

Date August 17, 2020

**APPROVING FIRST AMENDMENT TO AMENDED AND RESTATED AGREEMENT WITH MACERICH SOUTHRIDGE MALL LLC AND SOUTHRIDGE ADJACENT LLC FOR THE REDEVELOPMENT AND REPURPOSING OF SOUTHRIDGE MALL TO INCLUDE A GENESIS HEALTH CLUB AND MULTI-SPORTS FACILITY**

**WHEREAS**, on August 10, 2015, by Roll Call No. 15-1389, the City Council approved an Amended and Restated Urban Renewal Development Agreement (“Agreement”) with Macerich Southridge Mall LLC and Southridge Adjacent, LLC, a related company (collectively "Macerich"), represented by Scott McMurray, whereby Macerich has undertaken to redevelop and improve the Southridge Mall and the adjoining frontage lots in conformance with an approved Conceptual Development Plan and minimum development standards, in consideration of a separate economic development grant for each phase of the improvements to be paid in installments from the project-generated tax-increment financing (TIF) from that phase; and

**WHEREAS**, in August 2016, the Sears department store at Southridge Mall vacated its big-box retail store space and accompanying auto center, which have remained vacant since; and

**WHEREAS**, Genesis Health Club Sports Complex S.E. LLC (“Genesis”), represented by Rodney Steven II, President, proposes to acquire from Macerich approximately 10 acres of the Southridge Mall property and renovate the 105,000 square-foot former Sears Building for an athletic club and multi-sports facility, with an estimated project cost of \$13,500,000.00 and improvements including approximately 38,000 square feet for gym weights and cardio equipment, approximately 36,000 square feet for basketball courts, and approximately 31,000 square feet of additional space that could be used for soccer, athletic training and/or swimming pool space, with potential partnership opportunities with Iowa Elite for basketball programming at the facility (project collectively “Sears Redevelopment”); and

**WHEREAS**, on June 8, 2020, by Roll Call No. 20-0916, the City Council received a development proposal and preliminary terms of agreement relating to the proposed Sears Redevelopment and directed the City Manager to proceed with negotiation of the necessary agreements and amendments to the existing Agreement consistent with said preliminary terms for consideration of approval by the City Council; and

**WHEREAS**, the City Manager has negotiated a First Amendment to the Agreement (“First Amendment”) with Macerich, whereby Macerich has agreed to construct, operate, and maintain the Sears Redevelopment, subject to purchase agreement and approval of assignment to Genesis and further subject to and in accordance with an amendment to the Conceptual Development Plan to be submitted by Macerich and/or Genesis for City review and approval, which proposed First Amendment is on file and available for inspection in the office of the City Clerk and on the City of Des Moines website in relation to Urban Design Review Board review; and

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**WHEREAS**, the First Amendment provides that in consideration of Macerich's or assignee's (Genesis') commencement and completion, operation, and maintenance of the Sears Redevelopment project, the City will provide economic development assistance including an estimated \$7,400,000.00 tax increment financing assistance to serve as the core mechanism for responding to a financing gap presented by the development team, as follows:

- 38 semi-annual installments of one-hundred percent (100%) of project-generated tax increment financing (TIF) in the amount of approximately \$5,400,000.00 (net present value (NPV) at a 4.5 percent discount rate) to be paid by assignment from the City to Genesis;
- 20 annual payments of non-project generated tax increment financing (TIF) in the amount of \$337,409.00 per year in years 1-20 after project completion, for a total of \$4,200,000.00 (NPV at a 4.5 percent discount rate), to be paid by assignment from the City to Genesis from the Southside Tax Increment Financing District;
- Subsidy requirements for use of the Sears Redevelopment, totaling \$2,950,000.00 (\$1,717,192 NPV total) scheduled over years 2-20 after project completion, to be paid by Genesis as anticipated assignee to subsidize fifty percent (50%) of the cost of sports leagues, clinics, and lessons for basketball, volleyball, swimming, gymnastics, self-defense, and futsal, offered by Genesis pursuant to the Sears Redevelopment, to be provided to any and all children residing in households which earn an annual gross income equal to or lesser than the fifty percent (50%) annual median income threshold for Polk County for a four-person household as determined by the U.S. Department of Housing and Urban Development (HUD); and

**WHEREAS**, the First Amendment further provides that in consideration of Macerich's commencement and completion of the roof replacement or other agreed-upon improvements at 1111 E. Army Post Road ("1111 E. Army Post Road Maintenance"), completed by September 1, 2021, City will provide economic development assistance to Macerich of up to fifty percent of actual cost, not to exceed \$500,000.00, in the form of a grant.

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

1. The City Council hereby makes the following findings regarding the proposed First Amendment to Amended and Restated Urban Renewal Development Agreement:
  - a) The economic development incentives provided by the City to Macerich and/or anticipated assignee Genesis under the First Amendment are provided pursuant to the authority granted by the Urban Renewal Law and Chapter 15A of the Code of Iowa and are intended to assist in the redevelopment of the Project Area for commercial, office, retail, residential, educational and recreational uses by the construction of the Improvements and the redevelopment and use of the Project

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Area in conformance with the Amended Agreement and the Conceptual Development Plan, as amended by the First Amendment.

