

★ **Roll Call Number**  
17-0319

**Agenda Item Number**  
52

**Date** February 20, 2017

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**HOLD HEARING FOR APPROVAL OF THE SECOND AMENDMENT TO LEASE  
AGREEMENT WITH SRE BULLDOG HOTEL OWNER, LLC**

**WHEREAS**, on April 16, 1979, by Roll Call No. 1579, The City Council of the City of Des Moines approved a Lease of Air Rights (hereinafter "Agreement"), with City Center Development, an Iowa limited partnership, for the lease of air rights allowing for encroachment by the Des Moines Marriot Downtown hotel into and above a portion of 7<sup>th</sup> Street, Locust Street and Grand Avenue right-of-way, and over portions of the intervening alley right-of-way; and

**WHEREAS**, On December 1, 1980, by Roll Call No. 5846, the City Council of the City of Des Moines approved an Amendment to the Lease of Air Rights to remove from said Agreement that portion of the leasehold area being converted to a public skywalk corridor, and to reduce the annual rental amount proportionately; and

**WHEREAS**, On December 19, 2016, by Roll Call No. 16-2121, the City Council of the City of Des Moines consented to the assignment of the Lease of Air Rights from City Center Development, L.P. to SRE Bulldog Hotel Owner, LLC, a Delaware limited liability company; and

**WHEREAS**, said Assignment of and Assumption of Air Rights Lease Agreement was recorded in the office of the Polk County Recorder on December 21, 2016, in Book 16317, Page 935; and

**WHEREAS**, the City of Des Moines and SRE Bulldog Hotel Owner, LLC wish to further amend certain terms of the Agreement by amending the legal description of the Leased Premises, re-establishing an annual rental amount and payment due date, clarifying terms for future assignments, transfers or subleases, replacing the address found in Paragraph 21 of the Agreement for Notices for the Lessee, and designating the Real Estate Division Manager of the City of Des Moines to administer the requirements of the Agreement on the City's behalf; and

**WHEREAS**, on February 6, 2017, by Roll Call No. 17-0189, it was duly resolved by the City Council of the City of Des Moines, Iowa, that consideration of the proposed Second Amendment to Lease Agreement with SRE Bulldog Hotel Owner, LLC, be set down for hearing on February 20, 2017, at 5:00 p.m., in the City Council Chambers; and

**WHEREAS**, due notice of said proposal to amend said Lease of Air Rights was given as provided by law, setting forth the time and place for hearing on said proposal; and

**WHEREAS**, in accordance with City Council direction, those interested in the proposed Second Amendment to Lease Agreement, both for and against, have been given an opportunity to be heard with respect thereto and have presented their views to the City Council.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Des Moines, Iowa, as follows:



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1. Upon due consideration of the facts and statements of interested persons, any and all objections to the proposed Second Amendment to Lease Agreement of the vacated portions of 7th Street, Locust Street and Grand Avenue right-of-way, and portions of the intervening alley right-of-way are hereby overruled and the hearing is closed.
2. That the Second Amendment to Lease Agreement between the City of Des Moines and SRE Bulldog Hotel Owner, LLC, on file in the office of the City Clerk, amending the legal description of the Leased Premises, re-establishing an annual rental amount and payment due date, clarifying terms for future assignments, transfers or subleases, replacing the address found in Paragraph 21 of the Agreement for Notices for the Lessee, and designating the Real Estate Division Manager of the City of Des Moines to administer the requirements of the Agreement on the City's behalf, is hereby approved.
3. The Mayor is authorized and directed to sign the Second Amendment to Lease Agreement, and the City Clerk is authorized and directed to attest to the Mayor's signature and to deliver the aforementioned documents to the Real Estate Division Manager for recording and closing purposes, together with a certified copy of this resolution and of the affidavit of publication of the notice of this hearing.
4. The City's Real Estate Division Manager is hereby authorized and directed to administer and monitor the Lease Agreement and all amendments thereto to confirm compliance; to approve and execute documents pertaining to minor or unsubstantial changes to said Lease Agreement, except for renewals or extensions of the Lease Agreement, following approval of the City's Legal Department as to form; and, if needed, to proceed with and execute documents pertaining to the termination of the Lease Agreement if SRE Bulldog Hotel Owner, LLC fails to fulfill the terms required therein or if the Lease Agreement needs to be terminated for any reason, pursuant to the provisions of the Lease Agreement as applicable and following approval of the City's Legal Department as to form.

(Council Communication No. 17- 095 )

Moved by Hensley to adopt.

APPROVED AS TO FORM:

Lisa A. Wieland  
Lisa A. Wieland, Assistant City Attorney

RTW

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN				✓
GATTO	✓			
GRAY	✓			
HENSLEY	✓			
MOORE	✓			
WESTERGAARD	✓			
TOTAL	6			1

MOTION CARRIED APPROVED

T. M. Franklin Mayor

**CERTIFICATE**

I, DIANE RAUH, 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.

Diane Rauh City Clerk