DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Economic Development Division

m e m o r a n d u m

TO: Mayor Diane Wolfe Marlin and City Council Members

FROM: Carol J. Mitten, City Administrator
John A. Schneider, MPA, Community Development Director
Brandon S. Boys, AICP, Economic Development Manager

DATE: July 1st, 2019

SUBJECT: **UPDATED 7/1/19 - AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT WITH MARKSONS AFFILIATES, LLC** (Urbana Landmark Hotel - 2019)

Introduction

The Urbana City Council is requested to consider the attached Ordinance and incorporated Redevelopment Agreement, which has been revised since the June 24th Committee of the Whole Meeting (**Exhibit A: Draft Enabling Ordinance and Revised Redevelopment Agreement**). The ordinance would authorize the Mayor to enter into the proposed Redevelopment Agreement with developer Marksons Affiliates, LLC for the renovation and activation of the Urbana Landmark Hotel as a Hilton Tapestry hotel. Marksons Affiliates has proposed to purchase and fully renovate the Urbana Landmark Hotel, located at 210 South Race Street, resulting in a 120+ room boutique hotel, full-service restaurant, bar and conference center with Hilton Tapestry Branding.

Approval of the ordinance and draft agreement would allow the Mayor to enter into the final redevelopment agreement consistent with the terms of the Interim Agreement that would provide the developer with a $5.5MM reimbursement of construction costs after the project is both certified for occupancy by the City and approved as a Hilton Tapestry branded-hotel. Failure of the City to approve such a redevelopment agreement before the deadline would result in the City sharing in the developer's out-of-pocket earnest money and related expenses up to a maximum of $75,000.

Staff recommends that the City Council approve the attached draft ordinance and Redevelopment Agreement. Even with City approval of this agreement, the Developer may still elect to not purchase the property or proceed with the project.

UPDATED Summary of Changes to the Redevelopment Agreement

Below is a summary of the substantive changes to the proposed redevelopment agreement.

- Clarified the definition of Eligible Redevelopment Project Costs, further clarification added.
- Defined the Project Commencement Date as July 1, 2020.
- Clarified the developer's minimum equity participation during project construction as $3.025MM (20% of the

minimum project cost of $15.1MM) as of the Project Occupancy Date.

- Added a City obligation to resurface the segment of West Green Street right-of-way that is immediately south of the hotel property (shown in the new Exhibit D to the agreement). This would be carried out by the City as part of the upcoming City-wide asphalt patching contract. In addition, the City would remove or repair the circle landscape planter located in this right-of-way. Cash expenses to City for these obligations are not expected to exceed $30,000 and could be covered with funds from the Central TIF District if needed.
- Associated the Developer's restaurant obligation with the requirements of the Hilton Tapestry brand.
- Associated the term of the Redevelopment Agreement with the repayment of City Bonds.
- Made note of the Developer's intent to charge up to a 4% Developer's Fee, depending on the availability of unused Contingency in the Project Budget.

Options

1. Approve the draft ordinance and redevelopment agreement as presented.

2. Approve the draft ordinance and redevelopment agreement with changes, subject to review for consistency with the Interim Agreement.

3. Deny the draft ordinance and redevelopment agreement.

Recommendation

The Redevelopment Agreement as proposed would fulfill the City's obligations of its Interim Agreement with Marksons Affiliates, LLC however, the developer could still elect to not proceed with the project. If pursued, the project would result in the most significant renovation this historic property has seen in over 35 years. The proposed project would return the property to its highest and best use, generate new tax revenues, bring visitors and commerce to the downtown area, and restore this iconic and historic building in the heart of Downtown Urbana.

Staff recommends that the City Council approve the attached draft ordinance and revised redevelopment agreement as presented.

Exhibit: A: Draft Enabling Ordinance and Revised Redevelopment Agreement

DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Economic Development Division

m e m o r a n d u m

TO: Mayor Diane Wolfe Marlin and City Council Members

FROM: Carol J. Mitten, City Administrator
John A. Schneider, MPA, Community Development Director
Brandon S. Boys, AICP, Economic Development Manager

DATE: June 28, 2019

SUBJECT: **AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT WITH MARKSONS AFFILIATES, LLC** (Urbana Landmark Hotel - 2019)

Introduction

The Urbana City Council is requested to consider the attached Ordinance and incorporated Redevelopment Agreement, which has been revised since the June 24th Committee of the Whole Meeting (**Exhibit A: Draft Enabling Ordinance and Revised Redevelopment Agreement**). The ordinance would authorize the Mayor to enter into the proposed Redevelopment Agreement with developer Marksons Affiliates, LLC for the renovation and activation of the Urbana Landmark Hotel as a Hilton Tapestry hotel. Marksons Affiliates has proposed to purchase and fully renovate the Urbana Landmark Hotel, located at 210 South Race Street, resulting in a 120+ room boutique hotel, full-service restaurant, bar and conference center with Hilton Tapestry Branding.

Approval of the ordinance and draft agreement would allow the Mayor to enter into the final redevelopment agreement consistent with the terms of the Interim Agreement that would provide the developer with a $5.5MM reimbursement of construction costs after the project is both certified for occupancy by the City and approved as a Hilton Tapestry branded-hotel. Failure of the City to approve such a redevelopment agreement before the deadline would result in the City sharing in the developer's out-of-pocket earnest money and related expenses up to a maximum of $75,000.

Staff recommends that the City Council approve the attached draft ordinance and Redevelopment Agreement. Even with City approval of this agreement, the Developer may still elect to not purchase the property or proceed with the project.

Summary of Changes to the Redevelopment Agreement

Below is a summary of the substantive changes to the proposed redevelopment agreement.

- Clarified the definition of Eligible Redevelopment Project Costs
- Defined the Project Commencement Date as July 1, 2020.
- Clarified the developer's minimum equity participation during project construction as $3.025MM (20% of the minimum project cost of $15.1MM)

- Added a City obligation to resurface the segment of West Green Street right-of-way that is immediately south of the hotel property (shown in the new Exhibit D to the agreement). This would be carried out by the City as part of the upcoming City-wide asphalt patching contract. In addition, the City would remove or repair the circle landscape planter located in this right-of-way. Cash expenses to City for these obligations are not expected to exceed $30,000 and could be covered with funds from the Central TIF District if needed.
- Associated the Developer's restaurant obligation with the requirements of the Hilton Tapestry brand.
- Associated the term of the Redevelopment Agreement with the repayment of City Bonds.
- Made note of the Developer's intent to charge up to a 4% Developer's Fee, depending on the availability of unused Contingency in the Project Budget.

Options

1. Approve the draft ordinance and redevelopment agreement as presented.

2. Approve the draft ordinance and redevelopment agreement with changes, subject to review for consistency with the Interim Agreement.

3. Deny the draft ordinance and redevelopment agreement.

Recommendation

The Redevelopment Agreement as proposed would fulfill the City's obligations of its Interim Agreement with Marksons Affiliates, LLC however, the developer could still elect to not proceed with the project. If pursued, the project would result in the most significant renovation this historic property has seen in over 35 years. The proposed project would return the property to its highest and best use, generate new tax revenues, bring visitors and commerce to the downtown area, and restore this iconic and historic building in the heart of Downtown Urbana.

Staff recommends that the City Council approve the attached draft ordinance and revised redevelopment agreement as presented.

Exhibit: A: Draft Enabling Ordinance and Revised Redevelopment Agreement

DEPARTMENT OF COMMUNITY DEVELOPMENT SERVICES

Economic Development Division

m e m o r a n d u m

TO: Mayor Diane Wolfe Marlin and City Council Members

FROM: Carol J. Mitten, City Administrator
John A. Schneider, MPA, Community Development Director
Brandon S. Boys, AICP, Economic Development Manager

DATE: June 21, 2019

SUBJECT: **AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT WITH MARKSONS AFFILIATES, LLC** (Urbana Landmark Hotel - 2019)

Introduction

The Urbana City Council is requested to consider the attached Ordinance and incorporated Redevelopment Agreement (**Exhibit A: Draft Enabling Ordinance and Redevelopment Agreement**). The ordinance would authorize the Mayor to enter into the proposed Redevelopment Agreement with developer Marksons Affiliates, LLC for the renovation and activation of the Urbana Landmark Hotel as a Hilton Tapestry hotel. Marksons Affiliates has proposed to purchase and fully renovate the Urbana Landmark Hotel, located at 210 South Race Street, resulting in a 120+ room boutique hotel, full-service restaurant, bar and conference center with Hilton Tapestry Branding.