- b) The amount of the economic development incentives provided by the City to Macerich and/or anticipated assignee Genesis under the First Amendment is based on the public benefit from the construction of the Sears Redevelopment and 1111 E. Army Post Road Maintenance projects, and the redevelopment and use of the Project Area in conformance the Amended Agreement and the Conceptual Development Plan, as amended by the First Amendment.
  - c) The construction of the Sears Redevelopment and 1111 E. Army Post Road Maintenance projects, and the redevelopment and use of the Project Area in conformance with the Amended Agreement and the Conceptual Development Plan as amended by the First Amendment, will generate the following public gains and benefits: (i) it will advance the improvement and redevelopment of the Urban Renewal Area in accordance with the Urban Renewal Plan; (ii) it will encourage further private investment and will attract and retain businesses and residents in the Urban Renewal Area and the surrounding neighborhoods to reverse the pattern of disinvestment and declining commercial occupancy and resident population; and (iii) it will further the City's efforts to create and retain job opportunities within the Urban Renewal Area which might otherwise be lost.
  - d) The Sears Redevelopment and 1111 E. Army Post Road Maintenance projects planned by Macerich and/or its anticipated assignee Genesis pursuant to the Amended Agreement are a speculative venture and will not occur without the economic incentives provided by the Amended Agreement.
  - e) The construction of the Sears Redevelopment and 1111 E. Army Post Road Maintenance projects, the redevelopment and use of the Project Area in conformance the Amended Agreement and the Conceptual Development Plan as amended by the First Amendment, and the fulfillment generally of the Amended Agreement and First Amendment thereto, are in the vital and best interests of City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements under which such project has been undertaken, and warrant the provision of the economic assistance set forth in the First Amendment.
2. The First Amendment to Amended and Restated Urban Renewal Development Agreement between the City and Macerich is hereby approved, subject to execution thereof by Macerich.
  3. Upon execution of the First Amendment by Macerich, following and subject to purchase agreement and approval of assignment to Genesis, the Mayor is authorized and directed to execute said documents on behalf of the City of Des Moines and the City Clerk to attest to his signature.

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4. The City Manager or his designee(s) are authorized and directed to administer the Amended Agreement and First Amendment thereto.
4. Upon requisition by the City Manager or the City Manager's designee, the Finance Department shall advance required installments on the Economic Development Grants for the Sears Redevelopment and 1111 E. Army Post Road Maintenance projects pursuant to Article 5 of the Development Agreement.
5. The Development Services Director or her designee are directed to submit a copy of the fully executed First Amendment to the Finance Department to enable the Finance Director to make any appropriate disclosure filings in accordance with the City's adopted revised Disclosure Policy.

( Council Communication No. 20- **353** )

MOVED by \_\_\_\_\_ to adopt.

FORM APPROVED:

/s/ Glenna K. Frank  
 Glenna K. Frank  
 Assistant City Attorney

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

**CERTIFICATE**

I, P. KAY CMELIK, 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 AMENDED AND RESTATED  
URBAN RENEWAL DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF  
DES MOINES, IOWA, MACERICH SOUTHRIDGE MALL LLC,  
AND SOUTHRIDGE ADJACENT, LLC**

THIS FIRST AMENDMENT to Amended and Restated Urban Renewal Development Agreement (hereinafter “First Amendment”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Des Moines, Iowa (“City”) and Macerich Southridge Mall LLC and Southridge Adjacent, LLC (collectively “Developer”).

It is agreed by and between City and the Developer that:

1. The above-referenced Amended and Restated Urban Renewal Development Agreement (herein referred to as “Agreement”), as authorized by the Des Moines City Council on August 10, 2015, by Roll Call No. 15-1389, is hereby amended in accordance with the terms set forth in this First Amendment.
2. Section 1.1, “Definitions”, is revised by deleting subsections “*Central Property*”, “*Outlots*”, and “*Project Area*” in their entirety and replacing them with the definitions stated below, respectively, and by adding a definition of “*Lot 20*”, a definition of “*Sears Redevelopment*”, a definition of “*Senior Lofts Lot*” a definition of “*subsidy requirements*”, a definition of “*Unity Lot*”, and a definition of “*VA Lot*”, all as follows:

“*Central Property*” means the portion of the Project Area containing the Southridge Mall, more specifically described as follows:

**Lot 11 (except that portion of Lot 11 that is part of Parcel "B" as shown on the Plat of Survey filed April 6, 2016 in Book 15952, Page 621 in the Office of the Polk County Recorder, Polk County, Iowa), Lot 12, Lot 13 (except that part of Lot 13, Southridge Plat 2, an Official Plat, now included and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as Parcel "A" on the Plat of Survey filed November 30, 2012 in Book 14553, Page 49 in the Office of the Polk County Recorder, Polk County, Iowa; and except that part of Lot 13 in SOUTHRIDGE PLAT NO. 2, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as Parcel "2017-116" on the Plat of Survey filed June 22, 2017 in Book 16534, Pages 334-335 in the Office of the Polk County Recorder, Polk County, Iowa), and Lot 15 Southridge Plat No. 2, an Auditors Plat, Des Moines, Polk County, Iowa.**

[The parties hereto acknowledge that the forthcoming Lot 20 will be a portion(s) of the original Lot 15 (among others) and shall be excepted from the definition of ‘Central Property’ prior to the execution of this Amendment.]

