

City of Mason City
City Administrator

Memorandum

To: Mason City Mayor and City Council
From: Aaron Burnett, City Administrator
Date: January 15, 2019
RE: Recommendation to approve a lease agreement for the Multi-Purpose Arena space in Southbridge Mall

Recommendation:

Approve the lease agreement with Southbridge Mall Realty Holding, LLC.

Review:

The River City Renaissance (RCR) project is moving forward with the continuing work on the Hotel and Conference Center component by Gatehouse and the beginning of construction on the Arena. In order to allow construction to commence on the site of the new Multi-Purpose Arena, the city will need to enter into an agreement with the mall owner to lease the space. This lease has been negotiated for some time and has just been waiting for execution when the time was appropriate. Now that the first bid package has been received and is ready for acceptance, the city needs to secure the lease and rights to the space. The lease is for an initial 20 year term and 4 subsequent 5 year terms for a total of 40 years. The cost of the lease starts at \$180,000 each year for the first 5 years and increasing by 10% each subsequent 5 year period. The mall will be required to clean the facility as part of the lease and the city will pay utility costs and insurance on the facility.

Budget Impact:

The project is currently budgeted.

Council Action Requested:

I respectfully request the approval of the agreement with Southbridge Mall Realty Holding, LLC.



Aaron Burnett, City Administrator

LEASE AGREEMENT

This Lease Agreement (the "Agreement") is made and entered into this 10 day of December, 2018, by and between Southbridge Mall Realty Holding, LLC (the "Lessor") and the City of Mason City, Iowa (the "Lessee").

WITNESSETH:

WHEREAS, through redevelopment efforts of the City of Mason City, Iowa and other entities, it is anticipated that a recreational center and multipurpose facility will be constructed as a part of what is now Southbridge Mall in Mason City, including, but not limited to, the portion of Southbridge Mall formerly housing the J.C. Penney store in Mason City, Iowa, (as described with more particularity below) with said recreational and multipurpose facility to be referenced herein as the "Facility"; and,

WHEREAS, Lessee and Lessor presently wish to enter into a lease agreement for the use of the Facility for use as a hockey arena and for other ice skating and recreational and entertainment purposes.

NOW, THEREFORE in consideration of the mutual covenants and agreements herein contained, it is agreed by the Lessor and Lessee as follows:

1. LEASED PREMISES. Lessor leases to Lessee, and Lessee leases from Lessor, subject to the terms, conditions, covenants and provisions of this Agreement, the Facility. The "Leased Premises" shall include the Facility together with reasonable access to and from Southbridge Mall and to public parking adjacent and nearby to the Facility. The Leased Premises shall include the vacated J.C. Penny space in Southbridge Mall (consisting of 50,000 square feet, more or less) and an additional 11,400 square feet of interior shopping center space within Southbridge Mall, for a total of 61,400 square feet, more or less.

2. PERIOD OF OCCUPANCY AND TERM.

- A. Lease Commencement Date. The "Lease Commencement Date" shall be the date of this Agreement. Possession of the Leased Premises shall be delivered to Lessee on the Lease Commencement Date.
- B. Rent Commencement Date. The "Rent Commencement Date" shall be the date Lessee completes construction of the Facility, subject only to punch list items.
- C. Term of Agreement. The initial term of this Agreement shall commence on the Lease Commencement Date and shall expire twenty years following the Rent Commencement Date. The Lessee may elect to renew this Agreement on the same terms and conditions contained herein following the initial term for four additional successive terms of five years

each by providing Lessor with 60 days' written notice prior to the expiration of the applicable term.

3. IMPROVEMENTS BY LESSEE. Beginning on the Lease Commencement Date, Lessee shall undertake all work necessary to design and build the Facility in the Leased Premises. The improvements will include a multi-purpose facility for use as an ice arena or other purposes, seating approximately 2400 for ice events and 3500 for events when ice is out. The Facility will also have the capacity for three temporary basketball courts appropriate for use in tournament events and other sports activities. The Facility will also include locker room facilities appropriate and sufficient for tournament events and for hosting a semi-professional hockey team and visitor facilities. The Facility will also include concession facilities as well as offices sufficient to support the recreation department of the City of Mason City on a year round basis. Additional features and requirements may be designated in the design and specifications developed by Lessee in its sole discretion. If the lowest responsive, responsible bid for construction of the Facility exceeds \$13,000,000, Lessee may immediately terminate this Agreement by providing written notice to Lessor.

