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Title of Document: Parcel Development Agreement
Grantor/Grantee: City of Des Moines, Iowa, and Slate at Gray's Landing LLC
Legal Description: See Exhibit "1B" at page 20.

PARCEL DEVELOPMENT AGREEMENT
(for property within the Riverpoint West Redevelopment Area)

By and Between Develop
CITY OF DES MOINES, IOWA,
and
SLATE AT GRAY'S LANDING LLC
and
RIVER POINT WEST LLC

Approved by City Council:
Date: _____, 2021
Roll Call No. 21-_____

RECORDING NOTE: This Agreement and Exhibit 1 shall be recorded in the land records of the Polk County Recorder. This Agreement and all exhibits are on file and available for public inspection in the office of the City Clerk, at City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa 50309.

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This **Parcel Development Agreement**, including Exhibits, each of which is attached hereto and by this reference made a part hereof (hereinafter collectively called this “Agreement”), is made on or as of the ____ day of _____, 2021, by and between the **CITY OF DES MOINES, IOWA**, a municipal corporation (the “City”), acting pursuant to Chapter 403 of the Code of Iowa (the “Urban Renewal Law”), **SLATE AT GRAY'S LANDING LLC**, a Minnesota limited liability company (the “Owner”), and **RIVER POINT WEST LLC**, a Minnesota limited liability company (the "Developer").

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Urban Renewal Law, City has undertaken a program for the clearance and reconstruction or rehabilitation of slum and blighted areas in City, specifically to stimulate economic revitalization of the downtown area; to make use of underutilized areas of the City of Des Moines; to remove conditions which have prevented normal development of the land by private enterprise; and to avoid stagnant and unproductive conditions of land which is potentially useful and viable for contributing to the public health, safety and welfare and, in this regard, is engaged in carrying out an urban renewal project known as the Metro Center Urban Renewal Project (the “Urban Renewal Project”) in the Metro Center Urban Renewal Area (the “Urban Renewal Area”) located in the City of Des Moines; and,

WHEREAS, as of October 8, 2007, the City had prepared and approved a plan for the Urban Renewal Project, consisting of the Urban Renewal Plan and amendments thereto, all of which have been recorded among the land records in the Office of the Recorder for Polk County, Iowa, as indicated in the following table:

<u>Action</u>	<u>Date Adopted</u>	<u>Roll Call</u>	<u>Book-Page</u>
Plan Adopted	03/20/00	00-0788 & 00-0789	8491-645 8491-721
1st Amendment	06/26/00	00-1927	8534-168
2nd Amendment	11/06/00	00-4270	8637-725
3rd Amendment	12/04/00	00-4536	8659-119
4th Amendment	12/20/00	00-4679	8670-933
5th Amendment	10/22/01	01-3224	9055-830
6th Amendment	06/17/02	02-1596	9200-189
7th Amendment & Restatement	07/28/03	03-1800	10072-230
8th Amendment	05/21/07	07-1015	12221-129

(which plan, as so amended, is called the “Urban Renewal Plan”); and,

WHEREAS, that portion of the Urban Renewal Area which is bounded on the north by Martin Luther King Jr. Parkway, on the east by SW 9th Street, and on the south and west by the Raccoon River, is known as the “Riverpoint West Area”; and,

WHEREAS, the Riverpoint West Area is located in a part of the downtown area characterized by underutilized and vacant land, real or perceived environmental concerns, and a pattern of disinvestment and declining population and employment; and,

WHEREAS, the City has entered into a Third Amended and Restated Urban Renewal Development Agreement (as the same may be amended, the “3rd Restated Agreement”) dated September 9, 2019, with River Point West LLC, a Minnesota limited liability company (the “Developer”), whereby the Developer has undertaken to acquire real estate within the Redevelopment Area described in such agreement, clear and prepare such real estate for redevelopment, and sell “pad ready” parcels for redevelopment with commercial buildings and associated improvements; and,

WHEREAS, pursuant to the 3rd Restated Agreement, the Developer has acquired the real estate described in Exhibit “1” (the “Property”) and has imposed upon the Property the Declaration of Covenants identified in Section 2.1 of this Agreement; and,

WHEREAS, Owner has entered into a purchase agreement with River Point West LLC to purchase the Property; and,

WHEREAS, Owner’s obligations under this Agreement to redevelop the Property furthers the objectives of the Urban Renewal Plan to preserve and create an environment which will protect the health, safety and general welfare of City residents and maintain taxable values within the Urban Renewal Project Area, encourage intensive and coordinated commercial and residential mixed-use development, and provide high-quality office options for businesses that desire a downtown location outside the downtown core; and

WHEREAS, Owner’s obligations under this Agreement to redevelop the Property will generate the following public gains and benefits: (i) it will advance the improvement and redevelopment of the Urban Renewal Project Area in accordance with the Urban Renewal Plan; (ii) it will encourage further intensive and coordinated commercial and residential mixed-use development of the Area; (iii) it will encourage further private investment and will attract and retain businesses and residents in the Urban Renewal Project Area to reverse the pattern of disinvestment and declining population; and (iv) it will further City’s efforts to create and retain job opportunities within the Commercial Redevelopment Area and the balance of the Urban Renewal Area which might otherwise be lost.

