

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF DES MOINES
and
SSI PACIFIC PLACE, LLC

THIS DEVELOPMENT AGREEMENT, hereinafter referred to as the "Agreement", is entered into effective on the 30th day of NOV, 2007 by and between the City of Des Moines, a Washington municipal corporation (hereinafter referred to as the "City") and SSI Pacific Place, LLC, a Washington limited liability company (hereinafter referred to as "SSI") in connection with the real property described herein (hereinafter referred to as the "Property"), and development of the Property by SSI, its successors and assigns (hereinafter referred to as the "Project") for the purposes and on the terms and conditions set forth herein.

WHEREAS, the City, a noncharter, code city, organized pursuant to Title 35A RCW of the laws of the State of Washington having authority to enact laws and enter into agreements to promote the health, safety, and welfare of its citizens, and thereby control the use and development of property within its jurisdiction; and

WHEREAS, SSI owns, has a contract to purchase, or holds options to purchase the Property legally described in Exhibit A1, attached hereto and incorporated by reference herein; and

WHEREAS, the Property presently consists of several separate contiguous tax lots and is located within the Pacific Ridge neighborhood (hereinafter "Pacific Ridge") of the City and is bordered on the west by Pacific Highway South, on the east by 29th Ave. South, on the south by South 220th St., and to the north by South 218th St. and the northern boundary of King County Tax Parcel No. 2156400280; and

WHEREAS, that portion of the Property that is bordered on the west by 28th Ave. South, on the east by 29th Ave. South on the south by South 200th St. and on the north by South 218th St., is within the Pacific Ridge Residential Subarea of the Pacific Ridge Zone (hereinafter "PR-R") established by the Des Moines Municipal Code (hereinafter "DMMC") 18.31.010, et. seq.; and

WHEREAS, that portion of the Property that is bordered on the west by Pacific Highway South, on the east by 28th Ave. South, on the south by South 220th St., and on the north the northern boundary of King County Tax Parcel No. 2156400280, is within the Pacific Ridge Commercial One Subarea of the Pacific Ridge Zone (hereinafter PR-C1) established by DMMC 18.31.010, et. seq.; and

WHEREAS, DMMC 18.31.010, et seq. was enacted by the City to implement the Des Moines Comprehensive Plan, Pacific Ridge Neighborhood Improvement Plan, and other adopted policies for the commercial and residential areas of Pacific Ridge, including, inter alia, the transformation of Pacific Ridge into a new urban community that takes advantage of its geographic location, local and regional transportation linkages, stable soils, and view potential; the replacement of lower-scale, existing buildings with new larger scale and higher structures that will dramatically enhance the appearance, character, economics, and safety of the area; and

exhibit superior design features that makes Pacific Ridge inviting to residents and businesses, complements other areas of Des Moines, and fosters community pride; and

WHEREAS, Policy 2-03-05 of the Land Use Element of the Comprehensive Plan states that the City should “promote a land use pattern, scale, and density that supports public transportation services and encourages people to walk and bicycle, as well as provide convenient and safe automobile usage;” and

WHEREAS, Strategy 2-04-08 of the Land Use Element of the Comprehensive Plan states that the City should “encourage improvement of the Pacific Ridge Neighborhood by working with the business community and other representative organizations to achieve the goals of the City of Des Moines Comprehensive Plan;” and

WHEREAS, the intent of the Pacific Ridge Neighborhood as established by Goal 11-01-01 of Pacific Ridge Element, of the Des Moines Comprehensive Plan is “to transform Pacific Ridge into a new urban community that takes advantage of its geographic location, local and regional transportation linkages, stable soils, and view potential. The transformation of Pacific Ridge will include replacement of lower-scale, existing buildings with new structures that will dramatically enhance the appearance, character, economics, and safety of the area. Pacific Ridge will contain buildings and open spaces designed for pedestrians as well as the motorist. Pacific Ridge will be an area of businesses and residences. New buildings may be five to eight stories in height along Pacific Highway emphasizing retail and office uses. Between the development along Pacific Highway and Interstate 5, buildings may be eight (8) or more stories in height emphasizing residential high-rise home ownership with green open spaces and view corridors. This new community will exhibit superior design features that make Pacific Ridge inviting to residents and businesses, complement other areas of Des Moines, and foster community pride;” and

