section shall survive for a period of five (5) years from the date of expiration or termination of this Permit.

**8.2 Insurance.** Licensee, at its sole cost and expense, hereby agrees to purchase insurance in such amounts as reasonably required by the City to protect the public for use of the Right-of-Way and City owned property by Licensee and to name the City as an additional insured. Licensee shall provide City with a certificate of insurance evidencing compliance with the insurance requirements on or before January 1 of each calendar year. Such insurance requirements shall be set forth in **Exhibit D**, attached hereto and incorporated herein by reference. The City may alter the minimum insurance requirements set forth in **Exhibit D** from time to time by giving written notice to Licensee at least 90 days in advance of such change.

**SECTION 9. NOTICE**

**9.1 Notice Delivery.** Any notice, demand, consent, approval, request or other communication required or permitted to be given to either party under or with respect to this Permit (collectively, "Notice") must be in writing and must be delivered in person, by a reputable overnight delivery service or by certified mail, postage prepaid, return receipt requested, to the appropriate address(es) set forth below:

If Notice to Licensee:

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

If Notice to City:

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

With a copy to:

Van Matre, Harrison, Hollis,  
Taylor & Elliott, P.C.  
1103 E Broadway  
Columbia, MO 65201

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

**9.2 Notice Receipt.** If notice is given by personal delivery, a receipt indicating that personal delivery was made must be obtained. Notice will be deemed effective on the date of receipt by the addressee as shown on the receipt if given by personal delivery, on the return receipt if notice is given by certified mail or the confirmation of delivery form if notice is given by overnight delivery service. Rejection or refusal to accept or the inability to deliver because of a changed address of which no notice was given will be deemed to be receipt of the notice as of the date of rejection, refusal or inability to deliver. Either party may change its address for notice by giving notice of address change to the other party in the manner for giving notice prescribed in Section 9.1.

**SECTION 10. MISCELLANEOUS**

**10.1 Entire Understanding.** This Permit and all Exhibits constitute the entire understanding of the parties as to the subject matter of this Permit, and no negotiations or discussions prior to the Effective Date shall be of any effect.

**10.2 Severability.** The invalidity in whole of this Permit, or construing this document to be anything but a License Permit shall cause this document to be void. The invalidity of any part of any provision of this Permit shall not affect the validity of any other provision.

**10.3 Waiver.** No term or condition of this Permit will be deemed to have been waived by a party unless the waiver is made in writing and is signed by the party against whom the waiver is claimed.

**10.4 Cumulative Rights.** The rights and remedies of the Parties shall be cumulative and in addition to any other rights and remedies provided by law or equity.

**10.5 Governing Law.** The laws of the State of Missouri shall govern this Permit.



**10.6 Sole Benefit of Parties.** This Permit is for the benefit of the parties and not for any other person or entity. This Permit creates no third-party beneficiary rights.

**10.7 Authority to Execute.** The parties acknowledge they each have full authority to sign this Permit and commit to the terms and conditions thereof.

**IN WITNESS WHEREOF**, the parties execute the Permit herein as of the date signed below.

CITY OF COLUMBIA, MISSOURI

\_\_\_\_\_  
City Manager  
Dated: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Nancy Thompson, City Counselor

STATE OF MISSOURI )  
 ) ss  
COUNTY OF BOONE )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019 before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the City Manager of the City of Columbia, Missouri, and that the seal affixed to the foregoing instrument is the corporate seal of the City and that this instrument was signed and sealed on behalf of the City by authority of its City Council and City Manager acknowledged this instrument to be the free act and deed of the City.

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

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

My Commission expires:

LICENSEE  
BROADWAY LODGING TWO, LLC

\_\_\_\_\_  
David Parmley, Manager  
Dated: \_\_\_\_\_

ATTEST:

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

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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2019 before me, a notary public of the State of Missouri appeared David Parmley, the manager of said Broadway Lodging Two, LLC and known to be to be the person who executed the within agreement on behalf of said limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

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

My commission expires:

## **EXHIBIT A-1**

### ***Description of Private Facilities to be Constructed in Right of Way***

#### **Skywalk Airspace**

Right of use to construct, maintain and use improvements for the purpose of hotel guest and employee ingress and egress to and from the New Hotel Tower and the Existing Hotel Tower, including bridges or passageways through the air space (the "Skywalk Airspace") above the area described in **Exhibit B-1** and depicted on **Exhibit B-2**. The private facilities authorized to be constructed, maintained, and used within the Skywalk Airspace shall be bridges or passageways and related structures as depicted on **Exhibit A-2**, which is an excerpt from the Architectural Plans created by LWL Architects for The Broadway Phase II - Expansion (the "Architectural Plans").