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.

ARTICLE 1. REDEVELOPMENT PLAN AND SCHEDULE

Sec. 1.1. Improvements. A. Owner hereby agrees to redevelop the Property by constructing or installing thereon the following improvements (collectively the “Improvements”) in substantial conformance with the approved Redevelopment Plan:

- i) A 4-story building at 400 SW 11th Street, Des Moines, IA 50309 (the southwest corner of SW 11th and Tuttle Street. Parcel is identified in the 3rd Restated Agreement as Senior Housing 1 on Parcel F1. It contains 132 dwelling units for senior housing with mix of 1-bedroom, 1-bedroom plus den, and 2-bedroom units, with an attached 1-story clubhouse and one level of underground parking.
- ii) Off-street parking consisting of 127 parking stalls in the underground parking area, and surface parking containing approximately 39 parking stalls, with all necessary

- driveways and drive aisles and maneuvering space as shown by the approved Redevelopment Plan; and,
- iii) Landscaping and streetscape enhancements as shown by the approved Redevelopment Plan.

Sec. 1.2. Time for Completion of Improvements. Owner shall commence construction of the Improvements by December 31, 2021. The Improvements shall be substantially completed by June 1, 2023 (the “Completion Date”).

Sec. 1.3. Progress Reports. From commencement of construction until construction of the Improvements has been substantially completed, Owner shall make reports, in such detail and at such times as may reasonably be requested by City, as to the actual progress of Owner with respect to such construction.

Sec. 1.4. Access to Property. During construction of any of the Improvements Owner shall, upon reasonable notice and at reasonable times, permit City's representatives to have such access to the Improvements as City reasonably deems necessary for the purposes of this Agreement. No compensation shall be payable nor shall any charge be made in any form for the access provided for in this section.

Sec. 1.5. Redevelopment Plan. A. Owner has submitted to City a “Redevelopment Plan” and proposed construction schedule with respect to the Improvements. The proposed Redevelopment Plan, and any proposed amendments to the approved Redevelopment Plan, shall be in sufficient completeness and detail to show that the Improvements will comply with the requirements of this Agreement, with all applicable State and local laws and regulations, and with following additional criteria:

- 1) The Redevelopment Plan for the Improvements shall include a conceptual site plan, schematic signage and lighting plan, detailed building elevation for each building face, floor plans for the first and second stories, typical floor plans for each floor above the second story and a landscaping plan. The Redevelopment Plans shall also identify the floor area to be devoted to commercial retail and restaurant use and for office use.
- 2) The Redevelopment Plan shall comply with the requirements of this Agreement, including but not limited those set forth in Section 1.1, above, and shall satisfy the land use requirements of the Metro Center Urban Renewal Plan.
- 3) The design of the Improvements shall reasonably be anticipated to support the Minimum Assessed Value established in Section 3.1.
- 4) The building shall conform with the following design standards:
 - a) The exterior shall be clad in durable materials such as brick, metal, stone or cement board.
 - b) Exterior insulation systems shall not be used.
 - c) Industrial pre-engineered buildings shall not be used.
 - d) Rooftop mechanical equipment shall be enclosed or otherwise screened from view.

- 5) Parking lots adjacent to public streets shall be screened by walls, fences, berms, landscaping or a combination thereof.
- 6) Landscaping shall be provided in compliance with the applicable landscape and streetscape standards under the Des Moines Municipal Code.
- 7) Sustainable design practices shall be employed whenever practical throughout all aspects of the development.

B. City approval of the Redevelopment Plan shall not be unreasonably withheld or delayed. If City rejects a proposed Redevelopment Plan, in whole or in part, it will set forth in writing the reasons for such rejection. Owner shall, as promptly as possible, submit an amended or corrected Redevelopment Plan and the time for review shall be the same as provided for the original submission. City will make this a priority and shall endeavor to promptly complete its review of the plan.

C. The review required by the Planning and Design Ordinance (Des Moines Municipal Code Chapter 135) is a separate review process from the review of the Redevelopment Plan provided for in this Agreement. Approval of a plan pursuant to one does not constitute approval for purposes of the other.