WHEREAS, Policy 11-03-11 of the Pacific Ridge Element of the Des Moines Comprehensive Plan states that the City should “Promote a pedestrian-friendly sidewalk environment throughout Pacific Ridge. The sidewalk environment may include storefronts near the sidewalk, consolidated and/or shared vehicular access, public open space, attractive landscaping, and integrated signs and lighting. Promote safe and direct pedestrian access between Pacific Highway South and nearby properties;” and

WHEREAS, Policy 11-03-06 of the Pacific Ridge Element of the Des Moines Comprehensive Plan states that the City “Utilize innovative land use review techniques/procedures to minimize timeframes and uncertainty during permit review;” and

WHEREAS, Policy 11-03-08 Pacific Ridge Element of the Des Moines Comprehensive Plan states that the City “Ensure that public and private development continues the pedestrian-friendly environment envisioned by the Pacific Highway South Roadway Improvement Project;” and

WHEREAS, Strategy 11-04-02 of the Pacific Ridge Element of the Des Moines Comprehensive Plan states that the City should “Encourage land assemblage (lot consolidation)

so that larger-scale development proposals can be considered, and to minimize instances where 'hold-out' properties do not contribute to the emerging character of the area. When new construction is proposed, encourage or require that internal property lines within building sites be removed. Discourage further division of parcels when such proposals are inconsistent with Pacific Ridge policies and/or regulations;" and

WHEREAS, Strategy 11-04-04 of the Pacific Ridge Element of the Des Moines Comprehensive Plan states that the City should "Encourage or require that new development include mitigation measures relating to displacement of affordable housing. Encourage new residential development to offer owner-occupied dwellings;" and

WHEREAS, Section 1G of the Pacific Ridge Design Guidelines provides in its Intent: To increase site utilization by reducing the amount of land area devoted to automobile parking and as a Guideline states: The amount of space devoted to parking stalls shall be minimized by taking advantage of shared parking and/or methods for reducing parking demand, where possible; and

WHEREAS, Sections 1D, 1E, and 1F of the Pacific Ridge Design Guidelines require the improvement of vehicular circulation within sites and between sites through the use of shared access points to increase utilization of land, promote efficient use of resources, reduce conflicts with parallel access points, reduce pedestrian/vehicular conflicts, and improve traffic flow; and

WHEREAS, the 3rd Edition of the *Parking Generation Manual* prepared by the Institute of Transportation Engineers states that the average peak period demand for parking for Retirement Apartments is 0.5 to 0.33 stalls per unit; and

WHEREAS, the City is authorized, by formal action, to waive or modify the number of spaces required, thereby establishing the amount of required parking for uses for which the number of parking spaces proposed is demonstrated sufficient to fully serve the use, is consistent with the intent of this chapter and when strict application of the code would result in unnecessary hardship pursuant to DMMC 18.44.040; and

WHEREAS, the Regulatory Reform Act codified as RCW 36.70B and adopted by DMMC 18.56 requires that local jurisdiction provide for a consolidated permit review with a single open record hearing; therefore, the public hearing required by DMMC 18.44.040 with the hearing examiner is combined with City Council public hearing required for the development agreement; and

WHEREAS, other objectives and purposes of DMMC 18.31.010, et. seq., are to, *inter alia*, provide development regulations to promote redevelopment of properties within Pacific Ridge to create attractive, safe, and desirable areas to work and reside; to establish higher density development to meet or exceed the City's population and employment growth targets specified by the countywide planning policies for King County; and to reduce the social problems caused by the existing structures and land uses such as high crime rates (especially major felony crimes), declining property values, unsafe and undesirable housing conditions, insufficient building and

property maintenance, absentee property ownership/management, violation of zoning, construction, and health codes, transient residency, and marginal businesses; and