.....

“*Lot 20*” means the portion of the Project Area more specifically described as follows:

[The parties hereto acknowledge that the forthcoming Lot 20 will be a portion(s) of the original Lot 15 (among others) and shall be excepted from the definition of ‘Central Property’ prior to the execution of this Amendment.]

.....

“*Outlots*” means the portion of the Project Area lying north and east of the Central Property, more specifically described as follows:

**Lot 3 (except Parcel A described as Beginning at a Point at the northwest corner of said Lot 3, thence East to the northeast corner of said Lot 3, thence South along the East line of said Lot 3 a distance of 250 feet, thence west 285.81 feet to the West line of said Lot 3, thence North 250.02 feet to the Point of Beginning; and except that portion of Lot 3 that is part of Parcel "B" as shown on the Plat of Survey filed April 6, 2016 in Book 15952, Page 621 in the Office of the Polk County Recorder, Polk County, Iowa), and Lots 4 through 7, 8 (except Tract "B" of the Plat of Survey filed in the Office of the Recorder of Polk County, Iowa on March 26, 1992, and recorded in Book 6527 Page 851, being a part of Lot 8 in Southridge Plat No. 2, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa as further defined by Retracement Plat of Survey filed in the Office of the Recorder of Polk County, Iowa on May 18, 2020 in Book 17835 Page 909), 9 and 10, and Lots 16, 17, 18 (except that part of Lot 18, Southridge Plat No. 2, an Auditor' s Plat, Des Moines, Polk County, Iowa, being more particularly described as "Parcel 2017-127" on the Plat of Survey filed August 16, 2017 in Book 16608, Page 580 in the Office of the Polk County Recorder, Polk County, Iowa), and 19, in Southridge Plat No. 2, an Auditor's Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.**

.....

“*Project Area*” is the real estate consisting of the “Central Property”, the “Outlots”, “Lot 14”, the “VA Lot”, the “Senior Lofts Lot”, the “Unity Lot”, and “Lot 20”.

.....

“*Sears Redevelopment*” means construction, operation, and maintenance of Improvements containing the redevelopment of Lot 20, as defined herein, including renovation of the 105,000 square-foot former Sears Building, for an athletic club and

multi-sports facility, with an estimated project cost of \$16,500,000.00 and improvements including but not limited to approximately 38,000 square feet for gym weights and cardio equipment, approximately 31,000 square feet of additional space including a swimming pool and multipurpose rooms, and approximately 36,000 square feet for basketball courts including removal of approximately 37,070 square feet of roof deck and structure and 27 steel columns in order to increase the roof/ceiling heights by a minimum of six feet and allow for a minimum of five basketball courts. Said redevelopment shall be treated as a Phase of Improvements and shall be subject to all terms of this Agreement and Exhibits hereto, including but not limited to the subsidy requirements set forth in Section 4.2(I) below, unless explicitly excluded therefrom.

*“Senior Lofts Lot”* means the portion of the Project Area more specifically described as follows:

**Parcel 'B' as shown on the Plat of Survey recorded in Book 15952, Pages 621-622 of a portion of Lots 3 and 11 of Southridge Plat No. 2, an official plat in the Office of the Polk County Recorder, City of Des Moines, Polk County, Iowa.**

*“Subsidy requirements”* means the terms set forth in Section 4.2(I) of this Agreement.

*“Unity Lot”* means the portion of the Project Area more specifically described as follows:

**That part of Lot 18, Southridge Plat No. 2, an Auditor' s Plat, Des Moines, Polk County, Iowa, being more particularly described as "Parcel 2017-127" on the Plat of Survey filed August 16, 2017 in Book 16608, Page 580 in the Office of the Polk County Recorder, Polk County, Iowa.**

*“VA Lot”* means the portion of the Project Area more specifically described as follows:

**Tract "B" of the Plat of Survey filed in the Office of the Recorder of Polk County, Iowa on March 26, 1992, and recorded in Book 6527 Page 851, being a part of Lot 8 in Southridge Plat No. 2, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa as further defined by Retracement Plat of Survey filed in the Office of the Recorder of Polk County, Iowa on May 18, 2020 in Book 17835 Page 909.**

3. Section 3.1, “Site Plan Review”, is hereby deleted in its entirety and replaced with the following:

Sec. 3.1. Site Plan Review. The parties acknowledge that the Site Plan Review process as required by the Planning and Design Ordinance, Des Moines Municipal Code Chapter 135, is a separate review process from the review of the Conceptual Development Plan

and any amendments thereto as provided for in this Agreement. Approval of a plan or an amendment thereto pursuant to one does not constitute approval for purposes of the other.