On May 20, 2019, the Urbana City Council approved Ordinance No. 2019-05-12R which authorized the Mayor to enter into an Interim Agreement with Sam Spiritos of Marksons Affiliates, LLC (**Exhibit B: Interim Agreement with Letter of Intent**) and the agreement was executed by both parties. In keeping with the Interim Agreement, the developer executed a purchase agreement for the hotel property for a price not greater than $1MM.

The developer has provided additional information on the proposed project including an updated project narrative, sources and uses table, development budget, pro forma and intended project partners (**Exhibit C: Developer's Proposal**). The developer intends to utilize federal historic tax credits as part of the project funding. Additional background information and case studies were also provided by the project leads, asset management, project management, architect and hotel management partners (**Exhibit D: Project Partners**).

The qualifications of the project team, the pro forma and pricing assumptions for a Hilton Tapestry property, and available hotel market data were each reviewed by Patek Hospitality Consulting. (**Exhibit E: Patek Hospitality Review**). Overall, the project team was found to be well qualified, the pro forma was found to be within industry standards, and the market assumptions were found to be reasonable, although new competition is expected in the market for this hotel product in the coming years.

The proposed Redevelopment Agreement, as recommended by City staff, incorporates several changes at the request of the developer including an increase of City support for the project. Staff proposes an increase from $5.2MM to $5.5MM based on analysis of the proposed project's tax revenue projections. The developer has not committed to move forward with the project at this level of support.

SB Friedman Development Advisors was retained by the City to conduct a preliminary financial review of the developer's proposal and the City's level of support. (**Exhibit F: SB Friedman Review**). SB Friedman found that City support at $5.5MM for the project would allow the project to generate "above market returns" while also acknowledging that a higher rate of return is not unreasonable given the limited recent development in downtown Urbana and Champaign-Urbana's status as a small metropolitan market.

Staff also updated a 2017 analysis of alternative scenarios for use of the hotel property (**Exhibit G: Alternative Scenarios Analysis**). The alternatives analysis confirms that a renovated, full-service hotel has the highest economic impact compared to renovation for student housing, senior living or community housing. The cost of clearing the site was estimated at $4MM, making new construction scenarios cost-ineffective.

Approval of the ordinance and draft agreement would allow the Mayor to enter into the final redevelopment agreement consistent with the terms of the Interim Agreement that would provide the developer with a $5.5MM reimbursement of construction costs after the project is both certified for occupancy by the City and approved as a Hilton Tapestry branded-hotel. Failure of the City to approve such a redevelopment agreement before the deadline would result in the City sharing in the developer's out-of-pocket earnest money and related expenses up to a maximum of $75,000.

Staff recommends that the City Council approve the attached draft ordinance and Redevelopment Agreement. Even with City approval of this agreement, the Developer may still elect to not purchase the property or proceed with the project.

Background

Over the last four years, Mayor Marlin and City staff have invested hundreds of hours engaging potential buyers and developers of the Urbana Landmark Hotel property. Despite the challenges of the existing property's deteriorated condition, there has been significant interest from both local and out-of-town investors given the building's unique historic character and its central, walkable location in the heart of Downtown Urbana. The City has been working over this time to identify a buyer and developer of the property that would bring the right mix of experience, tenacity, financial resources, and a proposal with a balanced level of risk for the City. Based on its extensive interactions with the developer and their prospective project partners, staff is convinced that Marksons Affiliates has the appropriate experience and resources to accomplish the proposed transformative project at the Urbana Landmark Hotel.

Prior analysis of redevelopment options of this site, both internally and by third-party consultants, has consistently shown that a boutique, full-service hotel with an active conference and events center would be the highest and best use for the property, would yield the greatest spin-off benefits for the downtown area, and would generate the most new revenues to offset the significant cost of achieving a transformative renovation of this historic building. The executed Interim Agreement represents the culmination of months of negotiation with the prospective developer.

The Interim Agreement obligated the developer to maintain the hotel under contract at a sale price not greater than $1MM and the agreement obligated the City to approve a final redevelopment agreement consistent with the terms set forth in the Letter of Intent on or before July 19, 2019. In the event the City fails to approve such a redevelopment agreement by the deadline, then the City would be obligated to reimburse the developer for up to $75,000 of their out-of-pocket earnest money and related expenses. If the City approves a redevelopment agreement prior to the deadline or if the developer defaults on any of its obligations in the Interim Agreement, then the City would not be obligated to make any reimbursements to the developer.

The City approval process is proceeding along the following schedule presented in May for the approval of the final redevelopment agreement:

Stage of Approval	Date
Approval of the LOI and Interim Agreement	Mon 05/20/2019
Approval of the Final Redevelopment Agreement	
Committee of the Whole Meeting	Mon 06/24/2019
City Council Meeting (final approval)	Mon 07/01/2019
Execution of RDA by Mayor or designee (not later than)	Mon 07/08/2019

Summary of the Redevelopment Agreement

The terms of the proposed redevelopment agreement (**Exhibit A**) are based on the Letter of Intent (LOI) that were incorporated into the Interim Agreement (**Exhibit B**) and were then adjusted based on negotiation with the developer. The redevelopment agreement would obligate the developer to complete a project that results in a complete renovation of the hotel and grounds, Hilton Tapestry branding and service standards, preservation of historic elements, as well as commercial activation of at least 120 hotel rooms, a full-service restaurant with catering and room service, bar, ballroom, conference center and meeting rooms. The project would be constructed at a minimum cost of $15.1MM, which excludes project contingency. The developer's project budget provides for additional contingency to allow for up to a $17.8MM project construction budget.

The proposed redevelopment agreement also obligate the developer to commit to a specific construction schedule, set aspirational goals for the hiring of minority- and women-owned businesses, commit a minimum of 19.6 percent equity at the onset of the project, and operate the hotel as a Hilton Tapestry branded hotel for a minimum of ten years.

The redevelopment agreement obligates the City to reimburse the developer $5.5MM of eligible project expenses. All construction expenses are anticipated to be considered eligible for reimbursements via Tax Increment Financing (TIF). The redevelopment agreement also acknowledges the City's ability and need to establish additional hotel/motel taxes on the resulting hotel property, by separate action under the City's home rule authority. The City would initiate such additional hotel/motel taxes for the purpose of ensuring sufficient new tax revenues from the project in order to offset the cost of City reimbursement of eligible project expenses. It is currently estimated that the City would need to establish a 4% boutique hotel/motel tax on the property by the time of its opening to maintain appropriate new revenues to cover the anticipated bond payments.

Fiscal Impact

If the City does not approve a final redevelopment agreement, consistent with the Interim Agreement, on or before July 19th, 2019, the City would be obligated to reimburse the developer's documented, eligible due diligence expenses from the Central TIF District Fund up to a maximum of $75,000.

If approved in a manner consistent with the Interim Agreement final redevelopment agreement, the developer would have the option of entering into the agreement, closing on the hotel, and completing the project to receive $5.5MM in reimbursements of the construction costs. Staff conducted an incentive analysis to determine the level of support the City could provide for the project with the specific goal of ensuring that the new tax revenues generated by the project paid for the cost of the incentive and any borrowing costs over a ten-year period.

Bond Value Analysis

Given the amount and timing of the developer's incentive request, staff anticipates that the City would need to issue a bond. Given the type and amount of debt considered being issued and the City's financial policies, a private placement bond with a maximum ten year term that is the most feasible option. The process required to issue a longer term bond through a public sale is infeasible given the City's financial policies and developer's timeframe.

The project would be expected to generate sufficient new tax revenue to the City to cover the cost of the bond over this ten-year period. These new tax revenues are expected to come from four sources: (1) TIF incremental property taxes, (2) food and beverage taxes based on food and beverage sales, (3) hotel/motel taxes based on room sales and, (4) additional boutique hotel taxes based on room sales (contingent on further action by the City). Staff sought to identify the amount of incentive these revenues could support and still break even over a ten-year period.

Staff utilized a debt service coverage ratio (DCR) to incorporate the inherent risk of lending into this analysis. A DCR is the net income expected divided by the cost of the debt service. A DCR of 1.0 means the income is equal to debt service. A DCR higher than 1.0 means that income will be higher than debt service. A higher DCR indicates a higher ability to pay off the debt and a lower risk of default. For this project a DCR of 1.2 is applied the projected revenue, meaning that 20% more income is expected than the cost of the debt service (**Table 1 – Bond Value Analysis**).