WHEREAS, the phased development of Pacific Ridge pursuant to DMMC 18.31.010, et seq., was designated by the City as a Planned Action pursuant to the State Environment Policy Act (RCW 43.21C.010, et seq., and the Washington Administrative Code (WAC 197-11-164 and 197-11-168, et seq.) to encourage and expedite the responsible redevelopment of Pacific Ridge making any further SEPA review unnecessary for each specified development phase in the Pacific Ridge Zone, including, but not limited to construction related permits, provided each phase is consistent with the development levels established in DMMC 18.31.010, et seq.; and

WHEREAS, the SEPA Planned Action evaluated a build out scenario for Pacific Ridge which assumed the development of 5,541 residential units and 3,125,000 square feet of commercial space and was adopted by City Ordinance No. 1298 as required by WAC 197-11-168; and

WHEREAS, the EIS and Supplemental EIS documentation that served as the basis for the SEPA Planned Action envisioned that all future development within Pacific Ridge would be required to submit supplemental traffic analysis to identify impacts of specific projects and propose appropriate mitigation, if needed; and

WHEREAS, SSI desires to develop a mixed-use project on the Property involving a combination of low-rise commercial and retail, townhouses, high-rise condominiums and hotel structures, a possible low income senior housing facility, and courtyard and open space amenities configured as allowed by the PR-R and PR-C1 sub-areas to enhance views, encourage pedestrian connection and access, and create attractive, safe, and desirable areas to work and reside; and

WHEREAS, the City and SSI anticipate that development of the Property will be phased with development to occur over a period of years; and

WHEREAS, RCW 82.02.060 allows local jurisdictions to exempt impact fees for low-income housing, and other development activities with broad public purposes; and

WHEREAS, new development in the Pacific Ridge are within the Pacific Ridge Transportation Impact Fee Area and the Citywide Transportation Impact Fee Area; and

WHEREAS, the Pacific Ridge Transportation Impact Fee is calculated pursuant to the Addendum to the Environmental Impact Statement for the Pacific Ridge Neighborhood Improvement Plan adopted as Exhibit B of Ordinance No. 1298; and

WHEREAS, DMMC 12.56.030 modifies the Citywide Transportation Impact Fee for those sub-areas of the Pacific Ridge zone to exempt all new residential developments located east of the Pacific Highway South Corridor and authorizes new developments that front along the Pacific Highway South Corridor to receive a credit toward the traffic impact fee equal to the amount of the Pacific Ridge transportation mitigation fee; and

WHEREAS, RCW 36.70B.170. et. seq., authorizes the City to enter into development Agreements with owners, contract purchasers, and option holders of real property, such as SSI, to establish, among other things, the “development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement”; and

WHEREAS, the City and SSI have agreed to enter into this Agreement to establish, among other things, the “development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement”; and

WHEREAS, pursuant to RCW 36.70B.200, a public hearing has been held before the City Council and the City Council has enacted Resolution No. 1058 authorizing the City Manager to enter into this Agreement; and

WHEREAS, SSI may seek, but is not required, to have this Development considered as development within a blighted area or as a low income/affordable housing project subject to consideration with regards to transportation impact and other fees; and property tax exemptions.

NOW, THEREFORE, subject to the terms and conditions hereinafter stated, the City and SSI hereby covenant and agree as follows:

GENERAL PROVISIONS

Section 1. Purpose.

The purpose of this Agreement is to establish the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the Property for the duration specified herein and to create a structure or collaboration that utilizes incentives available to the City to encourage SSI to complete a catalyzing development to encourage transformation of the Pacific Ridge Neighborhood into a new urban community taking advantage of its geographic location, local and regional transportation linkages, and view potential.

Section 2. Acknowledgment.