4. Section 4.1, “Duration/Scope”, subsection (A), is hereby deleted in its entirety and replaced with the following:

Sec. 4.1. Duration/Scope. A. The restrictive covenants and agreements set forth in this Article (sometimes referred to herein collectively as the “Restrictive Covenants”) shall apply to the entire Project Area excluding Lot 20 from the date of recording of this Agreement until June 30th, 2036, and shall apply to Lot 20 from the date of recording of this Agreement until the date of payment of the final installment of the additional Economic Development Grant to Developer pursuant to Section 5.2(F) of this Agreement, unless terminated earlier as to all or some of the Project Area as provided in Section 7.8 and 2.4.

5. Section 4.2, “Restrictive Covenants”, is hereby amended by adding subsection (I) thereto as follows:

Sec. 4.2. Restrictive Covenants.

.....

I. Subsidy Requirements – Sears Redevelopment. The Phase of Improvements constituting the Sears Redevelopment shall be devoted, maintained, and used in conformity with the following subsidy requirements:

1. Developer shall provide a fifty percent (50%) subsidy of the cost of sports leagues, clinics, and lessons for basketball, volleyball, swimming, gymnastics, self-defense, and futsal, offered by Developer pursuant to the Sears Redevelopment.
2. Said subsidy shall be provided to any and all children residing in households<sup>6a</sup> which earn an annual gross income equal to or lesser than the fifty percent (50%) annual median income threshold for Polk County for a four-person household, as determined by the United States Department of Housing and Urban Development (HUD)<sup>6b</sup>.

[FN] <sup>6a</sup> For purposes of this Section and Covenant, “children” includes minors under the age of 18 maintaining a permanent residence in the home of an adult requesting and receiving the subsidy, whether or not related to said adult. Households may contain any number of members but shall not be subsidized pursuant to this Section if earning above the 50% annual median income threshold for a four-person household.

[FN] <sup>6b</sup> The annual median income calculation to be used for purposes of Section 4.1(I) shall be the multi-family tax income limits used for Low-Income Housing Tax Credit (LIHTC) projects placed in service after December 31, 2008, as determined annually by HUD.



3. Said subsidy shall be provided by Developer in accordance with the following schedule, commencing the first calendar year following the calendar year in which the Developer qualifies for issuance of the Certificate of Partial Completion for the Phase of the Improvements constituting the Sears Redevelopment as provided in Section 3.4:

\$ -	Year 1
\$ 50,000	Year 2
\$ 50,000	Year 3
\$ 75,000	Year 4
\$ 75,000	Year 5
\$ 100,000	Year 6
\$ 100,000	Year 7
\$ 150,000	Year 8
\$ 150,000	Year 9
\$ 200,000	Year 10
\$ 200,000	Year 11
\$ 200,000	Year 12
\$ 200,000	Year 13
\$ 200,000	Year 14
\$ 200,000	Year 15
\$ 200,000	Year 16
\$ 200,000	Year 17
\$ 200,000	Year 18
\$ 200,000	Year 19
\$ 200,000	Year 20
<b>\$ 2,950,000</b>	<b>Cash Total</b>
<b>\$ 1,717,192</b>	<b>NPV Total</b>

4. As determined by the City, the Developer must maintain the subsidy requirements throughout the duration of these Covenants and restore compliance with said requirements as needed.
5. Developer shall work in good faith to increase promotion of the subsidized programs, and/or to adjust pricing structure(s) of the subsidized programs if the subsidized amount set forth above in the Schedule is not being met in any given subsidy year.
6. Developer shall provide a report to the City demonstrating compliance with the subsidy requirements on or before each April 1<sup>st</sup>, or the following business day thereafter, commencing on the April 1<sup>st</sup> in the second calendar year following the calendar year in which the Developer qualifies for issuance of the Certificate of Partial Completion for the Phase of the Improvements constituting the Sears Redevelopment as provided in Section 3.4, and annually thereafter for the duration of the additional Economic Development Grant described in Section 5.2(F) below. Said annual report shall constitute a

condition precedent to payment of each installment of the additional Economic Development Grant pursuant to Section 5.3(A)(c) below. Said annual report shall state, at a minimum, (i) the number of children receiving a subsidy from Developer in accordance with this Section in the prior calendar year; (ii) the total value of subsidies provided by Developer in accordance with this Section in the prior calendar year; (iii) income information used by Developer to determine eligibility for children receiving subsidies in accordance with this Section in the prior calendar year; and (iv) any additional information requested by the City’s Development Services Director. Developer shall provide access to City to review records relating to the subsidy requirement upon City request.

