

RESOLUTION NO. 2019-05-012R

**A RESOLUTION RATIFYING A LETTER OF INTENT FOR AND APPROVING
AN INTERIM AGREEMENT FOR REDEVELOPMENT**

(Redevelopment of the Urbana Landmark Hotel - 2019)

WHEREAS, the City of Urbana , Illinois (hereinafter, the “City”) is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, and the passage of this Resolution constitutes an exercise of the City’s home rule powers and functions as granted in the Illinois Constitution, 1970; and

WHEREAS, the City seeks to foster and promote redevelopment within the City’s general downtown business district; and

WHEREAS, the Urbana Landmark Hotel (hereinafter, the “Hotel”), located at 210 South Race Street, Urbana, Illinois, is located in the City’s general downtown business district and has failed to operate as a fully-functioning hotel for many years despite the City’s efforts to foster and promote redevelopment of the Hotel; and

WHEREAS, the City remains committed to fostering, facilitating, assisting, and promoting a successful redevelopment of the Hotel; and

WHEREAS, the City has a strong interest in entering into a redevelopment agreement with an appropriate, experienced and qualified redeveloper of failing and/or failed hotel properties on such terms and conditions as the City deems reasonable and appropriate; and

WHEREAS, Marksons Affiliates, LLC (hereinafter, the “Developer”) is a business enterprise that acquires and redevelops older hotels to return such hotels into fully functioning and profitable businesses and, thereafter, does operate such redeveloped hotels; and

WHEREAS, for the past several months, the City and the Developer have been engaged in negotiations regarding the general terms and conditions acceptable to the City and the Developer pursuant to which the Developer will seek to acquire title and ownership interest in and to the Hotel and the City will provide certain financial assistance and incentives that promote and support the Developer’s acquisition and redevelopment of the Hotel; and

WHEREAS, the City and the Developer have negotiated and have executed a non-binding Letter of Intent (“LOI”) that summarizes the general terms and conditions that both parties agree should be

incorporated into a final binding and enforceable redevelopment agreement along with such other terms and conditions as the City and the Developer mutually deem necessary and appropriate for the successful redevelopment of the Hotel; and

WHEREAS, a copy of the LOI is appended hereto and made a part hereof; and

WHEREAS, the City Council has determined that if the City is able to negotiate a final agreement concerning the redevelopment of the Hotel on the terms and conditions described in the non-binding LOI along with such other terms and conditions the City and the Developer mutually deem appropriate, the City's-offered incentives will serve the public purpose of enabling the Developer to proceed with redeveloping the Hotel; and

WHEREAS, the City Council is willing to commit a certain amount of financial resources to the Developer on such terms and conditions as generally described in the non-binding LOI and on such specific terms and conditions that the City Council deems appropriate as will be set forth in a final redevelopment agreement to be negotiated and, if such terms and conditions in such final redevelopment agreement are acceptable to the City Council and Marksons Affiliates, LLC or its affiliated entity, will be executed by the Mayor pursuant to authority granted to the Mayor by the City Council and by a duly authorized officer of Marksons Affiliates, LLC and/or its affiliated entity; and

WHEREAS, the City Council, after due consideration, has determined that the non-binding LOI and a redevelopment agreement on such terms and conditions as the City Council deems appropriate and desirable will foster economic development and enhance, promote, and serve the best interests and general welfare of the City and its residents; and

WHEREAS, the Mayor of the City of Urbana has executed the non-binding LOI and requests the City Council to ratify her execution of the same; and

WHEREAS, the City Council deems it necessary and appropriate for the City and Marksons Affiliates, LLC or its affiliate to enter into an interim agreement for the redevelopment of the Hotel that covers the period between when the non-binding LOI was executed and when a binding and enforceable redevelopment agreement, if any, will be executed in order to assure that the City and Marksons Affiliates, LLC continue their good faith negotiations with the intent of reaching and memorializing a final binding and enforceable redevelopment agreement; and

WHEREAS, a copy of the Interim Agreement for the Redevelopment is attached hereto and made a part hereof.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Urbana, Champaign County, Illinois, as follows:

Section 1.