Voluntary Agreement. SSI and the City acknowledge that they have voluntarily entered into this Agreement and are not doing so under any form of duress.

Section 3. Definitions.

A. “Agreement” means this Development Agreement, governed by provisions of Chapter 36.70B RCW.

B. “SSI” means SSI Pacific Place LLC, and its successors and/or assigns.

- C. "Party" or "parties" means the City and SSI.
- D. "Project" means the phased development of the Property by SSI.
- E. "Property" means the real property legally described in Exhibit A1 and as generally depicted on the map in Exhibit A2, both of which are attached to this Agreement and incorporated by reference herein and such additional real property as defined in Section 20 herein.
- F. "Residential Development" means single family, multi-family, apartment, residential condominium, townhouse, and other related development which is designed for and used to provide a place of abode for human beings, but not including hotels or motel units having no kitchens.
- G. "Commercial Development" means all development except for Residential Development.

Section 4. Findings of Fact.

- A. The area identified as the Pacific Ridge Neighborhood in Chapter 18.31 DMMC meets the standard of a blighted area as defined RCW 35.81.015.
- B. The Project is located within the Pacific Ridge Neighborhood and is considered re-development within a blighted area.
- C. The Project is the first step in the process of transforming the Pacific Ridge Neighborhood into a new urban community taking advantage of its geographic location, local and regional transportation linkages, and view potential.
- D. The Project is proposed to replace lower-scale, existing buildings with new larger scale and higher structures that will dramatically enhance the appearance, character, economics, and safety of the area; and exhibit superior design features making Pacific Ridge inviting to residents and businesses.
- E. The redevelopment of the Property as proposed by SSI will meet the objectives and purposes of DMMC 18.31.010, et. seq., the Des Moines Comprehensive Plan, and the Pacific Ridge Neighborhood Plan, as well as reduce the social problems caused by the existing structure and land uses.
- F. It would be an unfair and unreasonable burden on the Project and SSI as well as an economic impediment to affordable senior housing development to require the Project's affordable senior housing development to set aside or show sufficient area for two parking spaces per unit that are not required to be installed.

- G. The Project is within the framework evaluated as part of the SEPA Planned Action adopted by Ordinance No. 1298.
- H. The Project is consistent with the City's development standards as required by RCW 36.70B.170.
- I. The proposed improvements and use are consistent with the policies of the City's Comprehensive Plan and the Pacific Ridge Neighborhood Improvement Plan.
- J. The proposed improvements, use, and design of the Project will be compatible with other permitted uses within the area as allowed in the Pacific Ridge Zone and the Pacific Ridge Neighborhood Improvement Plan.
- K. The public interest suffers no substantial detrimental effect from the proposed improvements and use.
- L. The proposed project is in the best interest of the public health, safety, morals or welfare of the City's citizens.

Section 5. Exhibits.

A1. Legal Description

A2. Boundary Survey

B. Vicinity Map

C. Exhibit B of Ordinance No. 1298

D. Warranty Deeds or proof of contracts to purchase for all properties described in Exhibit A. For properties under contract to purchase the deeds will be provided once the property transfer is finalized.

Section 6. Development Standards.

A. SEPA Planned Action Reservation.

As part of this Agreement the City will reserve to the Project one (1) million square feet of commercial development (excluding the area necessary for any required parking) and 1,850 residential units evaluated under the City's SEPA Planned Action adopted as part of Ordinance No. 1298, regardless of the timing of applications or approvals of any other non-SSI projects within Pacific Ridge. This reservation precludes the necessity of any further SEPA review for development by SSI of said commercial square footage and residential units within the Pacific Ridge Zone. Provided, that all components of the Project are consistent with the terms of the this Agreement and the SEPA Planned Action as

determined by the City. SSI is required to submit a Traffic Analysis as part of each application submittal as required by the SEPA Planned Action.