6. Section 5.1, “Basis for Assistance”, subsection (C) (except footnote 4 thereto which remains in form stated in the Agreement), is hereby deleted in its entirety and replaced with the following:

Sec. 5.1. Basis for Assistance.

.....

C. Developer has entered into a purchase and sale agreement with Genesis Health Club Sports Complex S.E. LLC for the sale of Lot 20 as well as an Assignment and Assumption of Amended and Restated Urban Renewal Development Agreement in relation to said property.<sup>4a</sup>

[FN] <sup>4a</sup> It is anticipated that improvements on this parcel will constitute a separate Phase of the Improvements shown by an amendment to the Conceptual Development Plan.

7. Section 5.2, “Economic Development Grants”, is hereby amended to delete subsection (C)(i) in its entirety (except footnote 6 thereto which remains in form stated in the Agreement) and replace it with the following, and to add a subsection (F) and a subsection (G) thereto, as follows:

C. *Amount of Installments.*

.....

i) The “*Annual Available Funds*” for the Phase 1 Grant means an amount equal to the total amount of property tax revenues that would be generated in a fiscal year by imposing the levies subject to division and allocation into the special fund pursuant to Iowa Code Section 403.19(2) on the Incremental Assessed Value of the Phase 1 Parcels. “*Incremental Assessed Value*” of the Phase 1 Parcels means the difference between the assessed value of the Phase 1 Parcels as of each January 1<sup>st</sup> (before application of the rollback) commencing with January 1, 2015 and the base assessed valuation of the Phase 1 Parcels as of January 1, 2013<sup>6</sup> (before application of any rollback), which is \$5,469,220.00 (“*Base Assessed Value*”). Any commercial property tax credit shall be allocated pro-rata between the Incremental Assessed Value and the Base Assessed Value. The area encompassed by the Phase 1 Parcels and the Base Assessed Value of the Phase 1

Parcels are subject to adjustment as provided in Section 5.2(D) below, in the event a future phase of the Improvements overlaps the Phase 1 Parcels.

F. *Sears Redevelopment.* Subject to Sections 5.3, 5.4 and 5.5 of this Agreement, economic development assistance shall be available to Developer in accordance with this subsection for constructing, operating and maintaining the Sears Redevelopment Phase of Improvements, notwithstanding subsections (A), (B), (C), (D), (E), and (G) of this Section 5.2 which are not applicable to the Sears Redevelopment.

i) *Project-Generated Grant.* a. Commencement of Installments. City shall pay to Developer a project-generated Economic Development Grant for the Phase of Improvements constituting the Sears Redevelopment in thirty-eight (38) semi-annual installments payable each December 15<sup>th</sup> and May 15<sup>th</sup> or the first business day(s) thereafter. The first installment on the project-generated Economic Development Grant for the Sears Redevelopment shall be due and payable commencing on December 15<sup>th</sup> in the second calendar year following the calendar year in which the Developer qualifies for issuance of the Certificate of Partial Completion for the Phase of the Improvements constituting the Sears Redevelopment as provided in Section 3.4.

b. Amount of Installments. I. Each of the installments on the project-generated Economic Development Grant for the Phase of the Improvements constituting the Sears Redevelopment due in any fiscal year shall be in an amount equal to one-hundred percent (100%) of the Project TIF, defined below.

II. The "Project TIF" is equal to the amount of taxes to be collected by the Polk County Treasurer in the current fiscal year which are attributable to the property tax levies subject to allocation into the special fund pursuant to Iowa Code §403.19(2) as amended from time to time, on the taxable value of the land and improvements on Lot 20.<sup>6a</sup> *Any commercial property tax credit and tax replacement funds provided by the State of Iowa shall be disregarded in the calculation of Project TIF.*

[FN] <sup>6a</sup> The base taxable valuation of the Lot 20 is \$0.00.

ii) *Additional Grant.* a. Commencement of Installments. In addition to the project-generated Economic Development Grant, City shall pay to Developer an additional Economic Development Grant for compliance with the subsidy requirements related to the Phase of Improvements constituting the Sears Redevelopment in twenty (20) annual installments payable each May 15<sup>th</sup> or the first business day thereafter. The first installment on the additional Economic Development Grant for the Sears Redevelopment shall be due and payable commencing on May 15<sup>th</sup> in the second calendar year following the calendar year in which the Developer qualifies for issuance of the Certificate of Partial Completion for the Phase of the Improvements constituting the Sears Redevelopment as provided in Section 3.4, subject to compliance with the subsidy requirements.

b. Amount of Installments. Each of the installments on the additional Economic Development Grant for the Phase of the Improvements constituting the Sears Redevelopment due in any fiscal year shall be in the amount of \$337,409.00, payable from the special fund financed by the division of revenue pursuant to Iowa Code § 403.19(2) from taxes levied on the Southside Economic Development District Urban Renewal Area.

