

Date March 4, 2024

RESOLUTION APPROVING A FIRST AMENDMENT TO THE URBAN RENEWAL DEVELOPMENT AGREEMENT WITH LAWMARK, LP, FOR RENOVATION OF THE FINANCIAL CENTER BUILDING LOCATED AT 606 WALNUT STREET

WHEREAS, on or about June 8, 2020, by Roll Call Number 20-0915, the Des Moines City Council approved an Urban Renewal Development Agreement with Lawmark, LP which included a partial building conversion of the building located at 606 Walnut Street from office to a full-service, upscale hotel on floors one (1) through thirteen (13); and

WHEREAS, as financing and market conditions significantly evolved for the development of hotels during and post pandemic, the project proposal for the partial building conversion has also evolved, and now includes an office-to-housing conversion on floors one (1) through fifteen (15) instead of the prior proposed hotel use; and

WHEREAS, due to the change in scope and financing for the project, Lawmark has requested an amendment to the Development Agreement extending the deadlines in the development agreement and substituting references of hotel use to multi-family housing use; and

WHEREAS, the proposed timeframes for the project have been revised to commence construction on or before September 30, 2024, and complete construction by April 30, 2026; and

WHEREAS, City staff have negotiated an Amendment to the Development Agreement with Lawmark in form attached hereto and on file in the Office of Economic Development.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA that:

1. The First Amendment to the Urban Renewal Development Agreement as attached hereto is approved and the Mayor is authorized and directed to sign the Amendment on behalf of the City and the City Clerk is authorized and directed to attest to the Mayor's signature;
2. The City Manager or his designee are directed to submit a copy of the fully-executed Amendment to the Finance Department for purposes of required Electronic Municipal Market Access disclosure filings; and
3. The Development Services Director or designee(s) are hereby authorized and directed to administer the Development Agreement on behalf of the City, and to monitor compliance by the Developer with the terms and conditions of the Agreement. The Development Services Director is further directed to forward to City Council all

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Date March 4, 2024

matters and documents that require City Council review and approval in accordance with the Agreement as amended.

(Council Communication No. 24-101)

MOVED BY _____ TO ADOPT.

SECOND BY _____

Approved as to form:

/s/ Gary D. Goudelock Jr.
 Gary D. Goudelock Jr.
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
BOESEN				
VOSS				
COLEMAN				
WESTERGAARD				
MANDELBAUM				
GATTO				
TOTAL				
MOTION CARRIED		APPROVED		

CERTIFICATE

I, LAURA BAUMGARTNER, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

 Mayor

 City Clerk

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

Metro Center Urban Renewal Project Between:

CITY OF DES MOINES, IOWA

And

LAWMARK, LP

Approved by Des Moines City Council

Date:

Roll Call No. 24 –

This Amendment is not intended to be recorded. This Agreement and any exhibits hereto are on file and available for public inspection in the office of the City Clerk, at City Hall, City of Des Moines, Iowa.

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This **FIRST AMENDMENT TO DEVELOPMENT AGREEMENT** (this "Amendment"), is made on or as of the _____ day of _____, 2024, by and between the **CITY OF DES MOINES, IOWA**, a municipal corporation, having its offices at City Hall, 400 Robert D. Ray Dr., Des Moines, Iowa (the "City"), and **Lawmark, LP**, a Delaware limited partnership (the "Developer").

WITNESSETH:

WHEREAS, the City and Developer are parties to that Urban Renewal Development Agreement (the "Agreement"), dated June 8, 2020, regarding the redevelopment of the Property identified in Exhibit A to the Agreement and locally known as 606 Walnut St., Des Moines, Iowa (the "Property"); and,

WHEREAS, the Agreement involved the Developer's redevelopment of the Property from office use to a full-service hotel on floors one through thirteen in exchange for the City's provision of certain economic development incentives; and

WHEREAS, Developer has requested the Agreement be amended to extend certain project deadlines and change the scope of the redevelopment from hotel use to multi-family housing use; and

WHEREAS, the requested changes to the Development Agreement are necessary for the Developer to finance and complete construction of the Improvements; and

WHEREAS, the Des Moines City Council has determined that amendment of the Agreement as requested by Developer are in the best interests of the City and its citizens and will better carry out the economic development aims of the Urban Renewal Project.

NOW THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

No. 1. Section 1.1(A)(a) of the Development Agreement is hereby deleted and replaced with the following:

- a. Renovation of the building located at 606 Walnut Street and develop:
 - i. A mixed-use residential building containing no less than 190 housing units that includes approximately 30% studio units, 35% one-bedroom units, and 35% two-bedroom units;
 - ii. A restaurant, café, lobby, mail, and bike storage areas on the ground floor;
 - iii. A business center, skywalk access, fitness center, clubroom, rooftop deck, pool amenities, and dog park on the 2nd, 3rd, and 4th floors; and
 - iv. A minimum of 2 Level-2 electric vehicle charging stations that can service at least 4 vehicles.