The Letter of Intent, in substantially the form of the copy of such Letter of Intent appended hereto and made a part hereof, shall be and hereby is approved.

Section 2.

The City Council hereby recognizes that, in an effort to move forward with the City's efforts to see the Hotel redeveloped, the Mayor of the City of Urbana has executed the Letter of Intent in substantially the form of the copy of such Letter of Intent appended hereto and made a part hereof and, therefore the City Council shall and hereby ratifies the said Mayor's authority to execute and the said Mayor's execution of the Letter of Intent in substantially the form appended hereto.

Section 3.

The Interim Agreement for the Redevelopment of Certain Hotel Property, in substantially the form of the copy of the same appended hereto and made a part hereof, shall be and hereby is approved.

Section 4.

The City Council shall and hereby authorizes the Mayor of the City of Urbana to execute the Interim Agreement for the Redevelopment of Certain Hotel Property in substantially the form of the copy of such agreement appended hereto.

PASSED BY THE CITY COUNCIL this 20th day of May, 2019.

AYES: Brown, Hazen, Hursey, Jakobsson, Wu

NAYS:

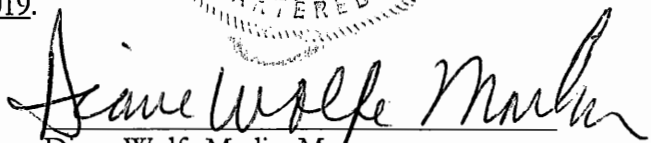
ABSTENTIONS:

RECUSALS: Roberts

APPROVED BY THE MAYOR this 22nd day of May, 2019.



Charles A. Smyth, City Clerk


Diane Wolfe Marlin, Mayor

**INTERIM AGREEMENT FOR THE
REDEVELOPMENT OF CERTAIN HOTEL PROPERTY**

This Interim Agreement for the Redevelopment of Certain Hotel Property (hereinafter, the "Interim Agreement") is entered into this 21st Day of May, 2019 by and between the City of Urbana, Illinois (hereinafter, the "City") and Marksons Affiliates, LLC or one of its affiliates (hereinafter, "Developer") (collectively, the "Parties" and, individually and generically, a "Party").

WHEREAS, the City is a home rule unit of local government pursuant to Article VII, Section 6, of the Illinois Constitution, 1970, and may exercise any power and perform any function pertaining to its government and affairs, and the passage of this Resolution constitutes an exercise of the City's home rule powers and functions as granted in the Illinois Constitution, 1970; and

WHEREAS, the City seeks to promote and foster the redevelopment of the Urbana Landmark Hotel, located at 210 South Race Street, Urbana, Illinois and its associated real property (hereinafter, the "Hotel"); and

WHEREAS, Developer is in the business of acquiring title to and ownership of older hotels and, thereafter, redeveloping such older hotels into fully functioning and operating such hotel properties; and

WHEREAS, Developer, as part of its redevelopment of older hotel properties, has the knowledge, resources and ability to redevelop such hotel properties and to obtain recognizable high-level branding for such hotel redevelopment projects (e.g., Hilton Tapestry branding); and

WHEREAS, Developer has been in negotiations with the owner of the Hotel in an effort for Developer to acquire all rights, title and interest in and to the Hotel on such terms as Developer

deems proper and reasonable so that Developer can, thereafter, commence, undertake and complete redevelopment and restoration of the Hotel; and

WHEREAS, Developer has, for the past several months, been in negotiations with the City regarding the City's provision of financial support to facilitate and promote Developer's acquisition of all rights, title and interest in and to the Hotel and for Developer to commence, undertake and complete redevelopment of the Hotel into a fully functioning, operational and financially profitable hotel property; and