G. *1111 E. Army Post Road Maintenance.* Subject to Sections 5.3(c), 5.4 and 5.5 of this Agreement, and subject to the requirements as follows, economic development assistance shall be available to Developer in accordance with this subsection for completion of major repairs and maintenance to the western portion, locally known as 1111 East Army Post Road, Des Moines, of the Central Property (herein “1111 E. Army Post Road Maintenance”), notwithstanding subsections (A), (B), (C), (D), (E), and (F) of this Section 5.2 which are not applicable to 1111 E. Army Post Road Maintenance. Any work for which Economic Development Grant assistance is requested by Developer pursuant to this Section 5.2(G) shall:

- i) Be substantially completed by September 1, 2021, as determined by issuance of a Certificate of Occupancy and/or inspection by the City prior to or on said date;
- ii) Be documented by invoices for work, receipts for payment, bank statements, and similar documentation as requested by City. Developer shall provide access to City to review records relating to the Economic Development Grant assistance request(s) upon City request;
- iii) Be specifically approved in advance in writing, as agreed upon by City and Developer and incorporated herein upon execution of said written approval. Developer shall provide City with site plans, engineering or architectural plans, bid documents, and similar documentation as requested by City for review to determine what work may be included as part of the 1111 E. Army Post Road Maintenance; and
- iv) Be used to pay up to fifty percent (50%) of the actual costs incurred by Developer for the agreed-upon 1111 E. Army Post Road Maintenance, in an amount not to exceed \$500,000.00.

8. Section 7.8, “Basis for Assistance”, subsection (A), is hereby deleted in its entirety and replaced with the following:

Sec. 7.8. Duration/Termination Certificate. A. This Agreement, including but not limited to the covenants set forth in Article 4, shall, unless sooner terminated as provided in this Agreement, terminate on June 30, 2036 as to the Project Area excluding Lot 20, and terminate upon payment of the final installment of the additional Economic Development Grant to Developer pursuant to Section 5.2(F) as to Lot 20. Upon the termination of this Agreement as provided herein and request by Developer, City shall issue to Developer a Termination Certificate confirming such termination and certifying that Developer has satisfied all its obligations under this Agreement. Such Termination Certificate shall be in recordable by the City in the records of the Polk County Recorder.

Developer may utilize the Termination Certificate as evidence of its compliance with and satisfaction of all its obligations under this Agreement.

9. Exhibit "1", "Description of the Property Area", is hereby deleted in its entirety and replaced with Exhibit "1" as attached hereto and by this reference made a part of the Agreement.

10. Exhibit "C" to the Agreement is hereby deleted in its entirety and replaced with Exhibit "C" as attached hereto and by this reference made a part of the Agreement.

11. All other terms, provisions, and conditions originally set forth in the Agreement, including all exhibits thereto, remain effective and binding upon City and the Developer.





**CITY OF DES MOINES, IOWA**

ATTEST:

By: \_\_\_\_\_  
P. Kay Cmelik, City Clerk

By: \_\_\_\_\_  
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

/s/ Glenna K. Frank  
Glenna K. Frank  
Assistant City Attorney

STATE OF IOWA    )  
                                  ) ss:  
COUNTY OF POLK )

On this \_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and P. KAY CMELIK, 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. 20-\_\_\_\_\_ of City Council on the \_\_\_ day of \_\_\_\_\_, 2020, and that T.M. FRANKLIN COWNIE and P. KAY CMELIK 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



## **Exhibit "1"**

### **Description of the Project Area**

The Project Area consists of the “Central Property”, the “Outlots”, the “VA Lot”, the “Senior Lofts Lot”, the “Unity Lot”, “Lot 14”, and “Lot 20”, all being more specifically described as follows:

“*Central Property*” means the portion of the Project Area containing the Southridge Mall, more specifically described as follows:

**Lot 11 (except that portion of Lot 11 that is part of Parcel "B" as shown on the Plat of Survey filed April 6, 2016 in Book 15952, Page 621 in the Office of the Polk County Recorder, Polk County, Iowa), Lot 12, Lot 13 (except that part of Lot 13, Southridge Plat 2, an Official Plat, now included and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as Parcel "A" on the Plat of Survey filed November 30, 2012 in Book 14553, Page 49 in the Office of the Polk County Recorder, Polk County, Iowa; and except that part of Lot 13 in SOUTHRIDGE PLAT NO. 2, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa, being more particularly described as Parcel "2017-116" on the Plat of Survey filed June 22, 2017 in Book 16534, Pages 334-335 in the Office of the Polk County Recorder, Polk County, Iowa), and Lot 15 Southridge Plat No. 2, an Auditors Plat, Des Moines, Polk County, Iowa.**

[The parties hereto acknowledge that the forthcoming Lot 20 will be a portion(s) of the original Lot 15 (among others) and shall be excepted from the definition of ‘Central Property’ prior to the execution of this Amendment.]