City also grants to Licensee reasonable rights of ingress and egress within the Skywalk Airspace and the space and land below same as are necessary for the construction, maintenance, repair, replacement or removal of the improvements located within the Skywalk Airspace.

**EXHIBIT A-2**

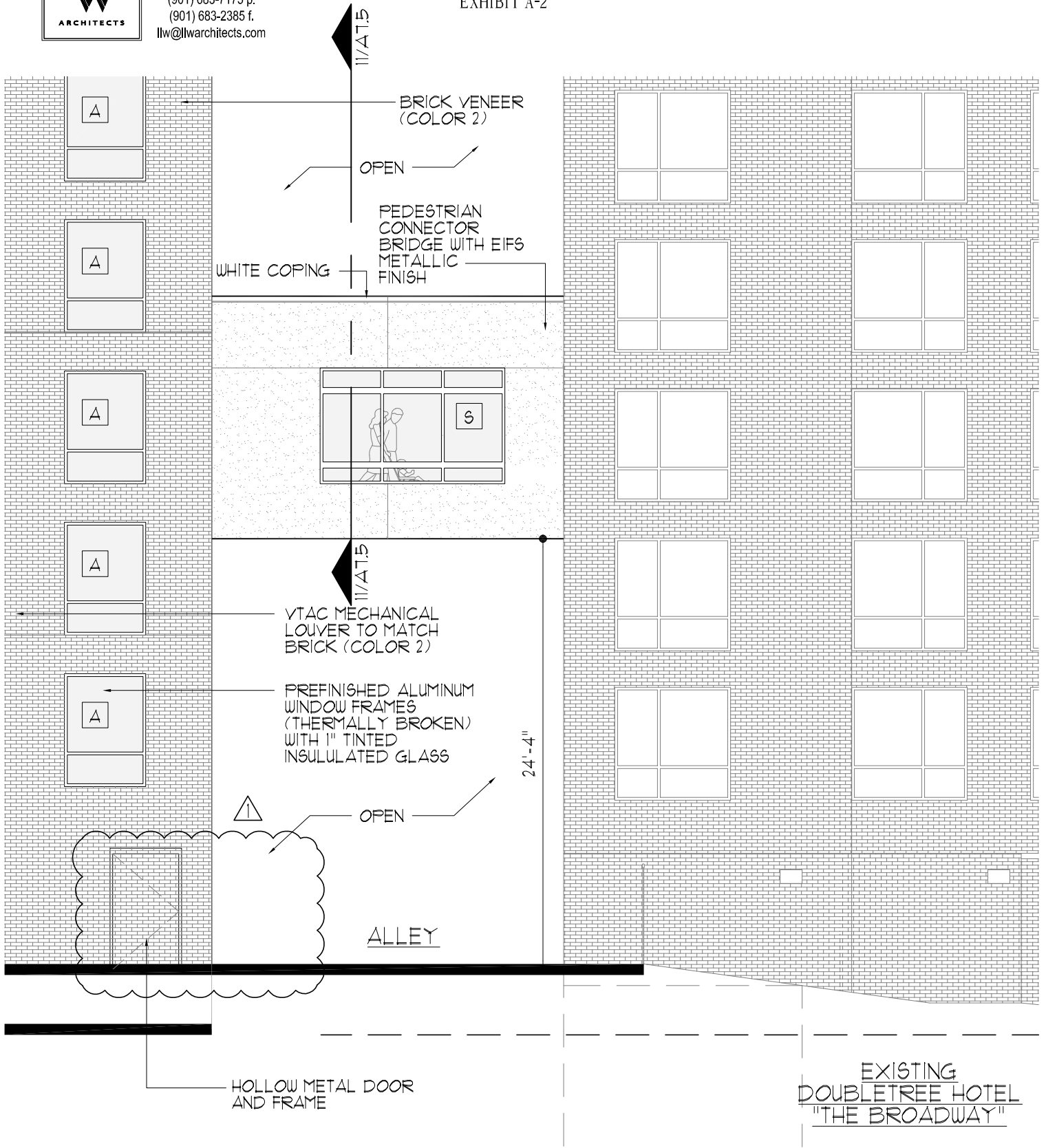
**Depiction of Private Facilities to be constructed in Right of Way**

[Insert excerpt from Partial West Elevation at Alley Sheet A3.1 of the Architectural Plans.]