Table 1. Bond Value Analysis

	$5.5M Bond	**$5.2M Bond**
New Revenues		
10-Year Total TIF Increment	$2,965,840	$2,965,840
10-Year Total Food & Beverage Tax	$313,811	$313,811
10-Year Total Hotel/Motel Tax	$2,992,016	$2,992,016
10- Year Total Boutique Hotel Tax (*4% , 3% respectively*)	$2,011,439	$1,508,580
10-Year Total Tax Revenue	$8,283,107	$7,780,247
Debt Service Coverage Ratio (DCR)	*1.20*	*1.20*
Adjusted 10-Year Total Tax Revenue	**$6,902,589**	**$6,483,539**
Incentives Value		
Initial Bond Issuance	$5,500,000	$5,200,000
10-Year Interest Cost	$1,445,465	$1,380,955
Total Incentive Value	**$6,945,465**	**$6,580,955**
Revenues as Percent of Incentives	99.4%	98.5%
Annual New Revenue Following Bond Payback		
Annual TIF Increment	$388,000	$388,000
Annual Other Tax Revenue	$597,000	$538,000
Total New Annual Revenue	**$985,000**	**$926,000**

In the above Table 1, the one variable that can be independently changed by the City is the boutique hotel tax, which could be established prior to completion project at a rate between 0.0 and 6.0 percent. The maximum boutique tax staff believes is feasible without being detrimental to hotel performance is 6.0 percent.

Given the risks the City incurs by issuing debt, the maximum bond issuance the City calculates the project being able to support is $5.5MM. Table 1 highlights the new revenues and costs for both a $5.5MM and $5.2MM bond. The to-be-created Boutique Hotel Tax would be set at a rate for each scenario that balances revenues with the cost of incentives:

For a $5.2MM bond, the Boutique Hotel Tax would need to be set at 3.0 percent prior to the project opening.

For a $5.5MM bond, the Boutique Hotel Tax would need to be set at 4.0 percent prior to the project opening.

After the ten year period and if the hotel performance remains constant, staff projects that the City would accrue $388,000 to the TIF and $538,000 through other sources to the General Fund in new revenue each year thereafter.

<u>Sensitivity Analysis</u>

Anytime debt is issued, the lender incurs some level of risk. To help quantify the level of risk the City would incur upon issuing a bond for this project several possible scenarios were examined to determine the impact to project revenue (**Table 2 – Sensitivity Analysis**). Each independent scenario was selected as an event that has a reasonable chance to occur, both in effect and in magnitude. The four sensitivity scenarios examined in Table 2 below were:

1) The Carle court case is resolved in a manner that adds the property back to the tax rolls, increasing City-wide EAV and thereby decreasing City-wide tax rates below those forecasted.
2) A final property assessment that results in a property value lower than forecasted.
3) The hotel's average daily room rates (ADR) are less than forecasted.
4) The occupancy rate is less than is forecasted, such as if competing upscale projects are built in the future.

For each scenario, the decrease in revenue is compared to the excess revenue reserved by the debt service coverage ratio and the amount of new revenue that could be generated by increasing the boutique hotel tax to the maximum 6 percent. In any one scenario, the DCR is sufficient to cover the bond payments. For a $5.5MM bond, the combination of two scenarios results in a change to project revenue nearly equal to the amount reserved by the DCR. At $5.5MM, if each of these independent scenarios were to occur, the new tax revenues fall short of covering the total cost of the debt service over the ten year period by $250,000. In that scenario, the project would be expected to generate enough revenue to cover the cost of the debt service in the eleventh year of operation.

For any bond issuance greater than $5.5 million, the initial boutique hotel tax would increase at well. As the initial tax nears 6.0%, the ability to increase revenues by increasing the tax rate is progressively reduced to zero. With the DCR being the City's only safety net, the risk of revenues not supporting bond payments becomes likely with any two scenarios occurring. This substantially increases the risk to the City as these scenarios, while not currently predicted to occur, are still feasible without a dramatic change in assumptions or market conditions.

Table 2. Sensitivity Analysis
$5.2M Bond and 3.0% Boutique Hotel Tax to Start

	Sensitivity Scenarios	Change in Assumption	Change in Project Revenue	Excess Revenue from DCR	New Revenue from 6% Boutique	Net Balance/ (Shortfall)
1	Carle Case	*Reduce Rate by 2.0*	($603,133)	$1,296,708	$1,273,128	$1,966,703
2	Property Value	*Assessed at ~$8.0MM*	($795,043)	$1,296,708	$1,273,128	$1,774,793
3	Reduced ADR	*Less $15 ADR*	($421,741)	$1,296,708	$1,273,128	$2,148,095
4	Over Saturated	*56% Occupancy Rate*	($756,286)	$1,296,708	$1,273,128	$1,813,550
5	3 & 4	*Both Revenue Scenarios*	($1,112,473)	$1,296,708	$1,273,128	$1,457,363
6	1 & 2	*Both Property Scenarios*	($1,247,393)	$1,296,708	$1,273,128	$1,322,443
7	Combo All	*All Scenarios*	($2,359,865)	$1,296,708	$1,273,128	$209,971

$5.5 M & 4.0% Boutique to Start

	Sensitivity Scenarios	Change in Assumption	Change in Project Revenue	Excess Revenue from DCR	New Revenue from 6% Boutique	Net Balance/ (Shortfall)
1	Carle Case	*Reduce Rate by 2.0*	($603,133)	$1,380,518	$848,752	$1,626,137
2	Property Value	*Assessed at ~$8.0MM*	($795,043)	$1,380,518	$848,752	$1,434,227
3	Reduced ADR	*Less $15 ADR*	($468,863)	$1,380,518	$848,752	$1,760,407
4	Over Saturated	*56% Occupancy Rate*	($835,353)	$1,380,518	$848,752	$1,393,917
5	3 & 4	*Both Revenue Scenarios*	($1,231,337)	$1,380,518	$848,752	$997,933
6	1 & 2	*Both Property Scenarios*	($1,247,393)	$1,380,518	$848,752	$981,877
7	Combo All	*All Scenarios*	($2,478,729)	$1,380,518	$848,752	($249,460)

Alternatives Analysis

In addition to the direct incentive cost incurred by the City for the current proposal, there is an opportunity cost of the development, or a lack thereof. With regard to alternative development outcomes, a fully renovated upscale hotel and conference center is the highest and best use for the property. Similarly, for a hotel, a renovation into an upscale brand is the most feasible development outcome compared to any scenario involving demolition and new construction. Staff is not aware of any alternative development scenario that would have a comparable economic impact or proportionately smaller development gap. The eventual consequence of which may result in the demolition of the property. If this were to occur, the cost to demolish the property and repair the attached structure would likely exceed $4MM; such an outcome would not be anticipated to generate any new tax revenues. **Exhibit G** shows a more complete analysis of the discussed alternative developments outcomes and their feasibility.

Third-Party Review

The qualifications of the project team, the pro forma and pricing assumptions for a Hilton Tapestry property, and available hotel market data were each reviewed by Patek Hospitality Consulting. (**Exhibit E**). Overall, the project team was found to be well qualified, the pro forma was found to be within industry standards, and the market assumptions were found to be reasonable, although new competition is expected in the market for this hotel product in the coming years.

SB Friedman Development Advisors was retained by the City to conduct a preliminary financial review of the developer's proposal and the City's level of support. (**Exhibit F**). SB Friedman found that City support at $5.5MM for the project would allow the project to generate "above market returns" while also acknowledging that a higher rate of return is not unreasonable given the limited recent development in downtown Urbana and Champaign-Urbana's status as a small metropolitan market.

Options

1. Approve the draft ordinance and redevelopment agreement as presented.

2. Approve the draft ordinance and redevelopment agreement, subject to review for consistency with the Interim Agreement.

3. Deny the draft ordinance and redevelopment agreement.

Recommendation

The Redevelopment Agreement as proposed would fulfill the City's obligations of its Interim Agreement with Marksons Affiliates, LLC however, the developer could still elect to not proceed with the project. If pursued, the project would result in the most significant renovation this historic property has seen in over 35 years. The proposed project would return the property to its highest and best use, generate new tax revenues, bring visitors and commerce to the downtown area, and restore this iconic and historic building in the heart of Downtown Urbana.