“*Outlots*” means the portion of the Project Area lying north and east of the Central Property, more specifically described as follows:

**Lot 3 (except Parcel A described as Beginning at a Point at the northwest corner of said Lot 3, thence East to the northeast corner of said Lot 3, thence South along the East line of said Lot 3 a distance of 250 feet, thence west 285.81 feet to the West line of said Lot 3, thence North 250.02 feet to the Point of Beginning; and except that portion of Lot 3 that is part of Parcel "B" as shown on the Plat of Survey filed April 6, 2016 in Book 15952, Page 621 in the Office of the Polk County Recorder, Polk County, Iowa), and Lots 4 through 7, 8 (except Tract "B" of the Plat of Survey filed in the Office of the Recorder of Polk County, Iowa on March 26, 1992, and recorded in Book 6527 Page**

**851, being a part of Lot 8 in Southridge Plat No. 2, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa as further defined by Retracement Plat of Survey filed in the Office of the Recorder of Polk County, Iowa on May 18, 2020 in Book 17835 Page 909), 9 and 10, and Lots 16, 17, 18 (except that part of Lot 18, Southridge Plat No. 2, an Auditor' s Plat, Des Moines, Polk County, Iowa, being more particularly described as "Parcel 2017-127" on the Plat of Survey filed August 16, 2017 in Book 16608, Page 580 in the Office of the Polk County Recorder, Polk County, Iowa), and 19, in Southridge Plat No. 2, an Auditor's Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.**

*“VA Lot”* means the portion of the Project Area more specifically described as follows:

**Tract "B" of the Plat of Survey filed in the Office of the Recorder of Polk County, Iowa on March 26, 1992, and recorded in Book 6527 Page 851, being a part of Lot 8 in Southridge Plat No. 2, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa as further defined by Retracement Plat of Survey filed in the Office of the Recorder of Polk County, Iowa on May 18, 2020 in Book 17835 Page 909.**

*“Senior Lofts Lot”* means the portion of the Project Area more specifically described as follows:

**Parcel 'B' as shown on the Plat of Survey recorded in Book 15952, Pages 621-622 of a portion of Lots 3 and 11 of Southridge Plat No. 2, an official plat in the Office of the Polk County Recorder, City of Des Moines, Polk County, Iowa.**

*“Unity Lot”* means the portion of the Project Area more specifically described as follows:

**That part of Lot 18, Southridge Plat No. 2, an Auditor' s Plat, Des Moines, Polk County, Iowa, being more particularly described as "Parcel 2017-127" on the Plat of Survey filed August 16, 2017 in Book 16608, Page 580 in the Office of the Polk County Recorder, Polk County, Iowa.**

*“Lot 14”* means the portion of the Project Area lying south of the Central Property and more specifically described as follows:

**Lot 14, in Southridge Plat No. 2, an Auditor's Plat, all now included in and forming a part of the City of Des Moines, Polk County, Iowa.**

*“Lot 20”* means the portion of the Project Area more specifically described as follows:

[The parties hereto acknowledge that the forthcoming Lot 20 will be a portion(s) of the original Lot 15 (among others) and shall be excepted from the definition of ‘Central Property’ prior to the execution of this Amendment.]

**Exhibit "C"**  
**Sample Calculations - Updated**

**Calculation of the 1st Installment on the Phase 1 Grant due December 10, 2016**

*Incremental Assessed Values of the Phase 1 Parcels*

District/Parcel No.	Assessed Value 1-1-2015	FY2016/17 Credit
<a href="#">120/04965-211-003</a>	\$7,509,100	\$1,051.56
<a href="#">120/04965-215-002</a>	\$5,660,000	\$792.61
<b>Total Assessed Value</b>	<b>\$13,169,100</b>	
<b>Total Commercial Tax Credit</b>		<b>\$1,844</b>
<b>Total Base Value (from Sheet 2)</b>		<b>\$5,469,220</b>

*Calculation of Annual Available Funds - prior to adjustment for tax credits*

Assessed value on 1-1-2015 (from above)		\$13,169,100	
Base Assessed Value (from above)	-	\$5,469,220	
Incremental Assessed Value		\$7,699,880	
Tax levies subject to allocation to Special Fund (estimated)	x	39.78549	Mills
<b>Annual Available Funds for Phase 1 Grant - prior to adjustment for tax credits</b>		<b>\$306,343</b>	

*Allocation of Tax Credits to Annual Available Funds*

Incremental Assessed Value (from above)		\$7,699,880
Assessed value on 1/1/2015 (from above)	÷	\$13,169,100
Percentage of Credit to be allocated to Annual Available Funds		58.4693%
Tax Credit allowed in FY2016/17 (from above)	x	\$1,844
<b>Tax Credit allocated Annual Available Funds</b>		<b>\$1,078</b>

*Phase 1 Grant installment due December 10, 2016*

Annual Available Funds - prior to adjustment for tax credits		\$306,343
Tax Credit allocated to Annual Available Funds	-	\$1,078
Annual Available Funds in FY2016/17		\$305,265
Percentage of Annual Available Funds from schedule	x	100.00%
Total of installments due in FY2016/17		\$305,265.22
Two semi-annual installments	÷	2
<b>Amount of Phase 1 Grant due on December 10, 2016</b>		<b>\$152,632.61</b>

**Calculation of the 1st Installment on the Phase 2 Grant due December 10, 2018**

The following is a sample calculation of the semi-annual installments due and payable in FY2018/19

on a hypothetical Phase 2 Grant for redevelopment of the south 1/2 of Lot 3 and a portion of Lot 11 that overlaps with the portion of Lot 11 used in the calculation of the Phase 1 Grant.