WHEREAS, the City and Developer have arrived at general terms and conditions that they mutually believe are necessary and appropriate for the Developer to proceed with entering in to a real estate purchase contract whereby Developer, shortly following the execution of a redevelopment agreement with the City, will complete the process necessary for Developer to acquire all rights, title and interest in and to the Hotel from the Hotel's current owner; and

WHEREAS, the City and Developer have memorialized in a non-binding Letter of Intent (hereinafter, the "LOI") those general, necessary and appropriate terms and conditions which they agree should be incorporated into a wholly separate binding and enforceable redevelopment agreement along with such other terms as they may agree be incorporated into such a redevelopment agreement;

WHEREAS, a true and correct copy of the aforesaid LOI is appended hereto and made a part hereof; and

WHEREAS, the City and Developer enter into this Interim Agreement as a prelude to undertaking final negotiations to arrive at mutually acceptable binding and enforceable terms and conditions regarding the redevelopment of the Hotel and the City's provision of certain financial incentives to foster and facilitate the redevelopment of the Hotel.

NOW for good, valuable and mutual consideration together with the mutually acceptable terms and conditions set forth herein, the Parties agree as follows:

A. OBLIGATIONS OF DEVELOPER:

1. **Acquisition of Hotel:** Developer shall complete its negotiations with the owner of the Hotel such that said negotiations shall arrive at a binding and enforceable real estate purchase and sale contract that provides for the purchase of the Hotel by Developer from the owner of the Hotel and the sale of the Hotel by the owner of the Hotel to Developer (hereinafter, "Purchase/Sale Contract"). Said Purchase/Sale Contract shall, at a minimum, –

- a. obligate Developer to purchase the Hotel from the owner of the Hotel and the owner of the Hotel sell to Developer the Hotel for a gross purchase price of no greater than One Million and No/Hundredths Dollars U.S. (\$1,000,000.00U.S.);
- b. provide for a closing on the said Purchase/Sale Contract on a date sometime after July 19, 2019; and
- c. provide that Developer's acquisition of the Hotel at the time of closing shall be free and clear of any liens, mortgages and all other encumbrances other than those which have been or may be incurred, created, or allowed to exist by Developer in connection with its pre-purchase due diligence costs and expenses and/or acquisition and/or construction/renovation financing, if any.

2. **Provision of Copy of Purchase/Sale Contract to the City:** Within three (3) business days of the last date of the Hotel owner's and Developer's execution of the Purchase/Sale Contract, Developer shall forward to the City's City Administrator (Carol Mitten) a copy of the fully executed Purchase/Sale Contract along with any exhibits appended thereto and/or referenced therein.

3. **Developer's Execution of LOI:** If not previously done, Developer shall execute the LOI in the form appended hereto and made a part hereof at the same time Developer executes this Interim Agreement.

4. **Developer's Continued Good Faith Negotiations with the City:** Developer shall continue good faith negotiations with the City for the purpose of arriving at mutually acceptable terms and conditions concerning Developer's redevelopment of the Hotel and the City's provision of certain financial assistance to facilitate Developer's redevelopment of the Hotel. The said redevelopment agreement shall contain, albeit in more precise form, the terms and conditions outlined in the LOI and such other terms and conditions as the Parties mutually deem necessary and appropriate for inclusion in such redevelopment agreement.

5. **Documentation of Developer's Out-of-Pocket Expenses:** In the event that the City fails or refuses to approve a redevelopment on or before July 19, 2019 that contains the terms and conditions provided for in the LOI, albeit in more precise form, Developer shall provide to the City a written itemized statement of the out-of-pocket costs and expenses Developer incurred in undertaking its due diligence review of the Hotel and related property and funds (earnest money), if any (hereinafter, collectively, the "Reimbursable Expenses").