D. All material changes to the approved Redevelopment Plan are subject to City's approval, which shall not be unreasonably withheld or delayed. If Owner desires to make any material change in an approved Redevelopment Plan, Owner must submit the proposed change to City. City approval of a proposed amendment to a Redevelopment Plan shall not be unreasonably withheld or delayed.

Sec. 1.6. Approval of Construction Plans. The Construction Plans submitted by Owner for the purpose of obtaining permits for the construction and installation of the Improvements must be reasonably consistent with and be a logical development of or reasonably inferable from the approved Redevelopment Plan. City review and approval of the Construction Plans shall not be unreasonably withheld or delayed. City may, but shall have no duty to, withhold any building permit for construction that is not consistent with the Redevelopment Plan.¹

Sec. 1.7. Certificate of Completion. A. Owner shall request a "Certificate of Completion" with respect to the Improvements by notifying City in writing that it has completed the Improvements in substantial conformance with the approved Redevelopment Plan and the approved Construction Plans, and by furnishing City with an architect's certificate or reasonable equivalent to that effect.

B. Promptly upon receipt of Owner's notification and the appropriate certification, City shall make such inspections as it determines appropriate to determine if the Improvements have been completed in substantial conformance with the approved Redevelopment Plan and

¹ The Permit & Development Staff responsible for the administration of building permits are NOT responsible for verifying that an application for a building permit conforms with all the requirements of this Agreement. If there is any doubt concerning whether the construction plans for any portion of the Improvements conforms with the approved Redevelopment Plan, Owner should immediately bring that question to the attention of the City Office of Economic Development.

Construction Plans. If City determines that Owner has completed the Improvements in accordance with the provisions of this Agreement, City shall issue a "Certificate of Completion" which, upon issuance, shall constitute the City's certification of the completion of the Improvements in compliance with all provisions of this Agreement. Issuance of the Certificate of Completion shall not be unreasonably withheld by City. If City determines that Owner has not completed the Improvements in accordance with this Agreement, City shall, within thirty (30) days of receiving Owner's notification of completion, provide Owner with a written statement of the basis for City's determination which specifies the actions to be performed by Owner in order to obtain the certification.

Sec. 1.8. Effect of Issuance. Issuance of the Certificate of Completion demonstrates and memorializes that Owner has completed construction of the Improvements and such Improvements have been determined by the City to be in substantial compliance with the requirements of this Agreement and the approved Redevelopment Plan. However,

- (a) Owner's obligation to make any Payment in Lieu of Taxes pursuant to Section 5.2 of this Agreement for a default in its obligation to complete the Improvements by the Completion Date set forth in Section 1.2;
- (b) All obligations and covenants set forth in the Minimum Assessment Agreement and the Declaration of Covenants; and,
- (e) Owner's obligation to meet or cause to be met the recordkeeping and reporting requirements set forth in Section 1.9.

shall remain in full force and effect notwithstanding the issuance and recording of the Certificate of Completion. The Certification of Completion shall be in recordable form to allow filing among the land records of the Polk County Recorder's Office. Except with respect to any obligations to make Payments in Lieu of Taxes pursuant to Section 5.2, the provisions of this Agreement shall have no further force or effect upon the recording of the Certificate of Completion among the land records of the Polk County Recorder's Office.

Sec. 1.9. Recordkeeping and Reporting. *(Not applicable.)*

ARTICLE 2. COVENANTS AND RESTRICTIONS

Sec. 2.1. Declaration of Covenants. (Not used. See Section 4.1(h).)

Sec. 2.2. Prohibition Against Transfer. A. Prior to issuance of the Certificate of Completion for the Improvements pursuant to Section 1.7, Owner shall not, without the prior written approval of City, make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer of the Property, or any part thereof or any interest therein, or any agreement to do any of the same, except (i) leasing of commercial tenant spaces in the ordinary course of business, (ii) any such transfer to a lender for the purpose of obtaining funds only to the extent necessary for constructing the Improvements, (iii) easements or other encumbrances necessary for the Improvements. The approval by City shall not be unreasonably withheld.

B. City shall be entitled to require as a condition to any such approval that:

- 1) Any proposed transferee shall have the qualifications and financial responsibility, as determined by City, necessary and adequate to fulfill the obligations undertaken in this Agreement by Owner (or, in the event the transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part);
- 2) Any proposed transferee, by an instrument in writing satisfactory to City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of City, expressly assume all of the obligations of Owner under this Agreement and agree to be subject to all the conditions and restrictions to which Owner is subject (or, in the event the transfer is of or relates to part of the Property, such obligations, conditions, and restrictions to the extent that they relate to such part), including the recordkeeping and reporting requirements set forth in Section 1.9; and,
- 3) All instruments and other legal documents involved in effecting transfer be submitted to City for review prior to the transfer;

C. In the absence of specific written agreement by City to the contrary, no such approved transfer by City shall be deemed to relieve Owner, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Improvements, from any of its obligations with respect thereto.