No. 2. Section 1.2 is deleted and replaced with the following:

Sec. 1.2. Time for Completion of Improvements. Subject to Section 7.4 of this Agreement, Developer shall cause construction of the Improvements to be commenced by September 30, 2024 and shall cause such construction to be diligently pursued to completion. Subject to Sections 7.2 and 7.4 of this Agreement, the Improvements shall be substantially completed by April 30, 2026, so as to qualify for the issuance of the Certificate of Completion under Section 2.4 of this Agreement.

For purposes of determining commencement of construction under this Agreement, the following definitions apply:

- A. If this Project includes new construction of a building, then commencement of construction means the first placement of permanent construction materials which are to become part of a building on a building site, such as the pouring of slabs or footings, or any work beyond the stage of excavation. Permanent construction does not include land preparation such as clearing, grading and filling; nor does it include the installation of streets, walkways or utility connections; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms.
- B. If the Project includes rehabilitation of or additions to an existing building, then commencement of construction means, with respect to each individual improvement project involving rehabilitation of or additional of or additions to an existing building, (a) the first placement of permanent construction materials which are to become a physical portion of the rehabilitation or addition, or (b) the first alteration of any wall, ceiling, floor or other structural part of the existing building.

No. 3. Footnote 1 in Section 4.2(A) is deleted in its entirety.

No. 4. Section 6.1 is deleted in its entirety.

No. 5. Section 7.1 is deleted and replaced with the following:

Sec. 7.1. In General.

- A. Except as otherwise specifically provided in this Agreement, in the event of a default by either party under this Agreement, the aggrieved party may by written notice of default (a, "Notice of Default") to the party in default, demand that it proceed immediately to cure or remedy such default, and, in any event, complete such cure or remedy within forty-five (45) days or such other time as may be specifically provided herein after receipt of such Notice of Default. Any default on an obligation to pay money shall be cured within five (5) business days after receipt of such notice. Notwithstanding the foregoing, if any non-monetary default reasonably requires more than forty-five (45) days to cure, such default shall not constitute a breach of this Agreement if the defaulting party commences to cure the default promptly upon

receipt of the notice of the default and with due diligence thereafter continuously prosecutes such cure to completion.

- B. In the event that a Notice of Default is given as provided above and action to cure or remedy the default is not promptly taken or not diligently pursued, or the default is not cured or remedied within the time allowed, then the party in default may be declared to be in breach of this Agreement by the aggrieved party. In the event of a breach of this Agreement, in addition to such other rights as the aggrieved party may have hereunder, the aggrieved party may institute proceedings for damages for breach of contract. The parties agree that either party may seek specific performance by the party in default in addition to any other remedies available in law or equity.

No. 6. Section 7.2(A) and (B) are deleted and replaced with the following:

- A. *Minor delay in completing the Improvements.* In the event the Improvements are not substantially completed by April 30, 2026, to qualify for issuance of the Certificate of Completion as required by Section 1.2, but the Improvements are substantially completed by August 1, 2026, to then qualify for issuance of the Certificate of Completion, the delay shall not constitute a default under this Agreement and the only remedy is a delay in the start of the installments on the Development Grant as provided in Section 4.3.
- B. *Major delay in completing the Improvements.* If the Improvements are not substantially completed by December 31, 2026, to qualify for issuance of the Certificate of Completion, it shall constitute a default under this Agreement. If such default is not timely remedied and Developer is declared to be in breach of this Agreement pursuant to Section 7.1, above, then City may elect to terminate this Agreement, whereupon, subject to the foregoing, neither party shall have any further obligation to the other under this Agreement, including, without limitation, with respect to the Urban Renewal Covenants.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed on or as of the day first above written.

SIGNATURE PAGE(S) FOLLOW

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

LAWMARK, LP,

a Delaware Limited Partnership

By: [Signature]

Its: CEO + MANAGING PARTNER

MARK BULEZIUK of LAWMARK LP.)

) ss:

County of Polk)

On this 28th day of February, 2024, before me, the undersigned, a Notary Public in the CEO of Lawmark LP, personally appeared Mark Buleziuk, to me personally known, and who, being by me duly sworn did state that they are the CEO of Lawmark, LP, a Delaware Limited Partnership; that the foregoing instrument was signed on behalf of the partnership and that they, as such officer of the corporation, acknowledged the execution of the instrument to be the voluntary act and deed of said partnership, by them and by the partnership voluntarily executed.

[Signature]

Notary Public in the State of Iowa

My commission expires: 9-21-25



CITY OF DES MOINES, IOWA

ATTEST:

By: _____
Laura Baumgartner, City Clerk

By: Connie Boesen, Mayor

APPROVED AS TO FORM:

Gary D. Goudeock Jr.
Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ___ day of _____, 2024, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared CONNIE BOESEN and LAURA BAUMGARTNER, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 24-_____ of City Council on the ___ day of _____, 2024, and that CONNIE BOESEN and LAURA BAUMGARTNER acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Notary Public in the State of Iowa