B. OBLIGATIONS OF THE CITY:

1. **City's Execution of LOI:** If not previously done, the City shall execute the LOI in the form appended hereto and made a part hereof at the same time it executes this Interim Agreement.

2. **City's Continued Good Faith Negotiations with Developer:** The City shall continue good faith negotiations with Developer for the purpose of arriving at mutually acceptable terms and conditions concerning Developer's redevelopment of the Hotel and the City's provision of certain financial assistance to facilitate Developer's redevelopment of the Hotel. The said

redevelopment agreement shall contain, albeit in more precise form, the terms and conditions outlined in the LOI and such other terms and conditions as the Parties mutually deem necessary and appropriate for inclusion in such redevelopment agreement.

3. Reimbursement of Developer Expenses: In the event that the City fails or refuses to approve on or before July 19, 2019 a redevelopment agreement with Developer that contains, in addition to such other terms and conditions as the Parties deem necessary and appropriate, the terms and conditions in the LOI, albeit in more precise form, the City shall reimburse Developer one-half (1/2) Developer's Reimbursable Expenses but, in no event shall such reimbursement be greater than Seventy-Five Thousand and No/Hundredths Dollars U.S. (\$75,000.00U.S.) (hereinafter, collectively, the "Reimbursable Amount"). Notwithstanding the immediate foregoing, in the event that the City has approved a redevelopment agreement on such terms and conditions outlined in the LOI, albeit in more precise form, on or before July 19, 2019, or if Developer elects not to close on its Purchase/Sale Contract with the owner of the Hotel for any reason other than the City's failure to approve such redevelopment agreement containing said terms and conditions, the City shall be fully and completely relieved of any obligation to pay to Developer the Reimbursable Amount herein provided.

C. GENERAL TERMS AND CONDITIONS:

1. **LOI Non-Binding:** Nothing in this Interim Agreement or the LOI shall be deemed, construed or interpreted as creating a binding and/or an enforceable agreement between the Parties regarding Developer's obligation to commence, undertake and complete the redevelopment of the Hotel and the City's obligation to provide financial assistance to Developer to facilitate such redevelopment. The Parties in this Interim Agreement and LOI expressly agree that in order for Developer to become obligated to actually commence, undertake and complete the redevelopment

of the Hotel and the City's obligation to actually provide financial assistance to Developer to facilitate such redevelopment, the Parties must enter into and execute a wholly separate written redevelopment agreement on such terms and conditions as the Parties agree.

2. Default, Cure, Dispute Resolution: In the event either Party defaults on any one or more of its obligations under this Interim Agreement (hereinafter, the "Defaulting Party"), the other Party (hereinafter, the "Non-Defaulting Party"), shall send a written Notice of Default to the Defaulting Party that sets forth (i) the nature of the default; (ii) the section of this Agreement believed to be in default; and (iii) a reasonable date by which the Defaulting Party shall cure such default. Within five (5) business days of receipt of such Notice of Default, the Defaulting Party shall provide a written response to the Non-Defaulting Party that states that (i) the default has been cured; (ii) the date by which the Non-Defaulting Party requests the default to be cured is unreasonable and which includes a reasonable date by which the Defaulting Party will cure the default, or (iii) provides verifiable evidence that no default has in fact occurred. In the event that the Parties are unable to resolve the matter involving the default, the Parties shall be free to pursue such other remedy as each may have against the other.

3. Notice: To the extent any notice is required to be given pursuant to this Interim Agreement, such notice shall be deemed valid and effective as hereinafter provided:

- a. If notice is provided by certified or registered First Class U.S. Mail, return receipt requested, such notice shall be deemed effective on the day following receipt of such notice as evidenced by the return receipt if the notice has been placed in an envelope bearing the intended recipient's proper address and bearing proper postage.

b. If notice is provided by facsimile, such notice shall be deemed effective on the day following receipt so long as the sender's fax machine prints out a receipt evidencing that that notice was properly transmitted to and received by the recipient's fax machine.

c. If notice is sent by overnight courier service, such notice shall be deemed effective on the day following delivery of such notice.