Sec. 2.3. Limitation Upon Encumbrance of Property. A. Prior to issuance of the Certificate of Completion pursuant to Section 1.7, Owner shall not engage in any transaction imposing any encumbrance or lien upon the Property, or any part thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to attach to the Property, except as permitted under paragraph B, below.

B. Liens and encumbrances may be imposed upon the Property, and any part thereof, only: (i) for the purpose of obtaining funds to the extent necessary for constructing the Improvements, (ii) for easements or other encumbrances necessary for the Improvements, and (iii) for the payment of installments of property taxes and special assessments that are due, but not delinquent. Owner shall use its best efforts to cause to be included in any mortgage on the Property a provision requiring that whenever the mortgagee shall deliver any notice or demand to Owner with respect to any breach or default by Owner in its obligations under such mortgage, the mortgagee shall at the same time forward a copy of such notice or demand to City at the address shown in Section 6.6.

C. Owner shall not be required to remove any encumbrance or lien required to be removed under paragraphs A and B, above, so long as Owner shall contest, in good faith and at its own cost and expense, the amount or validity thereof, in an appropriate manner or by appropriate proceedings which shall operate during the pendency thereof to prevent the collection of or other realization upon the encumbrance or lien so contested, and the sale, forfeiture, or loss of the Property or any part thereof to satisfy the same. Each such contest shall be promptly prosecuted to final conclusion (subject to the right of Owner to settle any such contest), and Owner shall, promptly after the final determination of such contest or settlement thereof, pay and discharge the amounts which shall be determined to be payable therein, together with all penalties, interest, costs

and expenses thereon or in connection therewith. Owner shall give City prompt written notice of any such contest and of the final outcome thereof.

Sec. 2.4. Affordable Housing.

- A. The building shall contain 10% of units rented at no more than 80% Area Medium Income (“AMI”) household rent limits as determined by the United States Department of Housing and Urban Development (HUD) for Polk County and restricted to households earning 80% or less of the AMI.
- B. Beginning on October 1, following the issuance of a Certificate of Completion on a building completed under this Parcel Development Agreement that contains residential rental property, and continuing on each October 1st thereafter until all installments under this Parcel Development Agreement are paid, the owner of the Property (the “Owner”), shall cause an Annual Report to be prepared and delivered to the City containing the following:
 - a. *Affordable Housing Requirements.* Written confirmation of compliance with the conditions stated in this section for the preceding 12 calendar months.
 - b. *Records.* Written records indicating (i) the number of person(s) in each household occupying the affordable unit mix; (ii) the annual income of each tenant within the affordable unit mix; (iii) a report detailing rent charged to the affordable unit tenants, which must not exceed the affordability requirements; and (iv) identification of any unit substitution and filling of vacancies to ensure compliance with the required affordable unit mix.
 - c. *Verification.* A statement signed by the President, Chief Executive Officer, Treasurer, Secretary, Managing Member, or Chairman of the Board of Directors of the Owner, verifying that the information contained in the Annual Report is true and accurate to best of knowledge of the person making the statement.

ARTICLE 3. TAXES AND ASSESSMENTS.

Sec. 3.1. Minimum Assessed Value for the Improvements. A. The minimum assessed value of the Property, inclusive of the value of the Improvements and the underlying land, shall upon substantial completion of the Improvements be Twelve Million, Five Hundred Two Thousand, Nine Hundred Eighty and 00/100 Dollars (\$12,502,980) (hereinafter referred to as the “Minimum Assessed Value”).²

Sec. 3.2. Minimum Assessment Agreement. Promptly upon approval of this Agreement by City, Owner shall execute and deliver to City a Minimum Assessment Agreement in the form attached hereto as Exhibit “A”, fixing the Minimum Assessed Value for the Property and the Improvements as established in this Article. Nothing herein shall waive Owner's rights under Iowa

² The minimum taxable value shall be equal to at least 95% of the taxable value projected for the Property in the Conceptual Development Plan and approved pro forma, and with a minimum taxable value of at least \$90.00 per square foot of finished interior space. Sec. 6.02(A)(3) of the Amended and Restated Agreement.

law to contest that portion of any actual value assessment made by an assessor in excess of the Minimum Assessed Value for the Property and Improvements.