4. RENTAL, CLEANING AND UTILITIES. Lessee agrees to pay to Lessor, commencing on the Rent Commencement Date, without prior demand, at Lessor's address set forth herein (or such other place as Lessor may designate to Lessee in writing) the following rental:

- A. Fixed Minimum Rent. Lessee agrees to pay to Lessor annual rent of \$180,000.00 for the first five years rent is due under this Agreement. Rent shall be payable annually on the Rent Commencement Date and on each annual anniversary thereof for the duration of this Agreement and for the duration of any option periods that may become effective under the terms of this Agreement or by separate written agreement of the parties hereto.
- B. Rent Adjustment. For years six through ten (6-10) of this Agreement the annual rent shall be \$198,000.00 otherwise payable under the terms set forth above. The rent payable for years eleven through fifteen (11-15) shall be \$217,800.00 and for years ~~fifteen~~ ^{sixteen} through twenty (15-20) ^{the rent} shall be \$239,000.00 under the terms as otherwise set out above. Rent payable for any option period shall be equal to the previous five-year period plus a ten percent increase.
- C. Additional Rent. In addition to the fixed rental payments referenced above, Lessee shall pay to Lessor Ten percent (10%) of profits collected by Lessee for professional and amateur events, payable on the tenth day of each month following the month during which the event occurred. The amount of the event charge for each event shall be determined by Lessee in its sole discretion.

- D. Utilities. Lessee shall be responsible for all utilities separately metered and billed to Lessee. Lessee shall be responsible for the installation and maintenance of separate meters for the Facility.
- E. Cleaning and Maintenance. Cleaning and maintenance charges are included in the annual fixed lease payments indicated above. The parties agree that the amount of the initial fixed rent allocated to the cleaning and maintenance charge shall be \$30,700.00 as a base amount for the first five years of this Agreement. Lessor shall be responsible for maintenance, operation, repair, reconstruction, and replacement of all structural components of the facility, including all outside walls and roof, electrical, plumbing, and HVAC components, and other items not made the responsibility of the Lessee herein. Lessee shall be responsible for maintenance and repair of all interior components of the Facility, including entry doors and glass storefronts.

5. INSURANCE.

A. Insurance to be Maintained by Lessor:

Lessor agrees to insure the Facility with fire and all risk coverage insurance, subject to standard exclusions, in amounts as agreed to by the parties hereto. Said insurance shall be effective during construction of the Facility and for all effective periods of this Agreement thereafter. Lessor shall provide written proof of said insurance to Lessee at least twenty (20) days prior to commencement of construction on the Facility and on an annual basis thereafter.

B. Insurance to be Maintained by Lessee:

(1) Comprehensive General Liability Insurance on an occurrence, with minimum liability in an amount of two million dollars (\$2,000,000.00).

The Comprehensive General Liability Insurance procured by Lessee under this subparagraph shall be issued in the names of and for the benefit of Lessor and Lessee and, at Lessor's request, Southbridge Mall and its owners, and shall contain an endorsement that Lessor and Southbridge Mall and its owners, although named as insured, nonetheless shall be entitled to recover under said policies for any loss or damage occasioned to them respectively, their servants, agents and employees, by reason of negligence of Lessee. Lessee shall deliver original policy or policies, or duly executed certificates for same, to Lessor not less than twenty (20) days prior to the commencement of this Agreement.

On or before commencement date of this Agreement and upon renewals of such policies, Lessee shall furnish to Lessor reasonably satisfactory

evidence of the renewal of the same not less than twenty (20) days prior to the expiration of the term of any such coverage. In the event Lessor determines it would facilitate coverage for Lessor to acquire the Comprehensive General Liability Insurance required by Lessee herein, Lessor shall procure such policy, include Lessee as an insured, and the cost of said policy shall be proportionately shared by the parties.