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

RIGHT OF USE LICENSE PERMIT  
SKYWALK AIRSPACE BETWEEN EXISTING HOTEL TOWER AND NEW HOTEL TOWER  
EXHIBIT A-2



**EXHIBIT B-1**

**Legal Description of Rights-of-Way subject to Right of Use**

[Insert legal description for “Right of Use – S. Sky Bridge”]

A TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 48 NORTH, RANGE 12 WEST IN COLUMBIA, MISSOURI AND BEING PART OF THE RIGHT OF WAY FOR THE PUBLIC ALLEY ADJOINING DITTER SUBDIVISION RECORDED IN BOOK 36, PAGE 64 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT 1

COMMENCING AT THE SOUTHEAST CORNER OF LOT 3, DITTER SUBDIVISION RECORDED IN BOOK 36, PAGE 64 AND WITH THE SOUTH LINE THEREOF, N 88°42'45"W, 10.83 FEET TO THE POINT OF BEGINNING:

THENCE FROM THE POINT OF BEGINNING AND LEAVING SAID SOUTH LINE, S 1°17'15"W, 18.94 FEET TO THE SOUTH RIGHT OF WAY LINE FOR SAID PUBLIC ALLEY, SAID POINT BEING ON THE NORTH LINE OF LOT 1-A, HICKMAN'S ADDITION, PLAT NO. 1-A RECORDED IN PLAT BOOK 45, PAGE 31; THENCE WITH SAID SOUTH RIGHT OF WAY LINE, N 88°42'45"W, 10.50 FEET; THENCE LEAVING SAID SOUTH RIGHT OF WAY LINE, N 1°17'15"E, 18.94 FEET TO THE NORTH RIGHT OF WAY LINE FOR PUBLIC ALLEY; THENCE WITH SAID NORTH RIGHT OF WAY LINE, S 88°42'45"E, 10.50 FEET TO THE POINT OF BEGINNING AND CONTAINING 198 SQUARE FEET.



*David W. Borden*

DAVID W. BORDEN, PLS-2002000244

*8-8-19*

DATE

<p><b>CROCKETT</b> ENGINEERING CONSULTANTS 1000 W. Nifong Blvd. Building 1 Columbia, Missouri 65203 (573) 447-0292 www.crockettengineering.com</p>	<p>CORPORATE NUMBER 2000151304</p>	<p><b>RIGHT OF USE-S. SKY BRIDGE</b></p> <p>SECTION 7, T48N, R12W COLUMBIA, BOONE COUNTY, MISSOURI</p>
	<p>DATE: 8/8/2019</p> <p>PROJECT: 150415</p>	

**EXHIBIT B-2**

**Depiction of Rights-of-Way set forth in Legal Description on Exhibit B-1**

[Insert Crockett drawing of “South Sky Bridge – Right of Use”]



E WALNUT STREET  
(46' R/W - 32' P.W.M.T.)