Sec. 3.3. Tax Abatement for Improvements. The City hereby represents and warrants that the Property is situated within the Riverpoint Sub-Area of the City-wide Urban Revitalization Area; and, provided the Improvements are completed in compliance with this Agreement within the term of the City-wide Urban Revitalization Plan³, the Owner may seek tax abatement on the value added by the Improvements under the ten-year declining exemption from taxation⁴ under Iowa Code (2019) §404.3(4) and the corresponding schedule under the City-wide Urban Revitalization Plan for the value added by qualifying improvements to residential property (including multi-residential property). If Developer adds a building as Phase II, that building will be eligible for any tax abatement available at the time of application.

ARTICLE 4. CONSENT TO SALE

Sec. 4.1. Conditional Approval of Sale. The City hereby consents to the sale and conveyance of the Property to Owner, subject to Owner having first presented documentation to the City Manager of City demonstrating to the City Manager's reasonable satisfaction that the following conditions have been satisfied:

- (a) The Property is being purchased by Owner at the Property's fair market value for redevelopment in accordance with the approved Conceptual Development Plan.
- (b) Owner has entered into a construction contract with a reputable commercial builder for the construction of the Improvements in conformance with the approved Redevelopment Plan.
- (c) Owner has obtained a commitment for construction financing in an amount, that when added to reserves held by Owner for that purpose, equal or exceed the amount of the construction contract.
- (d) Owner has obtained a footing and foundation permit from City to commence construction of the Improvements in conformance with the Redevelopment Plan.
- (e) Closing on Owner's purchase of the Property will occur contemporaneous with the closing on the construction financing.
- (f) Owner has demonstrated an intent to comply with green building principles such as LEED certified, Energy Star or other conservation design elements to promote environmental sustainability.

³ The City-wide Urban Revitalization Plan currently applies only to the value added by improvements commenced by December 31, 2025, and completed by December 31, 2026. The plan has been repeatedly extended in the past and it is expected, but not guaranteed, that the plan will continue to be extended in the future.

⁴ The 10-year declining exemption from taxation for qualifying improvements to residential property (including multi-residential property) is 100% for years one through eight, 60% in year nine, and 40% in year ten.

- (g) Owner has properly executed the Minimum Assessment Agreement, and proper arrangements have been made to record the Minimum Assessment upon closing on Owner's purchase of the Property in a manner that assures that the Minimum Assessment Agreement shall have priority over all mortgages and liens
- (h) Owner has caused the Developer to properly execute and record a Declaration of Covenants for the Property in the form of Exhibit "D" as required by Section 4.02 of the 3rd Restated Agreement.

Sec. 4.2. Consent to Sale. A. Provided Owner shall have first satisfied the conditions set forth in Section 4.1, the City Manager of City shall execute a Consent to Sale in the form attached hereto as Exhibit "B". The City Manager shall deliver the executed Consent to Sale to the closing agent handling the sale of the Property to Owner, for release to and recording by Owner, upon the combined closing on Owner's purchase of the property and construction financing for the Improvements.

B. Upon conveyance of the Property to Owner and recording of the Consent to Sale, the obligations of Developer with regard to the Property as defined herein, under this Agreement and the 3rd Restated Agreement shall be deemed satisfied in full.

ARTICLE 5. DEFAULT AND REMEDIES.

Sec. 5.1. In General. A. City and Owner shall work together cooperatively using good faith and commercially reasonable efforts to comply with the terms and conditions of this Agreement. 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 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 thirty (30) days (or such other time as may be specifically provided herein) after receipt of such notice. 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 thirty (30) days to cure, such default shall not constitute an event of default 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. If 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 if 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. In any claim, action or civil proceeding wherein damages are sought for breach of this Agreement, City shall have the same rights and liabilities as a private non-governmental party for any breach of this Agreement.

Sec. 5.2. Specific Remedy. A. Owner acknowledges that the City has provided substantial financial assistance under the 3rd Restated Agreement towards the costs of preparing

the Property for redevelopment in anticipation of the increased tax base and employment opportunities to be created by the redevelopment of the Property and the impact such redevelopment will have on the Metro Center Urban Renewal Area. Owner further acknowledges that in the event the Improvements are not substantially completed by the Completion Date set forth in Section 1.2, the City will suffer damages, and the amount of those damages cannot be precisely determined. Therefore, the City and Owner hereby agree that in the event Owner has not substantially completed the Improvements by the Completion Date set forth in Section 1.2, and such default is not remedied by January 1st immediately following such Completion Date, then such defaulting Owner shall as liquidated damages for such default, pay to City an annual Payment in Lieu of Taxes (“PILOT”) in the amount and at the times set forth in this Section.⁵

B. The annual PILOT to be paid by Owner to City as liquidated damages for a delay in completing the Improvements shall be equal to the difference between the total property taxes that would have been paid in each fiscal year if the Improvements had been timely completed and assessed for taxation in accordance with the Minimum Assessment Agreement without benefit of tax abatement, and the property taxes that were actually due and payable in that year. A maximum of five annual PILOT payments shall be payable, commencing on December 1st of the second calendar year following the calendar year of the Completion Date. The annual PILOT shall also cease upon payment of the PILOT due in the calendar year the Improvements are substantially completed. Exhibit “C” contains a sample calculation of the amount of the annual PILOT payments for a delay in completing the Improvements.