(2) Lessee shall bear sole responsibility, cost and expense of obtaining and casualty insurance with extended coverage, and with vandalism and malicious mischief endorsements, in such amount as Lessee deems adequate to cover full replacement value of all personal property, equipment and contents owned or provided by Lessee in the Facility in event of fire or other casualty. In the event Lessee fails to obtain such coverage, Lessee shall assume all risk for any such loss that would otherwise be covered by such insurance.

6. SUBROGATION. All policies insuring against fire and such other casualties and risks as are from time to time included in standard coverage endorsements, including coverage for vandalism and mischief, obtained by Lessor or Lessee shall contain an endorsement containing an express waiver of any right of subrogation by the insurance company against Lessor, Southbridge Mall and its owners, or Lessee and sub lessees, as the case may be.

7. INDEMNIFICATION. Lessee hereby agrees to defend, pay, indemnify and save free and harmless Lessor and Southbridge Mall, and its owners, from and against any and all claims, demands, fines, suits, actions, proceedings, orders, decrees and judgments of any kind or nature by or in favor of anyone whomsoever and from and against any and all costs and expenses, including reasonable attorney fees and litigation expenses, resulting from or arising directly or indirectly out of or from or on account of any occurrence, in part through the use and occupancy of the Facility or any improvements therein or appurtenance thereto or by any act or omission or negligence of Lessee or any sub-lessee or licensee of Lessee or their respective employees, agents or contractors in, upon, at or from the Facility. Lessor and/or Southbridge Mall, and its owners, shall not be responsible or liable for damages at any time to Lessee or those claiming by, through or under Lessee, for any loss of life, bodily or personal injury, or damage to property or business or for business interruption that may be occasioned by or through the acts, omissions or negligence of any other person or any other tenants or occupants of any portion of said Facility. Neither Lessor nor Southbridge Mall, or its owners, shall be responsible or liable for damages at any time for any defect, latent or otherwise, in any of the improvements of the Facility during the period of occupancy, or of any of the equipment, machinery, appliances or apparatus therein.

8. DESTRUCTION OF PREMISES. If the Facility shall be partially or totally damaged by fire or other casualty required to be insured under Lessor's insurance policies then, upon Lessor's receipt of insurance proceeds, Lessor shall (except as otherwise provided herein) promptly repair or restore or rebuild said Facility substantially to the condition thereof immediately prior to such damage or destruction, limited only by proceeds available for such use. Lessor shall repair or rebuild such facilities and reinstall the equipment incident thereto as

promptly as possible unless prevented from so doing by acts of God, the elements, public enemies, strikes, riots, insurrection, government regulations, city ordinances, labor, material or transportation shortages, or other causes beyond Lessor's reasonable control.

9. PARKING LOT. Lessor agrees to maintain, at its sole cost, adequate parking space adjacent or near to Facility for intended use during the period of occupancy by Lessee.

10. OWNERSHIP OF IMPROVEMENTS. Notwithstanding any provision to the contrary, all permanent betterments and improvements in and upon demised premises made by either party (except personal property) shall become property of Southbridge Mall, and its owners, and shall remain upon and be surrendered by Lessee with the Facility as a part thereof at the expiration or sooner termination of the lease term.

11. ASSIGNMENT AND SPECIAL EVENTS. Lessee shall not assign this Agreement, in whole or in part, without the prior express written permission and consent of Lessor which consent shall not be unreasonably withheld, conditioned or delayed. Lessee may freely sublease the Leased Premises or any part thereof.

12. COVENANT AGAINST LIENS. Neither Lessee nor anyone claiming by, through or under Lessee shall have the right to file or place any mechanic's lien or other lien of any kind or character whatsoever upon the Facility or upon any improvement thereon, or upon the leasehold interest of the Lessee therein, and notice is hereby given that no contractor, subcontractor or anyone else who may furnish any materials, services or labor for any improvements, alterations or repairs to the Facility shall at any time become entitled to any lien thereon without the written consent and permission of Lessor and Southbridge Mall, and its owners, and for further security of Lessor. Lessee covenants and agrees to give actual notice thereof, in advance, to any and all contractors and subcontractors who may furnish or agree to furnish any such materials, service or labor at the request of, pursuant to agreement with, or for the benefit of Lessee and/or its assigns.