Staff recommends that the City Council approve the attached draft ordinance and redevelopment agreement as presented.

Exhibits:	A:	Draft Enabling Ordinance and Redevelopment Agreement
	B:	Interim Agreement and Letter of Intent
	C:	Developer's Proposal
	D:	Project Partners
	E:	Patek Hospitality Review
	F:	SB Friedman Review
	G:	Alternative Scenarios Analysis

EXHIBIT A

ORDINANCE NO. ________________

AN ORDINANCE APPROVING A REDEVELOPMENT AGREEMENT WITH MARKSONS AFFILIATES, LLC

(Urbana Landmark Hotel - 2019)

WHEREAS, the City of Urbana, an Illinois municipal corporation, (hereinafter, the "City"), is a home rule unit of local government pursuant to Article 7, § 6 of the Illinois Constitution of 1970 and 65 ILCS 5/1-1-10; and

WHEREAS, Marksons Affiliates, LLC ("Developer"), a Maryland limited liability company, intends to renovate and operate the Urbana Landmark Hotel as a Tapestry Collection by Hilton Properties brand and is willing to undertake such development in accordance with the terms and conditions contained in the draft redevelopment agreement (hereinafter the "Agreement") appended to this Ordinance as an exhibit; and

WHEREAS, the City and Developer desire to enter into the Agreement in substantially the form of the exhibit appended hereto and made a part hereof;

WHEREAS, the City Council, after due consideration, finds that approval of the Agreement, as herein provided, are in the best interests of the residents of the City and is desirable for the welfare of the City's government and affairs.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

<u>Section 1</u>.

The Agreement shall be and hereby is approved in substantially the form appended to and incorporated into this Ordinance.

<u>Section 2</u>.

The Mayor of the City of Urbana, Illinois, shall be and is hereby authorized to execute and deliver the Agreement, in substantially the form of the exhibit attached hereto and hereby incorporated by reference, and the City Clerk of the City of Urbana, Illinois, be and the same is authorized to attest to said execution of said Agreement as so authorized and approved for and on behalf of the City of Urbana, Illinois.

Section 3.

This Ordinance shall be in full force and effect from and after its passage.

PASSED BY THE CITY COUNCIL this ___ day of ___________________, ______.

AYES:

NAYS:

ABSTENTIONS:

____
Charles A. Smyth, City Clerk

APPROVED BY THE MAYOR this ___ day of ___________________, ______.

____
Diane Wolfe Marlin, Mayor

REDEVELOPMENT AGREEMENT

by and between the

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

and

MARKSONS AFFILIATES, LLC

Dated as of June 1, 2019

TABLE OF CONTENTS

EXHIBIT LIST

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (including any exhibits and attachments hereto, collectively, this **"Agreement"**) is dated for reference purposes only as of June 1, 2019, but actually executed by each of the parties on the dates set forth beneath their respective signatures below, by and between the **City of Urbana, Champaign County, Illinois**, an Illinois municipal corporation (the **"City"**), and **Marksons Affiliates, LLC**, a Maryland limited liability company (the **"Developer"**). This Agreement shall become effective upon the date of the last of the City and the Developer to execute and date this Agreement and deliver it to the other (the **"Effective Date"**).

RECITALS

WHEREAS, in accordance with and pursuant to the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 et seq.), as supplemented and amended (the **"TIF Act"**), including by the power and authority of the City as a home rule unit under Section 6 of Article VII of the Constitution of Illinois, the City Council of the City (the **"Corporate Authorities"**) adopted a series of ordinances (Ordinance Nos. 2016-09-084, 2016-09-085 and 2016-09-086 on October 17, 2016) including as supplemented and amended (collectively, the **"TIF Ordinances"**); and

WHEREAS, under and pursuant to the TIF Act and the TIF Ordinances, the City designated the Central Tax Increment Redevelopment Project Area (the **"Redevelopment Project Area")** and approved the related redevelopment plan, as supplemented and amended (the **"Redevelopment Plan"**), including the redevelopment projects described in the Redevelopment Plan (collectively, the **"Redevelopment Projects"**); and

WHEREAS, the Developer proposes to acquire the Property (as defined below) and to undertake (or cause to be undertaken) the Project (including related and appurtenant facilities as more fully defined below, the **"Project"**); and

WHEREAS, the Property is within the Redevelopment Project Area; and

WHEREAS, the Developer is unwilling to undertake the Project without certain tax increment finance and other financial incentives from the City, which the City is willing to provide; and

WHEREAS, the City has determined that it is desirable and in the City's best interests to assist the Developer in the manner set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Developer hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.1. Definitions. For purposes of this Agreement and unless the context clearly requires otherwise, the capitalized words, terms and phrases used in this Agreement shall have the meaning provided in the above Recitals and from place to place herein, including as follows:

"Additional Taxes" means, collectively, those taxes derived from the Hotel Facility as follows: (i) the Hotel/Motel Use Tax as established by Article V of Chapter 20 of the Urbana City Code and (ii) the Boutique Hotel/Motel Use Tax as or to be established by Article V of Chapter 20 of the Urbana City Code.

"Bonds" means, howsoever styled, Tax Increment Revenue Bonds or any other instrument evidencing the obligation to pay money which are authorized or issued in one or more series by the City under applicable law and have a term of not more than 20 years.

"Bond Issue Date" means the date on which the City issues and delivers the Bonds.

"Developer" means the Developer listed above, but the purchase agreement and this Agreement will be assigned to an entity to be created to purchase the Property and become the Developer under this Agreement.

"Eligible Redevelopment Project Costs" means those costs paid and incurred in connection with the Project which are authorized to be reimbursed or paid to the Developer from the Fund as provided in Section 5/11-74.4-3(q) of the TIF Act, including but not limited to: (1) costs of studies, surveys, development of plans and specifications, (2) property assembly costs, including acquisition of land and other property, real or personal, and (3) costs of rehabilitation, reconstruction, repair or remodeling of existing public or private buildings and fixtures. All costs shown under the heading Construction in the Project Budget as well as certain other costs in the Project Budget are anticipated to qualify as Eligible Redevelopment Project Costs.

"Fund" means, the "Special Tax Allocation Fund" for the Redevelopment Project Area established under Section 5/11-74.4-8 of the TIF Act and the TIF Ordinances.

"Hotel Facility" means, collectively, the existing 128-room hotel facility, including the related conference center and meeting room space, bar/lounge, grounds and parking improvements located upon the Property.

"Incremental Property Taxes" means, net of all amounts required by operation of the TIF Act to be paid to other taxing districts, including as surplus, in each calendar year during the term of this Agreement, the portion of the ad valorem real estate taxes arising from levies upon the Property by taxing districts that is attributable to the increase in the equalized assessed value of each taxable lot, block, tract or parcel of real estate of the Property over the equalized assessed value of each taxable lot, block, tract or parcel of real estate of the Property within the Redevelopment Project Area which, pursuant to the TIF Ordinances and Section 5/11-74.4-8(b) of the TIF Act, will be allocated to and when collected shall be paid to the Finance Director for deposit by the Finance Director into the Fund established to reimburse or pay Eligible Redevelopment Project Costs and other redevelopment project costs as authorized under Section 5/11-74.4-3(q) of the TIF Act.

"Prevailing Wage Act" means the Prevailing Wage Act (820 ILCS 130/0.01 et seq.) of the State of Illinois, the material terms of which require all contractors and subcontractors to pay all laborers, workers and mechanics performing work on any "public works" (as therein defined) no less than the current "prevailing rate of wages" (hourly cash wages plus fringe benefits) applicable to the county where performed and to comply with certain notice, recordkeeping and filing duties.

"Project" means, collectively, the rehabilitation, reconstruction, repair or remodeling of the Hotel Facility upon the Property to include all guest rooms, conference center and meeting room space, restaurant, bar/lounge and common areas, exterior façade, grounds, parking lot, including related furniture, fixtures and equipment replacements, in a manner consistent with the standards established for the Tapestry Collection by Hilton brand ("Franchisor"), together with such renovations to the Hotel Facility as may be required by the City's landmark historic review standards and the Illinois State Historic Preservation Office, some details of which are more specifically described on Exhibit A attached hereto and made a part hereof.

"Project Commencement Date" means, as applicable, July 1, 2020, the date on or before which construction of the Project is to commence.