Sec. 5.3. No Waiver. City and Owner shall have the right to institute such actions or proceedings as each may deem desirable for effectuating the purposes of this Article; provided, however, that any delay by City or Owner in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or to deprive either City or Owner of or limit such rights in any way; it being the intent of this provision that City and Owner should not be constrained to exercise such remedies at a time when such party may still hope otherwise to resolve the problems created by the default involved so as to avoid the risk of being deprived of or limited in the exercise of such remedies because of concepts of waiver, laches, or otherwise. No waiver in fact made by City or Owner with respect to any specific default by the other party shall be considered or treated as a waiver of the rights of City or Owner with respect to any other defaults by the other party or with respect to the particular default, as the case may be, except to the extent specifically waived in writing by City or Owner.

Sec. 5.4. Enforced Delay in Performance. Except for an obligation to pay money to the other pursuant to this Agreement, neither City nor Owner shall be considered in breach of, or in default of, its obligations with respect to this Agreement, or any portion thereof, including the commencement and completion of construction of the Improvements, in the event of an enforced delay in the performance of such obligations due to unforeseeable causes beyond its control and without its fault or negligence, including, but not limited to, temporary injunctions, acts of God, acts of the public enemy, acts of government (provided that City may not rely upon its own acts as reason for delay), acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes or other labor disruptions, freight embargoes, and unusually severe weather or delays of

⁵ Real property in Iowa is assessed for property tax purposes at its market value as of each January 1st. Property taxes accrue on that assessed value during the following fiscal year (July 1 to June 30), and are payable during the next following fiscal year.

subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of City or of Owner, as the case may be, shall be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this Article shall, within thirty (30) days after the beginning of any such enforced delay, have notified the other party thereof in writing, and of the cause or causes thereof, and setting forth the anticipated extension required as a result of the enforced delay.

Sec. 5.5. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any default or breach by the other party.

ARTICLE 6. MISCELLANEOUS.

Sec. 6.1. Representatives Not Individually Liable. No member, official, or employee of City or Owner shall be personally liable in the event of any default or breach by either party under this Agreement or for any amount which may become due or on any obligations under the terms of this Agreement.

Sec. 6.2. City Not a Guarantor, Surety or Partner. City is not a guarantor or surety for the redevelopment or for any indebtedness incurred by Owner. Nothing in this Agreement, and no action taken by Owner or City pursuant hereto, is intended to be, nor shall be construed to be, in any way creating or establishing a partnership or joint venture between the parties hereto or as constituting either party as a contractor, agent or representative of the other for any purpose or in any manner whatsoever.

Sec. 6.3. Interpretation of Contract. A. *Documents to be Considered Together.* The Redevelopment Plan and any changes or modifications thereto approved by City shall be incorporated into this Agreement. Any interpretation of the provisions of this Agreement shall be made by construing this Agreement and all Exhibits hereto together. Copies of all such documents shall be placed on permanent file in the Office of the City Clerk, City Hall, 400 Robert D. Ray Drive, Des Moines, Iowa.

B. *Choice of Laws.* This Agreement shall be construed in accordance with the laws of the State of Iowa.

C. *Timing.* Time is of the essence in the performance of this Agreement.

D. *Non-working Days.* If the last date for performing any act required by this Agreement falls upon a weekend day or holiday, then the time for performing such act shall be extended to the next following working day.

E. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

Sec. 6.4. Waiver of Jury Trial. City and Owner each hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement or any instrument or document delivered hereunder.

Sec. 6.5. Agreement Binding on Successors in Interest. This Agreement shall inure to the benefit of and shall be binding upon successors and assigns of the parties.

Sec. 6.6. Notices. A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested; delivered personally; or sent by overnight courier service, as follows:

In the case of Owner, addressed to:

Attn: Legal Department
Slate at Gray's Landing LLC
233 Park Avenue South, Suite 201
Minneapolis, Minnesota 55415

In the case of City, addressed to:

Attn: City Manager
City of Des Moines
400 Robert D. Ray Drive
Des Moines, Iowa, 50309,

or to such other address, department, or individual as either may, from time to time, designate in writing and forward to the other as provided in this Article.