B. Traffic Impact Fees.

As authorized by RCW 82.02.060, the City will waive the Citywide Transportation Impact Fee and the Pacific Ridge Transportation Impact Fee for (i) the first one (1) million square feet of commercial development (excluding the area necessary for any required parking) if the individual permit applications contain a minimum square footage of 50,000 square feet of commercial development and (ii) for all residential development within the Project.

C. Building Permit Fees.

As part of this Agreement the City will reserve to the Project one (1) million square feet of commercial development (excluding the area necessary for any required parking) and 1,850 residential units of the total Pacific Ridge Redevelopment Fee Reduction Incentive established by the City of Des Moines regardless of the timing of applications or approvals of any other non-SSI projects within Pacific Ridge. This reduction is expected to be a 20% reduction of all development fees related to permit approval, including, but not limited to any and all fees, costs and expenses for filing, City review, and inspection excluding third-party review, if necessary, provided that the individual permit applications contain a minimum of 50,000 square feet of commercial or residential development or a combination thereof (excluding any area necessary for any required parking).

D. Parking Reduction.

As part of this Agreement the City reduces the number of required parking stalls required by DMMC 18.44.060 for Low Income Retirement Apartments to 0.5 per unit for a maximum of 250 units as long as the units are not larger than 850 square feet. SSI shall not be required to set aside or show, as mandated by DMMC 18.44.060, sufficient area for two parking spaces per unit for development of Low Income Retirement Apartments within the Project. Provided that if the building ceases to be used for Low Income Retirement Apartments the new use will meet the parking requirements in effect at the time the Low Income Retirement Use ceases.

E. Infrastructure Design Standards.

Retaining walls within the Project will meet or exceed the aesthetic design standards of the retaining walls constructed as part of the City of Des Moines Pacific Highway Redevelopment Project. All detention facilities will either be underground vaults or incorporated as a landscaping feature; the use of traditional open detention ponds will be prohibited.

F. Green Building Standards.

The City encourages SSI to incorporate sustainable design and building practices into the design of the Project.

G. Mass Transit Provisions.

SSI, in collaboration with the City, shall negotiate in good faith with Sound Transit for a Link Light Rail stop as part of the proposed development. If SSI is unable to finalize an agreement with Sound Transit for a Link Light Rail stop at the site within two years from City Council's approval of this Agreement, SSI, at its sole discretion, may elect to be released from this requirement.

H. Adult uses.

SSI agrees that Adult Uses as defined by DMMC 18.04.16 – 18.04.17 inclusive will not be included as part of the Project and will record a private covenant forbidding these types of uses within the boundaries of the Project in perpetuity.

I. Expedited Review.

The City shall expedite processing, review, and approval of all short plat, binding site plan, boundary line adjustment, and all other land use, planning, and site reconfiguration applications relative to the Property, which review shall be subject to the development requirements established by this Agreement.

Section 7. Vested Rights of Developer.

During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Property consistent with the Project described herein, SSI is assured, and the City agrees, that all development regulations, including, but not limited to, provisions of the City's Municipal Code, Comprehensive Plan, Pacific Ridge Neighborhood Improvement Plan, storm water management practice regulations, permit requirements, and compliance mandates, that govern development of the Property (collectively referred to as "Development Regulations") in effect as of the day of City Council approval of this Agreement shall apply for the duration of the Agreement, except as modified by this Agreement; furthermore, the Project shall be vested against any change in the Development Regulations, except as modified by this Agreement. Provided, that the International Building Code and other regulatory codes adopted by the State of Washington and King County that preempt the City's authority and the City's Street Standards in effect as of the date that SSI or its successor submits a particular development application to the City for review shall apply to that phase of the Project. Additionally, SSI is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in SSI and may not be changed or modified by the

City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the Exhibits hereto, or as expressly consented thereto by the Developer. Provided, that in the event that any change in the Development Regulations occurs subsequent to City Council approval of this Agreement that SSI shall have the option, in its sole discretion, to have said change applied to development of the Property.