"Project Occupancy Date" means, subject to "unavoidable delays" as described in Section 8.5 of this Agreement, the date on which the Project is completed and the Hotel Facility is ready for occupancy, utilization and commercial operation as evidenced by a certificate of occupancy for the entire Project issued by the Community Development Director of the City, but in no event shall such date be later than eighteen (18) months from and after the Project Commencement Date.

"Property" means, the real estate consisting of the parcels legally described on Exhibit B hereto, upon or within which the Project is to be undertaken and completed.

"TIF Financing" means financing arrangements to or for the benefit of a developer arising out of the TIF Act which pay or reimburse redevelopment project costs in whole or in part.

Section 1.2. Construction. This Agreement, except where the context by clear implication shall otherwise require, shall be construed and applied as follows:

(a) definitions include both singular and plural.

(b) pronouns include both singular and plural and cover all genders; and

(c) headings of sections herein are solely for convenience of reference and do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(d) all exhibits attached to this Agreement shall be and are operative provisions of this Agreement and shall be and are incorporated by reference in the context of use where mentioned and referenced in this Agreement.

ARTICLE II
REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. In order to induce the Developer to enter into this Agreement, the City hereby makes certain representations and warranties to the Developer, as follows:

(a) Organization and Standing. The City is a home rule municipality duly organized, validly existing and in good standing under the Constitution and laws of the State of Illinois.

(b) Power and Authority. The City has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

(c) Authorization and Enforceability. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the City's Corporate Authorities. This Agreement is a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except that such enforceability may be further limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

(d) No Violation. Neither the execution nor the delivery of this Agreement or the performance of the City's agreements, obligations and undertakings hereunder will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of any agreement, rule, regulation, statute, ordinance, judgment, decree, or other law by which the City may be bound.

(e) Governmental Consents and Approvals. No consent or approval by any other governmental authority is required in connection with the execution and delivery by the City of this Agreement or the performance by the City of its obligations hereunder.

Section 2.2. <u>Representations and Warranties of the Developer</u>. In order to induce the City to enter into this Agreement, the Developer makes the following representations and warranties to the City:

(a) Organization. The Developer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Maryland. The Developer shall be duly authorized to transact business in the State of Illinois before taking title to the Property.

(b) Power and Authority. The Developer has full power and authority to execute and deliver this Agreement and to perform all of its agreements, obligations and undertakings hereunder.

(c) Authorization and Enforceability. The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action on the part of the Developer's manager. This Agreement is a legal, valid and binding agreement, obligation and undertaking of the Developer, enforceable against the Developer in accordance with its terms, except to the extent that such enforceability may be limited by laws, rulings and decisions affecting remedies, and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforceability of debtors' or creditors' rights, and by equitable principles.

(d) No Violation. Neither the execution nor the delivery or performance of this Agreement will conflict with, violate or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, or (with or without the giving of notice or the passage of time or both) entitle any party to terminate or declare a default under any contract, agreement, lease, license or instrument or any rule, regulation, statute, ordinance, judicial decision, judgment, decree or other law to which the Developer is a party or by which the Developer or any of its assets may be bound.

(e) Consents and Approvals. No consent or approval by any governmental authority or by any other person or entity is required in connection with the execution and delivery by the Developer of this Agreement or the performance by the Developer of its obligations hereunder.

(f) No Proceedings or Judgments. There is no claim, action or proceeding now pending, or to the best of its knowledge, threatened, before any court, administrative or regulatory body, or governmental agency (1) to which the Developer is a party and (2) which will, or could, prevent the Developer's performance of its obligations under this Agreement.

(g) Maintenance of Existence. During the term of this Agreement, the Developer shall do or cause to be done all things necessary to preserve and keep in full force and effect its existence.

Section 2.3. Disclaimer of Warranties. The City and the Developer acknowledge that neither has made any warranties to the other except as set forth in this Agreement. The City hereby disclaims any and all warranties with respect to the Property and the Project, express or implied, including, without limitation, any implied warranty of fitness for a particular purpose or merchantability.

Section 2.4. Developer Designation. At the Developer's request, the City hereby recognizes the Developer under the TIF Act to develop and redevelop the Property acquired by the Developer, and not otherwise, in connection with the Project on its part to be undertaken, rehabilitated, reconstructed, repaired and remodeled under this Agreement within the Redevelopment Project Area in accordance with **(i)** the TIF Act, **(ii)** the Redevelopment Plan, **(iii)** the Redevelopment Projects, and **(iv)** this Agreement. For a period of ten (10) years from and after the Project Occupancy Date, the City agrees that it will not enter into any development or redevelopment agreement to provide development incentives to any other hotel facility or project that would be in direct competition with the Hotel Facility and the Project. The Developer is authorized to commence applicable activities upon the Effective Date of this Agreement.

ARTICLE III
CONDITIONS PRECEDENT TO THE
UNDERTAKINGS ON THE PART OF THE CITY

Section 3.1. Conditions Precedent. The undertakings on the part of the City as set forth in Article IV of this Agreement are expressly contingent upon each of the following Sections of this Article III:

Section 3.2. Title to Property. The Developer shall have acquired fee simple title to the Property.

Section 3.3. Project Budget. The Developer has delivered to the City an itemized list of the estimated costs to complete the Project (the **"Project Budget"**), a copy of which is attached hereto as Exhibit C.

Section 3.4. Ability to Pay. The Developer shall have provided evidence, in a commercially reasonable form satisfactory to the City, of its ability to pay for the costs of the Project, as itemized in the Project Budget. Such evidence shall include: (i) a table showing the sources and use of funds for the Project where the equity contribution of such sources is not less than $3,025,000 as of the Project Occupancy Date; and (ii) an estimated return on investment.

Section 3.5. Construction Schedule. The Developer shall have delivered to the City a detailed construction schedule for the commencement and completion of the Project which shall include the Project Commencement Date and the Project Occupancy Date.

Section 3.6. Branding. The Developer shall have entered into an applicable franchise agreement to have the Hotel Facility operated and maintained as a Tapestry Collection by Hilton Properties brand for a period of not less than ten (10) years from and after the Project Occupancy Date.

Section 3.7. City Approvals. The Developer shall have obtained approval of the Project in accordance with all applicable laws, codes, rules, regulations and ordinances of the City, including without limitation all applicable subdivision, zoning, environmental, building code, historic preservation or any other land use regulations (collectively, the **"City Codes"**).

Section 3.8. Commitment to Undertake and Complete the Project. The Developer covenants and agrees to commence the Project on or before the Project Commencement Date and to have the Project completed on or before the Project Occupancy Date. The Developer recognizes and agrees that the City has sole discretion with regard to all approvals and permits relating to the Project, including but not limited to approval of any required permits and any failure on the part of the City to grant or issue any such required permit shall not give rise to any claim against or liability of the City pursuant to this Agreement. The City agrees, however, that any such approvals shall be made in conformance with the applicable City Codes and shall not be unreasonably denied, withheld, conditioned or delayed.

Section 3.9. Compliance with Agreement and Laws During Construction. The Developer shall at all times undertake the Project, including any related activities in connection therewith, in conformance with this Agreement and all applicable federal and state laws, rules and regulations and all City Codes.

Section 3.10. Prevailing Wages. The Developer acknowledges that the Illinois Department of Labor currently takes the position as a matter of its enforcement policy that the TIF Financing of the Project under this Agreement does not subject the Project to the Prevailing Wage Act unless the Project also receives funding from another public source. Neither the Developer nor the City intend for the Prevailing Wage Act to apply to the Project. The City makes no representation as to any such application of the Prevailing Wage Act to the Project, and any failure by the Developer to comply with the Prevailing Wage Act, if and to the extent subsequently found to be applicable by any legal authority having jurisdiction, shall not be deemed a "Default" under this Agreement. Notwithstanding the foregoing sentence, the Developer agrees to assume all responsibility for any such compliance (or noncompliance) with the Prevailing Wage Act in connection with the Project under this Agreement in the event of any action by any party to enforce its provisions.

Section 3.11. Contractors Owned by Minorities and Females. It is the policy of the Corporate Authorities of the City to promote and encourage the use by the Developer of contractors owned by "minorities" and/or "females" (as such terms are defined in the Business Enterprise for Minorities, Females and Persons with Disabilities Act, 30 ILCS 575/0.01 et seq.) in connection with the Project. Toward this end, the Developer shall establish goals for contracting with contractors owned by minorities and females in connection with the Project, including a plan by which the Developer intends to meet these goals, and shall submit such plan to the City for review and approval.