ARTICLE 7. ECONOMIC ASSISTANCE.

Sec. 7.1. Statement of Intent. The Purpose of this Article is to comply with the 3rd Restated Agreement following payment of the Section 108 Loan. The parties do not intend to affect any rights or obligations of or take any action that would require HUD approval of a change to the 3rd Restated Agreement.

Sec. 7.2. Parcels. The parties note that as anticipated in section 6.10 of 3rd Restated Agreement, the boundaries of Parcel F have changed due to acquisition of additional property and will be as shown on Exhibit "A1" and legally described in Exhibit "A2". The Polk County Tax Parcel Numbers at the time of execution of this Agreement are shown on Exhibit "A3". Developer may construct an additional building on Parcel F1 as anticipated in the 3rd Restated Agreement subject to design approval by the Urban Design Review Board and may include a reasonable amendment to the Minimum Assessment Agreement, subject to City Manager approval. The City Manager is authorized to approve and execute an increase in the amount of the minimum assessment agreement.

Sec. 7.3. Economic Assistance. In compliance with Table 2 of the Agreement at page 21, each semi-annual installment on the Parcel Grant for the Senior Housing 1 and Senior Housing 2 on Parcels F1 shall be 86% of the available Annual Project TIF, taking into consideration the existing available tax abatement. The actual payments shall be one-half of the following percentages of the Annual Project TIF:

December 1, 2032	34%
June 1, 2033	34%
December 1, 2033	52%
June 1, 2034	52%
December 1, 2034	86%
June 1, 2035	86%
December 1, 2035	86%
June 1, 2036	86%


The maximum amount of the total of all grants subject to the 3rd Restated Agreement is capped at a Net Present Value of Two Million, Eight Hundred Thousand Dollars (\$2,800,000.00) and all grants will terminate on June 30, 2036, regardless of whether the maximum amount of grants have been paid.

Sec. 7.4. Assignment of Parcel Grant. Developer hereby assigns all installments on the Parcel Grant for the Senior Housing 1 to the Owner.

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

"OWNER"


SLATE AT GRAY'S LANDING LLC,
a Minnesota limited liability company

By: 
Christopher L. Sherman, Authorized Signatory

State of Minnesota)
) ss:
County of Hennepin)


This instrument was acknowledged before me on ~~September 10~~, 2021, by Christopher L. Sherman, as Authorized Signatory of **Slate at Gray's Landing LLC**, on behalf of whom the instrument was executed.




Notary Public in the State of Minnesota
My commission expires: JANUARY 31, 2025

"Developer"

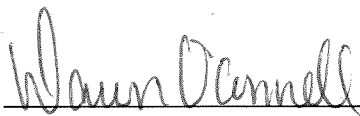
RIVER POINT WEST LLC,
a Minnesota limited liability company

By: 
Christopher L. Sherman, President

STATE OF MINNESOTA)
) ss:
COUNTY OF HENNEPIN)

On this 10th day of September, 2021, before me, a notary public, personally appeared Christopher L. Sherman, to me personally known, who being by me duly sworn did say that he is the President of River Point West LLC, a Minnesota limited liability company, and that the foregoing instrument was signed on behalf of said company by authority of its managers, and he acknowledged the execution of the said instrument to be the voluntary act and deed of said company, by it voluntarily executed.




Notary Public in the State of Minnesota
My commission expires: January 31, 2025

"City"

CITY OF DES MOINES, IOWA

ATTEST:

By: _____
P. Kay Cmelik, City Clerk

By: _____
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

Thomas G. Fisher Jr.
Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ___ day of _____, 2021 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 the City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by the City Council under Roll Call No. 21-_____ of City Council on the ___ day of _____, 2021, 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 "1B"
Legal Description of the Property