Section 8. Termination.

This Agreement shall remain in effect until the actions required herein are completed, unless otherwise terminated as set forth below.

- A. This Agreement may be terminated by the City if SSI fails to submit to the City within four (4) years of City Council approval of this Agreement "complete" building permit applications as defined by City's Building Code in effect at the time of City Council approval of this Agreement for the first 150,000 square feet of commercial or residential development or a combination thereof (excluding the area necessary for any required parking). Prior to such termination, the City shall first provide SSI with sixty (60) days written notice, which notice shall be withdrawn if SSI submits a "complete" application prior to the expiration of 60 day period or such additional time as agreed to between the parties. Termination of this Agreement shall not result in termination of any other legally binding Agreement or action based upon this Agreement unless such additional termination is required under the terms of such other Agreement or action. Notice of termination shall be given as provided in Section 22 – Notices. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City that the Agreement has been terminated.
- B. This Agreement may be terminated by the City if SSI fails to submit to the City within seven (7) years of City Council approval of this Agreement "complete" building permit applications as defined by City's Building Code in effect at the time of City Council approval of this Agreement for an additional amount of square feet of commercial or residential development or a combination thereof (excluding the area necessary for any required parking) to achieve a cumulative total for the Project of 300,000 square feet of commercial or residential development or a combination thereof (excluding the area necessary for any required parking). Provided the Building Permits Applications required in order to comply with Section 8(A) shall have been issued to SSI or its assign. Prior to such termination, the City shall first provide SSI with sixty (60) days written notice, which notice shall be withdrawn if SSI submits a "complete" application prior to the expiration of 60 day period or such additional time as agreed to between the parties. Termination of this Agreement shall not result in termination of any other legally binding Agreement or action based upon this Agreement unless such additional termination is required under the terms of such other Agreement or action. Notice of termination shall be given as provided in Section 22 – Notices. Upon termination of this Agreement, the City shall record a notice

of such termination in a form satisfactory to the City that the Agreement has been terminated.

- C. This Agreement may be terminated by the City if SSI fails to submit to the City within ten (10) years of City Council approval of this Agreement "complete" building permit applications as defined by City's Building Code in effect at the time of City Council approval of this Agreement for an additional amount of square feet of commercial or residential development or a combination thereof (excluding the area necessary for any required parking) to achieve a cumulative total for the Project of 450,000 square feet of commercial or residential development or a combination thereof (excluding the area necessary for any required parking). Provided the Building Permits Applications required in order to comply with Section 8(A) and Section 8(B) shall have been issued to SSI or its assign. Prior to such termination, the City shall first provide SSI with sixty (60) days written notice, which notice shall be withdrawn if SSI submits a "complete" application prior to the expiration of 60 day period or such additional time as agreed to between the parties. Termination of this Agreement shall not result in termination of any other legally binding Agreement or action based upon this Agreement unless such additional termination is required under the terms of such other Agreement or action. Notice of termination shall be given as provided in Section 22 – Notices. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City that the Agreement has been terminated.
- D. This Agreement may be terminated by the City if SSI fails to submit to the City within thirteen (13) years of City Council approval of this Agreement "complete" building permit applications as defined by City's Building Code in effect at the time of City Council approval of this Agreement for an additional amount of square feet of commercial or residential development or a combination thereof (excluding the area necessary for any required parking) to achieve a cumulative total for the Project of 600,000 square feet of commercial or residential development or a combination thereof (excluding the area necessary for any required parking). Provided the Building Permits Applications required in order to comply with Section 8(A), Section 8(B) and Section 8(C) shall have been issued to SSI or its assign. Prior to such termination, the City shall first provide SSI with sixty (60) days written notice, which notice shall be withdrawn if SSI submits a "complete" application prior to the expiration of 60 day period or such additional time as agreed to between the parties. Termination of this Agreement shall not result in termination of any other legally binding Agreement or action based upon this Agreement unless such additional termination is required under the terms of such other Agreement or action. Notice of termination shall be given as provided in Section 22 – Notices. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City that the Agreement has been terminated.