Section 3.12. Additional Taxes. The Developer acknowledges that the City will be required to incur debt and issue Bonds in order to provide the funds necessary to meet the City's financial obligations to the Developer under Section 4.1(a) of this Agreement and to pay costs of issuance. In order to pay debt service on the Bonds, the City may be required to impose Additional Taxes upon the guests and customers of the Hotel Facility. The Developer agrees to cooperate with the City in this connection and to not raise any objection or legal challenge to the imposition of any such Additional Taxes.

Section 3.13. Total Project Costs. The Developer shall have spent not less than the Project Sub-Total amount set forth in the Project Budget, which amount shall expressly exclude any amount shown for contingency.

Section 3.14. Reasonable Efforts and Notice of Termination. The Developer shall use due diligence to timely satisfy the conditions set forth in this Article III above on or before the Project Occupancy Date, but if such conditions are not so satisfied or waived by the City, then the City may terminate this Agreement by giving written notice thereof to the Developer. In the event of such termination, this Agreement shall be deemed null and void and of no force or effect and neither the City nor the Developer shall have any obligation or liability with respect thereto.

ARTICLE IV
CITY'S COVENANTS AND AGREEMENTS

Section 4.1. City's TIF Funded Financial Obligations. The City shall have the obligations set forth in this Section 4.1 relative to financing Eligible Redevelopment Project Costs in connection with the Project. Subject to the terms, conditions and limitations set forth in this Section 4.1 immediately below, the City agrees to reimburse the Developer, or to pay as directed by the Developer, the amount as follows:

(a) **Reimbursement Amount**. After the Project Occupancy Date and the Bond Issue Date and provided the Developer has (i) obtained final approval for the Hotel Facility to be operated and maintained as a Tapestry Collection by Hilton Properties brand and (ii) secured equity and/or permanent debt financing for the balance of the cost of the Project, the City shall provide to the Developer a cash payment or reimbursement in an amount equal to $5,500,000 (the **"Reimbursement Amount"**).

(b) **Reimbursement Amount Limitation**. The City's obligation to provide the total amount of such Reimbursement Amount as described in part (a) of this Section 4.1 above is subject to the condition that such obligation shall not exceed the amount of Eligible Redevelopment Project Costs submitted by the Developer to the Economic Development Manager of the City for those Eligible Redevelopment Project Costs which have been incurred and paid. Any such submittal shall be supported by appropriate documentation, including, as applicable, receipts for paid bills or statements of suppliers, contractors or professionals, together with required contractors' or material men's partial and final affidavits or lien waivers, as the case may be.

(c) **Bond Issue Date**. The City agrees to issue and deliver the Bonds and cause the Bond Issue Date to occur as soon as reasonably possible after the Project Occupancy Date but in any event no later than sixty calendar (60) days from and after the Project Occupancy Date and to pay the Reimbursement Amount to the Developer within ten (10) calendar days of the Bond Issue Date.

Section 4.2. **Improvement to West Green Street Right-of-Way**. The City agrees at its sole cost and expense to improve the West Green Street Right-of-Way as depicted on Exhibit D attached hereto and made a part hereof by: (1) resurfacing all asphalt surfaces and (2) repairing, removing or replacing the landscape island located immediately south of the porte-cochere of the Hotel Facility on the Property.

Section 4.3. **Urbana Enterprise Zone**. The City confirms that the Property is within the City of Urbana/Champaign County Enterprise Zone and that the Project qualifies for a state sales tax exemption for eligible building materials purchased in connection with the rehabilitation, reconstruction, repair and remodeling of the Hotel Facility.

Section 4.4. **Defense of Redevelopment Project Area**. In the event that any court or governmental agency having jurisdiction over enforcement of the TIF Act and the subject matter contemplated by this Agreement shall determine that this Agreement, including the payment of the Reimbursement Amount to be paid or reimbursed by the City, is contrary to law, or in the event that the legitimacy of the Redevelopment Project Area is otherwise challenged before a court or governmental agency having jurisdiction thereof, the City will defend the integrity of the Redevelopment Project Area and this Agreement.

ARTICLE V
OTHER DEVELOPER COVENANTS

Section 5.1. **Continuing Compliance with Laws**. The Developer agrees that in the continued use, occupation, operation and maintenance of the Hotel Facility and the Property, the Developer will comply with all applicable federal and state laws, rules, regulations and all applicable City Codes and other ordinances.

Section 5.2. **Tax and Related Payment Obligations**. The Developer agrees to pay and discharge, promptly and when the same shall become due, all general ad valorem real estate taxes and assessments, all applicable interest and penalties thereon, and all other charges and impositions of every kind and nature which may be levied, assessed, charged or imposed upon the Property or any part thereof that at any time shall become due and payable upon or with respect to, or which shall become liens upon, any part of the Property. The Developer, including any others claiming by or through it, also hereby covenants and agrees not to file any application for property tax exemption for any part of the Property or the Project or any part thereof under any applicable provisions of the Property Tax Code of the State of Illinois (35 ILCS 200/1-1 et seq.), as supplemented and amended, unless the City and the Developer shall otherwise have first entered into a mutually acceptable agreement under and by which the Developer shall have agreed to make a payment in lieu of taxes to the City, it being mutually acknowledged and understood by both the City and the Developer that any such payment of taxes (or payment in lieu thereof) by the Developer is a material part of the consideration under and by which the City has entered into this Agreement. This covenant of the Developer shall be a covenant that runs with the land being the Property upon which the Project is undertaken and shall be and remain in full force and effect during the term of this Agreement and following its expiration or termination, as the case may be, until December 31, 2044, upon which date this covenant shall terminate and be of no further force or effect (and shall cease as a covenant binding upon or running with the land) immediately, and without the necessity of any further action by City or Developer or any other party; provided, however, upon request of any party in title to the Property, the City shall execute and deliver to such party an instrument, in recordable form, confirming for the record that this covenant has terminated and is no longer in effect.

Section 5.3. Restaurant Obligation. The Developer agrees that it shall operate and maintain within the Hotel Facility a restaurant as required by Franchisor for a period of not less than ten (10) years from and after the Project Occupancy Date.

Section 5.4. Branding Obligation. The Developer agrees that it shall continuously operate and maintain the Hotel Facility as a Tapestry Collection by Hilton Properties brand for a period of not less than ten (10) years from and after the Project Occupancy Date.

ARTICLE VI
DEFAULTS AND REMEDIES

Section 6.1. Events of Default. The occurrence of any one or more of the events specified in this Section 6.1 shall constitute a **"Default"** under this Agreement.

By the Developer:

(1) The furnishing or making by or on behalf of the Developer of any statement or representation in connection with or under this Agreement that is false or misleading in any material respect;

(2) The failure by the Developer to timely perform any term, obligation, covenant or condition contained in this Agreement and/or the Loan Documents;

By the City:

(1) The failure by the City to pay the Reimbursement Amount when it becomes due and payable in accordance with the provisions of this Agreement; and

(2) The failure by the City to timely perform any other term, obligation, covenant or condition contained in this Agreement.

Section 6.2. Rights to Cure. The party claiming a Default under Section 6.1 of this Agreement (the **"Non-Defaulting Party"**) shall give written notice of the alleged Default to the other party (the **"Defaulting Party"**) describing the nature of the Default complained of and the term or provision of this Agreement which the Non-Defaulting Party believes is in default. Except as required to protect against immediate, irreparable harm, the Non-Defaulting Party may not institute proceedings or otherwise exercise any right or remedy against the Defaulting Party until thirty (30) days after having given such notice, provided that in the event a Default is of such nature that it will take more than thirty (30) days to cure or remedy, such Defaulting Party shall have an additional period of time reasonably necessary to cure or remedy such Default provided that such Defaulting Party promptly commences and diligently pursues such cure or remedy. During any such period following the giving of notice, the Non-Defaulting Party may suspend performance under this Agreement until the Non-Defaulting Party receives written assurances from the Defaulting Party, deemed reasonably adequate by the Non-Defaulting Party, that the Defaulting Party will cure or remedy or has cured or remedied the Default and remain in compliance with its obligations under this Agreement. A Default not cured or remedied or otherwise commenced and diligently pursued within thirty (30) days as provided above shall constitute a **"Breach"** under this Agreement. Except as otherwise expressly provided in this Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any Default or any Breach shall not operate as a waiver of any such Default, Breach or of any other rights or remedies it may have as a result of such Default or Breach.