PLAT DESCRIPTION

A PART OF LOT 81 AND A PART OF LOT 82 OF FACTORY ADDITION, AN OFFICIAL PLAT AND A PART OF LOTS 6, C, L AND A PART OF LOT 9 OF FACTORY ADDITION PLAT NO. 3, AN OFFICIAL PLAT, ALL NOW INCLUDED IN AND FORMING A PART OF THE CITY OF DES MOINES, POLK COUNTY, IOWA AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEASTERLY CORNER OF STREET LOT "B" OF GRAY'S STATION PLAT 1, AN OFFICIAL PLAT; THENCE SOUTH 39°13'52" WEST ALONG THE SOUTHERLY LINE OF SAID STREET LOT "B", 7.81 FEET TO THE NORTHERLY CORNER OF PARCEL "F" RECORDED IN BOOK 12787, PAGE 858 ALSO BEING THE NORTHERLY CORNER OF ACQUISITION PLAT RECORDED IN BOOK 17164, PAGE 524 - 525 OF THE POLK COUNTY RECORDER'S OFFICE; THENCE SOUTH 07°55'01" EAST ALONG THE EAST LINE OF SAID PARCEL "F" AND ALONG THE EAST LINE OF SAID ACQUISITION PLAT RECORDED IN BOOK 17164, PAGE 524 - 525, A DISTANCE OF 90.58 FEET TO THE SOUTHERLY CORNER OF SAID ACQUISITION PLAT RECORDED IN BOOK 17164, PAGE 524 - 525 AND THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 07°55'01" EAST ALONG SAID EAST LINE OF PARCEL "F", 533.11 FEET TO THE NORTHERLY CORNER OF ACQUISITION PLAT RECORDED IN BOOK 17164, PAGE 526 - 527; THENCE SOUTH 33°17'39" WEST ALONG THE NORTHERLY LINE OF SAID ACQUISITION PLAT RECORDED IN BOOK 17164, PAGE 526 - 527, A DISTANCE OF 22.57 FEET; THENCE SOUTH 74°30'18" WEST CONTINUING ALONG SAID NORTHERLY LINE, 144.52 FEET; THENCE WESTERLY CONTINUING ALONG SAID NORTHERLY LINE AND ALONG THE SOUTH LINE OF PARCEL 2018-29 AS RECORDED IN BOOK 17164, PAGE 488 OF THE POLK COUNTY RECORDER'S OFFICE AND ALONG A CURVE CONCAVE NORTHERLY WHOSE RADIUS IS 724.00 FEET, WHOSE ARC LENGTH IS 190.98 FEET AND WHOSE CHORD BEARS SOUTH 82°03'43" WEST, 190.43 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 2018-29; THENCE NORTH 00°04'17" WEST ALONG THE WEST LINE OF SAID PARCEL 2018-29 AND ALONG THE WEST LINE OF PARCEL 2018-28 AS RECORDED IN SAID BOOK 17164, PAGE 488, A DISTANCE OF 587.54 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 2018-28; THENCE NORTH 81°37'05" EAST ALONG THE NORTH LINE OF SAID PARCEL 2018-28 AND ALONG THE SOUTH LINE OF SAID ACQUISITION PLAT RECORDED IN BOOK 17164, PAGE 524 - 525, A DISTANCE OF 253.36 FEET TO A CORNER ON SAID SOUTH LINE OF SAID ACQUISITION PLAT RECORDED IN BOOK 17164, PAGE 524 - 525; THENCE SOUTH 53°08'58" EAST CONTINUING ALONG SAID SOUTH LINE, 21.13 FEET TO THE POINT OF BEGINNING AND CONTAINING 4.10 ACRES (178,719 S.F.).

to be platted as:

Gray's Landing Plat 1, now in and forming a part of the City of Des Moines, Polk County, Iowa.

EXHIBIT "1C"

Parcel F1 Tax Parcel Numbers

020/01041-004-017

020/01041-004-018

020/01041-004-024

020/01041-004-026

Exhibit "C"
Sample Calculation of PILOT Payment
(Without tax abatement)

Assumptions:

1. Commence construction in Calendar Year ("CY") 21.
2. Required Completion Date in CY22.
3. Substantially completed in CY24. Partially completed in CY22 and 23.
4. Minimum Assessed Value \$1,000,000
5. Actual assessed values as identified below.
6. No tax abatement.
7. Annual property tax levy is 46 mills.
8. Assessed as Commercial Property with 10% rollback
9. All values in thousands of dollars.

Taxes Due in:	FY22/23	FY23/24	FY24/25	FY25/26	FY26/27
Based on Assessed Values as of:	1/1/2021	1/1/2022	1/1/2023	1/1/2024	1/1/2025
Assumed land value	200	200	200	200	200
Expected minimum assessed Improvement value			800	800	800
Expected total minimum assessed value land & Improvements	200	200	1000	1000	1000
Assumed minimum property taxes (without abatement)	\$8.28	\$8.28	\$41.40	\$41.40	\$41.40
Application of PILOT					
Actual assessed Improvement value			100	400	800
Actual total assessed value land & Improvements	200	200	300	600	1000
Estimated property taxes (without abatement)	\$8.28	\$8.28	\$12.42	\$24.84	\$41.40
Annual PILOT payments:			\$28.98	\$16.56	0
Payment Due			12/1/2024	12/1/2025	12/1/2026