4. **Governing Law:** The laws of the State of Illinois shall govern the interpretation and enforcement of this Interim Agreement and any action to interpret, construe, enforce, or for breach of this Interim Agreement shall be filed and maintained in the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois or the United States District Court for the Central District, Illinois.

5. **Representations and Warranties:** The Parties represent and warrant the individual executing this Interim Agreement on behalf of the respective Party has the authority to do so on behalf of that Party.

6. **Term and Termination:** This Interim Agreement shall remain binding and enforceable until 11:59 p.m. on July 19, 2019 or until such time as the City approves a redevelopment agreement as contemplated in this Interim Agreement. Should this Interim Agreement terminate without the Parties having entered into a redevelopment agreement as contemplated in this Interim Agreement and the LOI, Section B.3. shall survive said termination.

7. **No Agency Relationship:** Nothing in this Interim Agreement shall be deemed or construed to create any form of agency relationship or grant to either Party authority to bind the other Party except as provided herein.

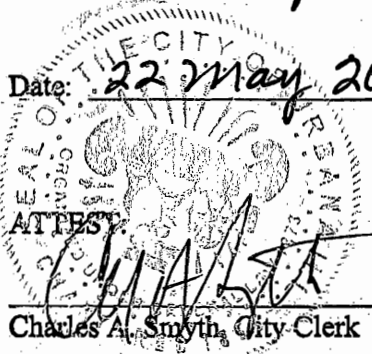
8. Counterparts: This Interim Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Signatures may be faxed or e-mailed.

[END OF INTERIM AGREEMENT; SIGNATURES FOLLOW.]

FOR THE CITY OF URBANA:

Diane Wolfe Marlin
Diane Wolfe Marlin, Mayor

Date: 22 May 2019



Charles A. Smyth
Charles A. Smyth, City Clerk

Date: 5/22/2019

FOR MARKSONS AFFILIATES, LLC

[Signature]
A duly authorized officer.

Date: 5.21.19



CITY OF URBANA

Office of the Mayor
Diane Wolfe Matlin

400 S Vine St • Urbana IL 61801 • (217) 384-2457 • dwmarlin@urbanaininois.us

May 16th, 2019

VIA EMAIL

Sam Spiritos
Marksons Affiliates, LLC
2138 Rose Theatre Circle
Olney, MD 20832
sspiritos@srgpe.com

RE: Letter of Intent to enter into a Redevelopment Agreement

Dear Mr. Spiritos,

On behalf of the City of Urbana, IL ("City"), this Letter of Intent outlines some of the terms and conditions under which Marksons Affiliates, LLC or affiliate ("Developer") would enter into negotiations for the execution of a Redevelopment Agreement ("Agreement") for the proposed redevelopment of the Urbana Landmark Hotel Project (the "Project", defined below) located at 210 South Race Street in Urbana, Illinois ("Property").

1. The PROJECT shall result in:

- a. Complete renovation of the hotel and grounds located on the Property
- b. Hilton Tapestry branding, facility standards and customer experience
- c. Preservation of historic elements wherever feasible
- d. Commercial activation of 120 hotel rooms, a full-service restaurant with catering service, bar, ballroom, conference center, and meeting rooms
- e. Reactivation of common areas, lobby, elevators, and all guest/customer amenity spaces
- f. Renovated and redesigned interior with new furniture, fixtures, and equipment
- g. Reconditioned exterior, resurfaced parking lot, and landscaped grounds
- h. Minimum cost of \$16.8MM, inclusive of construction, FF&E, financing and land acquisition ("Project Cost")
- i. Maximum land acquisition price of \$1,000,000

2. The CITY shall:

- a. Work in good faith with the Developer to finalize the Agreement
- b. Establish an additional hotel motel tax classification for the Project
- c. Offer incentives as part of the Agreement upon approval by the City subject to the following terms:
 - i. Upon issuance of a final certificate of occupancy for the Project and satisfaction of Hilton Tapestry branding, reimbursement of TIF-eligible

expenses shall be issued to the Developer in an amount no less than \$5.2MM, with the potential to increase subject to underwriting.