- E. This Agreement shall terminate upon the expiration of a term of Fifteen (15) years or when the Property has been fully developed, whichever occurs first, and all of the Developer's obligations in connection with the Agreement are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City that the Agreement has been terminated.

Section 9. Ownership and Warranty of Authority.

The Property described in Exhibit A is currently owned by or under the control of SSI. SSI, hereby warrants to the City that it is authorized to commence negotiation of this Development Agreement and to so bind the Property covered herein and all fee owners, subject to their current ownership interest or contingent upon acquisition of the Property by Owner or Developer or their successors or assigns. If any necessary acquisition fails to occur, then this Agreement and all obligations set forth herein shall be deemed null and void with respect to the particular property at issue.

Section 10. Effect of this Agreement.

The provisions of RCW 36.70B.180 concerning the effectiveness of this Agreement govern its terms.

Section 11. Warranty of City's Authority.

The City is delegated authority by RCW 36.70B.170 -36.70B.200 to enter into Development Agreements as a proper exercise of the municipal police power and contract authority. This Agreement is entered into pursuant to the said authority. It is hereby warranted that the undersigned has full authority to so enter into this Agreement.

Section 12. Agreement Modification.

This Agreement shall not be modified or amended except in writing signed by the City and SSI or their respective successors in interest; provided the City expressly reserves authority under RCW 36.70B.170(4) to impose new or different regulations to the limited extent required by a serious threat to public health and safety; provided further that this Development Agreement may be amended or modified only by written Agreement of the parties, as limited by the requirements of RCW 36.70B.180.

Section 13. Public Notice.

The City has provided advance notice of a public hearing on this matter pursuant to RCW 36.70B.200.

Section 14. Development Regulations.

All development regulations and associated charges in existence as of the date a completed application is filed in conformance with this Agreement shall apply to and govern and vest the development of the Property during the term of this Agreement except as modified by specific terms of this Agreement.

Section 15. Further Discretionary Actions.

SSI acknowledges that the existing land use regulations contemplate the exercise of further discretionary powers by the City. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying existing land use regulations.

Section 16. Dispute Resolution.

- A. In event of any dispute as to interpretation or application of the terms or conditions of this Agreement, SSI and the City Manager shall meet within twenty (20) business days after request from either party for the purpose of attempting, in good faith, to resolve the dispute. The meeting may, by mutual agreement, be continued to a date certain in order to include other parties or persons, or to obtain additional information. The meeting shall be a pre-requisite to the filing of a lawsuit by any party regarding any aspect of this Agreement or the Project, except to the extent necessary to meet the requirements of applicable statute of limitations.
- B. In event of any dispute related solely as to the interpretation of the Des Moines Municipal Code and not the interpretation or application of the terms or conditions of this Agreement, SSI will file an appeal to be heard by the Hearing Examiner as provided in the Hearing Examiner Code codified in DMMC 18.94.

Section 17. Applicable Law and Venue.

This Agreement shall be governed by and be construed in accordance with the laws of the State of Washington. Any action with respect to this Agreement shall be brought in King County Superior Court, Kent, Washington.

Section 18. Assignment and Assumption.

SSI shall have the right to assign or transfer all or any portions of the interest, rights and obligations under this Agreement to other parties acquiring an interest or estate in the Property. Consent by the City shall be required for any transfer of rights pursuant to this Agreement. The City's consent will not be unreasonably withheld or delayed.

- A. Disclosure upon Transfer. SSI agrees that in the event of a proposed sale, gift, transfer, segregation, assignment or device of the Property, SSI shall disclose the existence of this Agreement to the interested party.
- B. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each party hereto only for the duration of this Agreement.

Section 19. Addition of Real Property.