Section 6.3. Remedies. Upon the occurrence of a Breach under this Agreement by the Developer, the City shall have the right to terminate this Agreement by giving written notice to the Developer of such termination and the date such termination is effective. Except for such right of termination by the City, the only other remedy available to either party upon the occurrence of a Breach under this Agreement by the Defaulting Party shall be to institute such proceedings as may be necessary or desirable in its opinion to cure or remedy such Breach, including but not limited to legal proceedings to compel any action for specific performance, or other appropriate equitable relief. Notwithstanding anything herein to the contrary, the sole remedy of the Developer upon the occurrence of a Breach by the City under any of the terms and provisions of this Agreement shall be to institute legal action against the City for specific performance or other appropriate equitable or legal relief and under no circumstances shall the City be liable to the Developer for any indirect, special, consequential or punitive damages, including without limitation, loss of profits or revenues, loss of business opportunity or production, cost of capital, claims by customers, fines or penalties, whether liability is based upon contract, warranty, negligence, strict liability or otherwise, under any of the provisions, terms and conditions of this Agreement.

Section 6.4. Costs, Expenses and Fees. Upon the occurrence of a Default or Breach which requires either party to undertake any action to enforce any provision of this Agreement, the Defaulting Party shall pay upon demand all of the Non-Defaulting Party's charges, costs and expenses, including the reasonable fees of attorneys, agents and others, as may be paid or incurred by such Non-Defaulting Party in enforcing any of the Defaulting Party's obligations under this Agreement or in any litigation, negotiation or transaction in connection with this Agreement in which the Defaulting Party causes the Non-Defaulting Party, without the Non-Defaulting Party's fault, to become involved or concerned.

ARTICLE VII
RELEASE, DEFENSE AND INDEMNIFICATION OF CITY

Section 7.1. Declaration of Invalidity. Notwithstanding anything herein to the contrary, the City, its Corporate Authorities, elected and appointed officials, agents, employees and independent contractors shall not be liable to the Developer for damages of any kind or nature whatsoever or otherwise in the event that all or any part of the TIF Act, or any of the TIF Ordinances or other ordinances of the City adopted in connection with either the TIF Act, this Agreement or the Redevelopment Plan, shall be 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 is prevented from enjoying the rights and privileges hereof; provided that nothing in this Section 7.1 shall limit otherwise permissible claims by the Developer against the Fund or actions by the Developer seeking specific performance of this Agreement or other relevant contracts, if any, in the event of a Breach of this Agreement by the City.

Section 7.2. Damage, Injury or Death Resulting from Project. The Developer releases from and covenants and agrees that the City and its Corporate Authorities, elected and appointed officials, agents, employees and independent contractors shall not be liable for, and agrees to indemnify, defend, and hold harmless the City, its Corporate Authorities, elected and appointed officials, agents, employees and independent contractors thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from the Project, except as such may be caused by the intentional conduct, gross negligence, negligence or other acts or omissions of the City, its Corporate Authorities, officials, agents, employees or independent contractors that are contrary to the provisions of this Agreement.

Section 7.3. Damage or Injury to Developer and Others. The City and its Corporate Authorities, elected and appointed officials, agents, employees and independent contractors shall not be liable for any damage or injury to the persons or property of the Developer or any of its officers, agents, independent contractors or employees or of any other person who may be about the Property or the Project due to any act of negligence of any person, except as such may be caused by the intentional misconduct or gross negligence of the City, its Corporate Authorities, officials, agents, employees, or independent contractors that are contrary to the provisions of this Agreement.

Section 7.4. No Personal Liability. 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 Corporate Authorities, officials, agents, employees or independent contractors in their individual capacities. No member of the Corporate Authorities, elected or appointed officials, agents, employees or independent contractors of the City shall be personally liable to the Developer **(i)** in the event of a Default or Breach by any party under this Agreement, or **(ii)** for the payment of any Reimbursement Amount which may become due and payable under the terms of this Agreement.

Section 7.5. City Not Liable for Developer Obligations. Notwithstanding anything herein to the contrary, the City shall not be liable to the Developer for damages of any kind or nature whatsoever arising in any way from this Agreement, from any other obligation or agreement made in connection therewith or from any Default or Breach by the Developer under this Agreement; provided that nothing in this Section 7.5 shall limit otherwise permissible claims by the Developer against the Fund or actions by the Developer seeking specific performance of this Agreement or other relevant contracts in the event of a Breach of this Agreement by the City.

Section 7.6. Actions or Obligations of Developer. The Developer agrees to indemnify, defend and hold harmless the City, its Corporate Authorities, elected and appointed officials, agents, employees and independent contractors, from and against any and all suits, claims and cost of attorneys' fees, resulting from, arising out of, or in any way connected with **(i)** any of the Developer's obligations under or in connection with this Agreement, **(ii)** the rehabilitation, reconstruction, repair or remodeling of the Project, **(iii)** the Developer's compliance with the Prevailing Wage Act if, as, and when applicable to the Project and **(iv)** the negligence or willful misconduct of the Developer, its officials, agents, employees or independent contractors in connection with the Project, except as such may be caused by the intentional conduct, gross negligence, negligence or breach of this Agreement by the City, its Corporate Authorities, officials, agents, employees or independent contractors.

Section 7.7. Environmental Covenants. To the extent permitted by law, the Developer agrees to indemnify, defend, and hold harmless the City, its Corporate Authorities, officials, agents, employees and independent contractors, from and against any and all claims, demands, costs, liabilities, damages or expenses, including attorneys' and consultants' fees, investigation and laboratory fees, court costs and litigation expenses, arising from: **(i)** any release or threat of a release, actual or alleged, of any hazardous substances, upon or about the Property or respecting any products or materials previously, now or thereafter located upon, delivered to or in transit to or from the Property regardless of whether such release or threat of release or alleged release or threat of release has occurred prior to the date hereof or hereafter occurs and regardless of whether such release occurs as a result of any act, omission, negligence or misconduct of the City or any third party or otherwise; **(ii)** (A) any violation now existing (actual or alleged) of, or any other liability under or in connection with, any environmental laws relating to or affecting the Property, or (B) any now existing or hereafter arising violation, actual or alleged, or any other liability, under or in connection with, any environmental laws relating to any products or materials previously, now or hereafter located upon, delivered to or in transit to or from the Property, regardless of whether such violation or alleged violation or other liability is asserted or has occurred or arisen prior to the date hereof or hereafter is asserted or occurs or arises and regardless of whether such violation or alleged violation or other liability occurs or arises, as the result of any act, omission, negligence or misconduct of the City or any third party or otherwise; **(iii)** any assertion by any third party of any claims or demands for any loss or injury arising out of, relating to or in connection with any hazardous substances on or about or allegedly on or about the Property; or **(iv)** any breach, falsity or failure of any of the representations, warranties, covenants and agreements of the like. For purposes of this paragraph, "hazardous materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 5101 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other federal, state or local environmental law, ordinance, rule, or regulation.

Section 7.8. Notification of Claims. Not later than thirty (30) days after the Developer becomes aware, by written or other overt communication, of any pending or threatened litigation, claim or assessment, the Developer will, if a claim in respect thereof is to be made against the Developer which affects the Property or any of the Developer's rights or obligations under this Agreement, notify the City of such pending or threatened litigation, claim or assessment, but any omission so to notify the City will not relieve the Developer from any liability which it may have to the City under this Agreement.

ARTICLE VIII
MISCELLANEOUS PROVISIONS

Section 8.1. Entire Agreement and Amendments. This Agreement (together with Exhibits A and B attached hereto) constitutes the entire agreement by and between the City and the Developer relating to the subject matter hereof. This Agreement supersedes all prior and contemporaneous negotiations, understandings and agreements, whether written or oral, and may not be modified or amended except by a written instrument executed by both the City and the Developer.

Section 8.2. Third Parties. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other persons other than the City and the Developer and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation or liability of any third persons to either the City or the Developer, nor shall any provision give any third parties any rights of subrogation or action over or against either the City or the Developer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

Section 8.3. Counterparts. Any number of counterparts of this Agreement may be executed and delivered and each shall be considered an original and together they shall constitute one agreement.

Section 8.4. Special and Limited Obligation. This Agreement shall constitute a special and limited obligation of the City according to the terms hereof. This Agreement shall never constitute a general obligation of the City to which its credit, resources or general taxing power are pledged.