- d. Provide, separate and apart from the Agreement, all eligible Enterprise Zone incentives for which the Project qualifies including Sales Tax Exemption Certificates for new construction materials.
- e. Commit to not incentivize any directly competing hotel projects as part of the Agreement

3. The DEVELOPER shall:

- a. Work in good faith with the City to finalize the Agreement
- b. Serve as primary developer of the Project and assume ownership of the Property
- c. Provide a detailed Project proposal to the City and present revisions as requested by the City
- d. Upon request by the City, share preliminary and confidential financial planning information with the City in Excel spreadsheet format with live formulas including but not limited to:
 - i. Project pro forma
 - ii. Detailed Project construction budget
 - iii. Project sources and uses of funds
 - iv. Estimated return on investment to each source
- e. Commit to the private funding levels defined in the Agreement
- f. Commit to the construction schedule as part of the Agreement
- g. Comply with all relevant local code and ordinances
- h. Commit to setting aspirational goals for the hiring of minority- and women-owned businesses as part of the Project in the Agreement
- i. Oversee the design, preconstruction, bidding and construction of the Project
- j. Pay all required municipal fees related to the Project including but not limited to fees pertaining to zoning approvals, building permits, right-of-way permits/agreements, Enterprise Zone incentives, fire prevention and occupancy certification
- k. Pay all costs associated with all Project site preparation including but not limited to utility relocation, environmental cleanup and any adjacent public right-of-way improvements
- l. Commit a minimum of 20% equity as a percent of the Project Cost
- m. Continuously operate and ensure professional management and service provision for the Project as a Hilton Tapestry branded hotel for a period of ten years from the issuance of a final Certificate of Occupancy
- n. Consent to City review and approval of any sale of the Property that does not result in the continuous operation of the Project as a Hilton Tapestry branded hotel

4. PROPOSED TIMING

- a. May 16, 2019 - Execution of this Letter of Intent
- b. July 19, 2019 – Outside date for execution of Agreement

5. ACKNOWLEDGEMENT

- a. City and Developer acknowledge the mutual intent to negotiate and enter into an Agreement not later than July 19, 2019
- b. City and Developer acknowledge that the proposed Project may change and agree to work together to solve any issues that arise throughout the negotiation of the Agreement
- c. City and Developer each acknowledge and avow that this Letter of Intent is intended solely for the purposes of identifying essential contractual terms to be negotiated by and between the parties hereto regarding the subject matter of this Letter of Intent and to provide for confidentiality of information exchanged between them
- d. This Letter of Intent shall not be deemed, construed or interpreted as being binding on or enforceable against either party hereto
- e. No contract of or between the parties shall become binding and/or enforceable against either party unless and until it is reduced to a writing wholly separate from this Letter of Intent, which separate writing is executed by the parties' respective duly authorized officers

If the provisions of this Letter of Intent are acceptable to the Developer, please have this Letter of Intent signed and dated and returned to City.

[Remainder of page intentionally left blank, signature page to follow.]

On behalf of:
CITY

City of Urbana, IL

By: *Diane Wolfe Marlin*

Dated: 16 May 2019

Mayor Diane Wolfe Marlin

City of Urbana
400 S Vine St
Urbana, IL 61801
dwmartin@urbanainc.us

On behalf of:
DEVELOPER

Marksons Affiliates, LLC

By: *SE S, Manager*

Dated: May 16, 2019

Samuel M. Spiritos

Marksons Affiliates, LLC
2138 Rose Theatre Circle
Onley, MD 20832
sspiritos@srgpe.com

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