SSI may, in its sole discretion by giving written notice to the City as required by Section 22, elect to add contiguous and adjacent real property to the Project, which real property may be separated from the real property described in Exhibit A by a public street or other right-of-way, to the extent that it would be a logical component and integral to the Project as determined by the City, which determination shall not be unreasonably withheld or delayed, and such additional real property shall be subject to and inure to the benefits of this Agreement.

Section 20. Change in Project Name.

SSI shall have the right, in its sole discretion, to change the name of Project or development with the Project.

Section 21. Duty of Good Faith.

Each party hereto shall cooperate with the other in good faith to achieve the objectives of this Agreement. The parties shall not unreasonable withhold requests for information, approvals or consents provided for, or implicit, in this Agreement. The parties agree to take further actions and execute further documents, either jointly or within their respective powers and authority, to implement the intent of this Agreement and any subsequent Development Agreement.

Section 22. Notices.

All communications, notices and demands of any kind which a party under this Agreement is required to or desires to give to any other party shall be in writing and either (1) delivered personally, (2) sent by facsimile transmission with an additional copy mailed first class, or (3) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and address as follows:

CITY:

City of Des Moines
ATTN: City Manager
21630 11th Avenue South
Des Moines, WA 98198
Tel.: 206-870-6550
Fax: 206-870-6540

DEVELOPER

SSI PACIFIC PLACE, LLC
Mathew Chan, Manager
1612 S. Mildred St., Ste B
Tacoma, WA 98465
Tel.: 253 460 6888
Fax: 253 460 6899

Copies to:
Kim Nakamura, Manager
SSI PACIFIC PLACE, LLC
c/o Rushforth Construction
6021 12th Street East, #100
Tacoma, WA 98424
Tel.: 253.922.1884
Fax: 253.922.2089

Darrell S. Mitsunaga
Johns Monroe Mitsunaga PLLC
1601 114th Ave. SE
Suite 110
Bellevue, WA 98004
Tel.: 425 451 2812
Fax: 425 451 2818

Notice by hand delivery or facsimile shall be effective upon receipt. If deposited in the mail, notice shall be deemed received 72 hours after deposit. Any party at any time by notice to the other party may designate a different address or person to which such notice shall be given.

Section 23. Ratification and Confirmation.

Any acts consistent with the authority and prior to the effective date of this Agreement are hereby ratified and confirmed.

Section 24. Entire Understanding.

This Development Agreement and the Exhibits attached to it and incorporated by reference comprise the entire Agreement of the parties and supersede any and all prior written or oral Agreements.

Section 25. No Presumption against Drafter.

This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement.

Section 26. Severability.

If any term, provision, condition or portion of this Agreement shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Agreement which shall continue in full force and effect. The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

Section 27. Recording.

This Agreement shall, when approved by the City Council and executed by the parties hereto, be filed as a matter of public record in the office of the King County Auditor. It is the intent to have this Agreement, so long as it is in force, to be considered, interpreted, and regarded as a covenant running with the land.

Section 28. Amendment to the Development Regulations.

The City shall proceed, if necessary, with the required review, environmental analysis, and public process to initiate and adopt area-wide/non-project specific amendments and any and all other code, rule, policy or regulatory amendments to the Development Regulations as necessary to ensure that the Development Regulations allow for development of the Property in accordance with this Agreement.

CITY OF DES MOINES


By: 

Anthony A. Piasecki

City Manager

By direction of the Des Moines City
Council in Open Public Meeting
on November 15, 2007

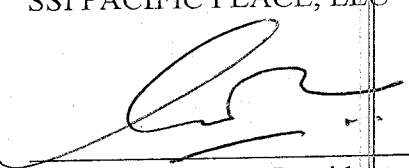
APPROVED BY:



Pat Bosmans, WSBA No. 9148

City Attorney

SSI PACIFIC PLACE, LLC


Matthew N. Chan, President, Sunway
Services, Inc., Managing Member for
Sunway LLC, ^{AND AS} ~~and~~ Manager for SSI
Pacific Place, LLC 