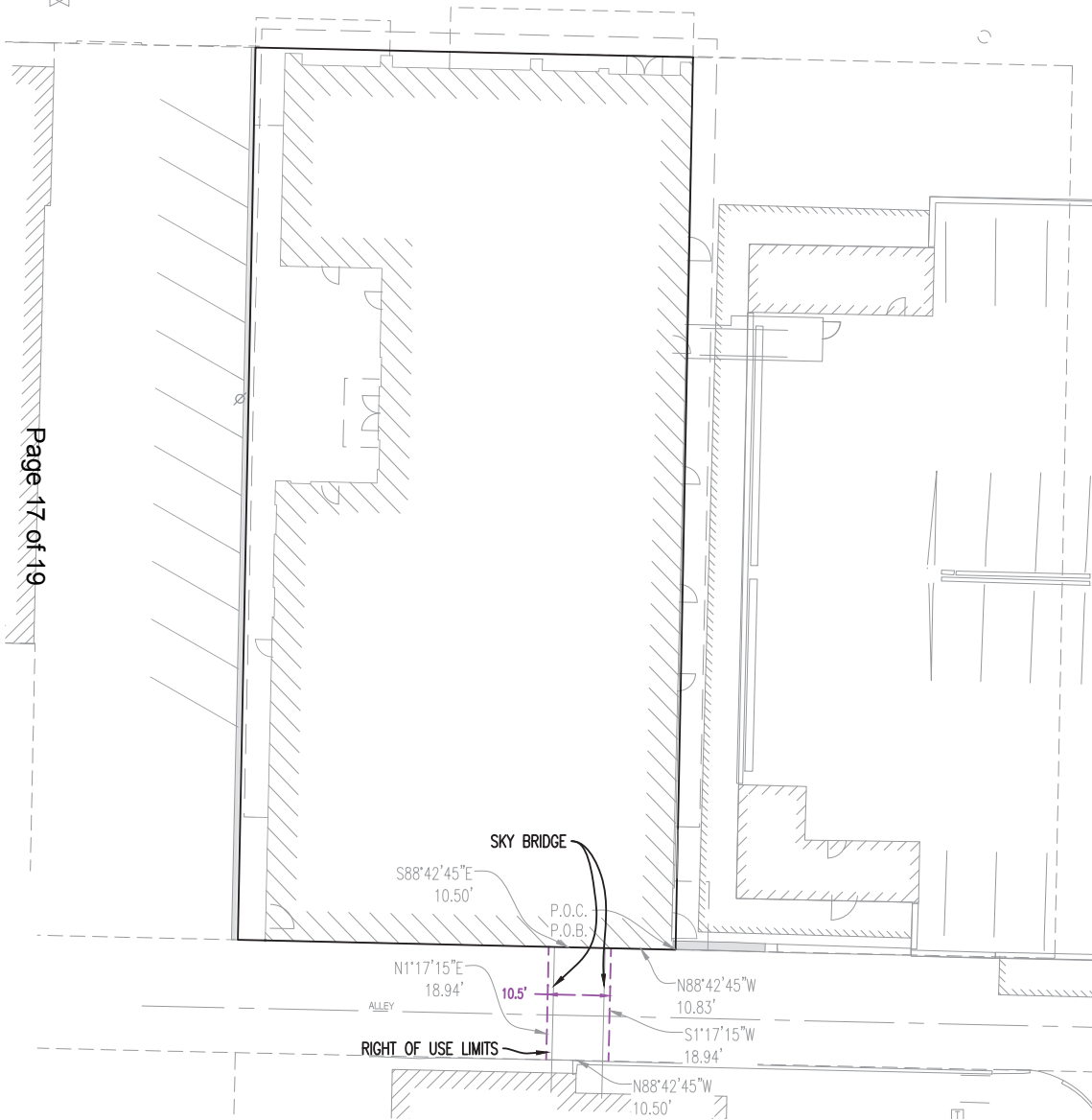
# COLUMBIA BROADWAY II

## SOUTH SKY BRIDGE - RIGHT OF USE

SCALE: 1" = 20'



BEARINGS ARE REFERENCED TO GRID NORTH, OF THE MISSOURI STATE PLANE COORDINATE SYSTEM (CENTRAL ZONE), OBTAINED FROM GPS OBSERVATION.



PREPARED BY:

**CROCKETT**

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

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

Crockett Engineering Consultants, LLC  
Missouri Certificate of Authority  
#2000151304

**EXHIBIT C**  
**Term and Compensation**

**Term:**

The Term of this Permit shall be for a period of twenty (20) years from the Effective Date. This Permit shall automatically renew for up to three (3) additional ten (10) year periods provided Licensee is in compliance with the provisions of this Permit at the time of such renewal.

**Compensation:**

There is no compensation to City for use of the Right-of-Way by Licensee as set forth in this Permit.

**EXHIBIT D**  
**Insurance Requirements**

(a) The Licensee will cause there to be insurance as hereinafter set forth at all times during the process of constructing the Private Facilities and continuing (with respect to (ii) and (iii) below) so long as the Private Facilities are located on the Right of Way or City owned property. In addition to an annual certificate of insurance referenced in (b) below, the Licensee shall, from time to time at the request of the City, furnish the City with a copy of the insurance policy and/or 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 Private Facilities 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 Private Facilities 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 Private Facilities, 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 name the City as an additional insured and 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. Such insurance must be primary as to any other valid and collectible insurance. The Licensee shall deliver to the City at least once annually a certificate of insurance evidencing all insurance to be maintained hereunder.

(c) In the event of destruction or damage to the Private Facilities by fire or other casualty, the insurance proceeds (after deducting any expenses incurred in the collection thereof) shall be applied to the restoration, reconstruction and repair of the Right of Way or City owned property to at least the value and substantially the same character as prior to the damage or destruction.

(d) The coverages and limits set forth herein are minimum requirements and in no way limit the liability of Licensee.