Section 8.5. Time and Force Majeure. Time is of the essence of this Agreement; provided, however, neither the Developer nor the City shall be deemed in Default with respect to any performance obligations under this Agreement on their respective parts to be performed if any such failure to timely perform is due in whole or in part to the following (which also constitute "unavoidable delays"): any strike, lock-out or other labor disturbance (whether legal or illegal, with respect to which the Developer, the City and others shall have no obligations hereunder to settle other than in their sole discretion and business judgment), civil disorder, inability to procure materials, weather conditions, wet soil conditions, failure or interruption of power, restrictive governmental laws and regulations, condemnation, riots, insurrections, acts of terrorism, war, fuel shortages, accidents, casualties, acts of God or third parties, or any other cause beyond the reasonable control of the Developer or the City.

Section 8.6. Waiver. Any party to this Agreement may elect to waive any right or remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless such waiver is in writing and duly executed by the party giving such waiver. No such waiver shall obligate the waiver of any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided pursuant to this Agreement.

Section 8.7. Cooperation and Further Assurances. The City and the Developer covenant and agree that each will do, execute, acknowledge and deliver or cause to be done, executed and delivered, such agreements, instruments and documents supplemental hereto and such further acts, instruments, pledges and transfers as may be reasonably required for the better assuring, mortgaging, conveying, transferring, pledging, assigning and confirming unto the City or the Developer or other appropriate persons all and singular the rights, property and revenues covenanted, agreed, conveyed, assigned, transferred and pledged under or in respect of this Agreement.

Section 8.8. Notices and Communications. All notices under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (a) deposited in the United States mail in a properly addressed envelope and sent by registered or certified mail, postage prepaid, return receipt requested, (b) personally delivered, or (c) sent by a nationally recognized overnight courier, delivery charge prepaid. All requests, claims or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given in the manner specified in clauses (a), (b) or (c) above or when the same are: (d) sent by email transmission confirmed by email reply or other writing as being actually received. In each case, all such notices, requests, claims or other communications shall be sent or delivered to the City and the Developer at their respective addresses (or at such other address as each may designate by notice to the other), as follows:

(i) In the case of the Developer, to:
Marksons Affiliates, LLC
2138 Rose Theatre Circle
Olney, MD 20832
Attn: Samuel M. Spiritos
Tel: (240) 997-6171
Email: sspiritos@srgpe.com

(ii) In the case of the City, to:
City of Urbana, Illinois
400 South Vine Street
Urbana, IL 61801
Attn: Economic Development Manager
Tel: (217) 328-8270
Email: bsboys@urbanaillinois.us

Whenever any party hereto is required to deliver notices, certificates, opinions, statements or other information hereunder, such party shall do so in such number of copies as shall be reasonably specified.

Section 8.9. Assignment. The Developer agrees that it shall not sell, assign or otherwise transfer the Hotel Facility or any of its rights and obligations under this Agreement without the prior express written consent of the City, except that: (i) any assignment of the Reimbursement Amount under this Agreement as collateral for financing the Project, (ii) any related sale, assignment or transfer of this Agreement in whole to a legal entity having common ownership with the Developer; or (iii) any sale, assignment or transfer of the Hotel Facility under circumstances where the Tapestry Collection by Hilton Properties brand will be maintained in accordance with this Agreement, may be made without the prior written consent of the City. Except as authorized in this Section above, any assignment in whole or in part shall be void and shall, at the option of the City, terminate this Agreement. No such sale, assignment or transfer as authorized in this Section, including any with or without the City's prior written consent, shall be effective or binding on the City, however, unless and until the Developer delivers to the City a duly authorized, executed and delivered instrument which contains any such sale, assignment or transfer and the assumption of all the applicable covenants, agreements, terms and provisions of this Agreement by the applicable parties thereto.

Section 8.10. Successors in Interest. Subject to Section 8.9 above, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respectively authorized successors, assigns and legal representatives (including successor Corporate Authorities).

Section 8.11. No Joint Venture, Agency, or Partnership Created. Nothing in this Agreement nor any actions of either of the City or the Developer shall be construed by either of the City, the Developer or any third party to create the relationship of a partnership, agency, or joint venture between or among the City and any party being the Developer.

Section 8.12. Illinois Law; Venue. This Agreement shall be construed and interpreted under the laws of the State of Illinois. If any action or proceeding is commenced by any party to enforce any of the provisions of this Agreement, the venue for any such action or proceeding shall be in Champaign County, Illinois, whether in the United States District Court for the Central District of Illinois or the Circuit Court for the Sixth Judicial Circuit, Champaign County, Illinois.

Section 8.13. Term. Unless earlier terminated pursuant to the terms hereof, this Agreement shall be and remain in full force and effect from and after the Effective Date and shall terminate no later than the earlier of the full repayment of the Bonds or twenty (20) years after the Project Occupancy Date, provided, however, that anything to the contrary notwithstanding, the Developer's obligations under Section 5.2 and Article VII of this Agreement shall be and remain in full force and effect in accordance with the express provisions thereof.

Section 8.14. Construction of Agreement. This Agreement has been jointly negotiated by the parties and shall not be construed against a party because that party may have primarily assumed responsibility for preparation of this Agreement.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed by their duly authorized officers or manager(s) as of the date set forth below.

CITY OF URBANA, CHAMPAIGN COUNTY, ILLINOIS

By:____________________________________
Mayor

ATTEST:

By:________________________________
City Clerk

Date:________________________

MARKSONS AFFILIATES, LLC

By:____________________________________
Samuel M. Spiritos, Manager

Date:________________________

[Exhibits A, B and C follow this page and are an integral part of this Agreement in the context of use.]

EXHIBIT A

Additional Project Elements

The **PROJECT** shall include or 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, as required
d. Commercial activation of at least 120 hotel rooms, a restaurant, bar, ballroom, conference center, and meeting rooms
e. Renovation of common areas, lobby, elevators, and all guest/customer amenity spaces
f. Renovated and redesigned interior with new furniture, fixtures, and equipment
g. Renovated exterior, resurfaced parking lot, and landscaped grounds
h. Oversight of the design, preconstruction, bidding and construction phases of the Project
i. Payment of all costs associated with all site preparation of the Property

EXHIBIT B

Description of Property

Commonly known as 210 S Race Street, Urbana, Illinois.

PINs: 92-21-17-212-003; 92-21-17-212-001; 92-21-17-212-017 and 92-21-17-212-012

EXHIBIT C

Project Budget

DESCRIPTION OF ITEM		**Budget**
Construction		
General Contractor (Total)	$	9,734,587
General Conditions	*$*	*209,050*
Exterior	*$*	*1,685,000*
Public Areas	*$*	*2,651,750*
Corridors	*$*	*234,446*
Guestrooms	*$*	*813,942*
Bathrooms	*$*	*842,427*
Elevators	*$*	*856,500*
Life Saftety	*$*	*600,000*
Mechanical	*$*	*325,000*
Plumbing	*$*	*475,000*
Soft Costs, Freight, Insurance	*$*	*490,458*
Contractor Fee	*$*	*551,014*
Landscaping/Sidewalks/Parking	$	100,000
Low Voltage	$	75,000
Environmental abatement (allowance)	$	200,000
Sub-Total: Construction	**$**	**10,109,587**
Furniture, Fixtures and Equipment (FF&E)		
FFE (with tax and freight)	$	2,560,000
Signage-Exterior	$	75,000
Signage-interior	$	30,000
Operations equipment (PMS/POS etc.)	$	250,000
Kitchen Equipment	$	300,000
OSE	$	384,000
Phone system	$	50,000
Sub-Total: FF&E	**$**	**3,649,000**
Consultants, Permits & Inspection Fees		
Architect /Interior incl MEP	$	365,000
Architect /Interior expenses	$	35,000
Procurement of FF&E	$	145,960
Procurement of FF&E expenses	$	5,000
3rd PPM (H-CPM)	$	343,965
3rd PPM (WL)	$	206,379
3rd PPM expenses	$	35,000
Other Consultant (Due Diligence)	$	183,340
Other Consultant expenses during Construction	$	45,000
Sub-Total: Consultants	**$**	**1,364,643**
Project Sub-Total	**$**	**15,123,230**
Contingency		
Total Contingency, inclusive of up to 4% Developer Fee	$	2,722,181
Sub-Total: Contingency	**$**	**2,722,181**
PROJECT TOTAL	**$**	**17,845,412**

EXHIBIT D

West Green Street Right-of-Way