*Base Taxable Value of the Phase 2 Property*

Size of the overlapping area		11,564	s.f.
<i>Total Land Area in Lot 11</i>	÷	1,559,844	sf
Portion of Lot 11 in the overlapping area		0.7414%	
Assessed value of land in Lot 11 on 1-1-2014	x	\$2,830,000	
Assessed value of the Overlapping Area		\$20,980	
<i>Assessed value of S 1/2 of Lot 3 on 1-1-2014</i>	+	\$191,100	
Assessed value of the Phase 2 Property		\$212,080	
Amount of Rollback (5% of Assessed Value)	-	\$10,604	
<b>Base Taxable Value of the Phase 2 Property</b>		<b>\$201,476</b>	

*Taxable Value of the Phase 2 Property on January 1, 2017*

Assessed Value of Phase 2 Property on 1-1-2017 (assumed)		\$7,222,222	
Amount of Rollback (10% of Assessed Value)	-	\$722,222	
<b>Taxable Value of Phase 2 Property on 1-1-2017 (assumed)</b>		<b>\$6,500,000</b>	

*Incremental Taxable Value of the Phase 2 Property on January 1, 2017*

Taxable Value of Phase 2 Property on 1-1-2017 (assumed)		\$6,500,000	
Base Taxable Value of the Phase 2 Property	-	\$201,476	
<b>Incremental Taxable Value of the Phase 2 Property on 1-1-2017</b>		<b>\$6,298,524</b>	

*Calculation of Annual Available Funds - prior to adjustment for tax credits*

Incremental Taxable Value of the Phase 2 Property on 1-1-2017		\$6,298,524	
Tax levies subject to allocation to Special Fund (estimated)		39.49	mills
<b>Annual Available Funds - prior to adjustment for tax credits</b>		<b>\$248,729</b>	

*Allocation of Tax Credits to Annual Available Funds*

Incremental Taxable Value of Phase 2 Property on 1-1-2017		\$6,298,524	
Taxable Value of Phase 2 Property on 1-1-2017	÷	\$6,500,000	
Percentage of Credit to be allocated to increment		96.9004%	
Tax Credit allowed in FY2018/19 (estimated)	x	\$150	
<b>Tax Credit allocated to Annual Available Funds</b>		<b>\$145</b>	

*Phase 2 Grant installment due December 10, 2018*

Annual Available Funds - prior to adjustment for tax credits		\$248,729	
Tax Credit allocated to Annual Available Funds	-	\$145	
Annual Available Funds in FY2018/19		\$248,583	
Percentage of Annual Available Funds from schedule	x	100%	
Total of installments due in FY2018/19		\$248,583	
Two semi-annual installments	÷	2	
<b>Amount of Phase 2 Grant due on December 10, 2018</b>		<b>\$124,292</b>	

**Amended and Restated Urban Renewal Development Agreement  
Macerich Southridge Mall LLC  
Calculation of Base Values for Phase 1 and Phase 2 Improvements**

Calculation made October 26, 2016

**Phase 1 Improvements - Demo and new exterior frontage**

Base valuation date is January 1, 2013

Original Parcel No.	Area	Land Value	Value psf	New Parcel No.	Area from Original Parcel	Adjusted Base Land Value	Base Bldg Value
<a href="#"><u>120/04965-211-002</u></a>	1,559,884	\$2,830,000	\$1.81	<a href="#"><u>120/04965-211-003</u></a>	1,548,320	\$2,809,020	\$100
<a href="#"><u>120/04965-215-002</u></a>	1,477,729	\$2,660,000	\$1.80	same	1,477,729	\$2,660,000	\$100
Totals New Parcel					3,026,049	\$5,469,020	\$200
<b>Total Base Value Land &amp; Bldg</b>							<b>\$5,469,220</b>

**Phase 2 Improvements - Senior Housing**

Base Value as of January 1, 2014

Original Parcel No.	Area	Land Value	Value psf	New Parcel No.	Area from Original Parcel	Adjusted Base Land Value	Base Bldg Value
<a href="#"><u>120/04965-203-002</u></a>	71,293	\$191,100	\$2.68	<a href="#"><u>120/04965-203-003</u></a>	71,293	\$191,100	\$0
<a href="#"><u>120/04965-211-002</u></a>	1,559,884	\$2,830,000	\$1.81	<a href="#"><u>120/04965-203-003</u></a>	11,564	\$20,980	\$0
Totals new parcel					82,857	\$212,080	\$0
<b>Total Base Value Land &amp; Bldg</b>							<b>\$212,080</b>