13. SIGNS. Neither Lessee, nor its assigns, shall place or cause to be placed or maintained on any exterior door, wall or window of the Leased Premises any sign, awning or canopy or advertising matter or other thing of any kind and will not place or maintain any decoration, lettering or advertising matter on the exterior doors, walls or windows without first obtaining the Lessor's written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

14. RIGHT TO ENTER. Lessor, or its authorized agent or attorney, may at any and all reasonable times, enter upon the Leased Premises for the purpose of inspecting or maintaining the same or to make repairs, or to make such improvements to Facility as Lessor may deem proper, and there shall be no abatement of rent nor shall Lessor be liable for any loss of occupation or quiet enjoyment of the leased premises thereby occasioned. Lessor, and its employees and agents and contractors, shall have the right to enter upon the premises for the purpose of selling and maintaining the concessions to which Lessor has rights under the terms of this Agreement.

15. SURRENDER OF PREMISES. Upon expiration, without renewal, of any period of occupancy under the terms of this Agreement, or option period or extension thereof, Lessee agrees to quit and surrender Facility in good condition and repair, reasonable use, wear and tear and natural deterioration excepted. If the Facility be not surrendered as and when aforesaid, and after Lessor shall have given to Lessee a ten (10) day Notice to Quit, Lessee shall indemnify Lessor against all loss or liability resulting from the delay by Lessee in surrendering same, including without limitation any claims made by any succeeding occupant founded on such delay.

16. SHORT FORM LEASE. This Agreement shall not be recorded; however, parties hereto agree that at the request of either of them the parties will execute a Short Form Lease for recording purposes, containing the names of the parties, the description of the Leased Premises and a description of the terms of this Agreement.

17. ARBITRATION. In case any disagreement shall arise between the parties hereto, or any person or entity claiming under them in relation to this Agreement, whether as to the construction or operation thereof or respective rights and liabilities thereunder, such disagreement shall be referred to three (3) arbitrators, one to be appointed by Lessor, one to be appointed by Lessee, and the third to be appointed by the two by the parties appointed; and the decision in writing signed by any two of them shall be final.

18. ENTIRE AGREEMENT. This Agreement, including exhibits and riders, if any attached hereto, sets forth the entire agreement between the parties, and all prior conversations or writings between the parties hereto or their representatives are merged herein and extinguished. This Agreement shall not be modified except by writing signed by both parties hereto.

19. PROVISIONS BINDING. Except as otherwise and expressly provided in this Agreement, all covenants, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of parties hereto and their respective heirs, legal representatives, successors and assigns. Each provision of this Agreement to be performed by Lessee shall be construed to be both a covenant and a condition and if there shall be more than one Lessee, they all shall be bound, jointly and severally, by the provisions of this Agreement.

20. PARTIAL INVALIDITY. If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be held void or invalid, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held void or invalid shall not be affected hereby.

21. NOTICES. Any notice required or permitted under this Agreement shall be deemed to have been delivered when mailed by certified mail at any branch or general Post Office maintained by United States Postal Service, addressed to respective parties at addresses set forth below; provided, however, that notice of change of address shall be effective only upon receipt of written notice thereof.

IF TO LESSOR: Southbridge Mall Realty Holding, LLC
c/o Mike Kohen
1010 Northern Blvd., Suite 212
Great Neck, NY 11021

IF TO LESSEE: City Administrator
City of Mason City
10 - 1st Street N.W.
Mason City, IA 50401

22. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

23. GOVERNING LAW. This Agreement is to be governed by and construed according to the laws of State of Iowa.

24. REQUIRED APPROVAL. The parties hereto recognize that this Agreement is subject to approval by the City Council for the City of Mason City and is not effective prior to such approval and the execution of this Agreement by the designated officials of the Lessee.

25. LEASE AGREEMENT SUBJECT TO FINANCING. This Agreement is further subject to Lessee being approved for and receiving all anticipated financing and credit facilities for the costs of constructing the Facility described above, which will, or will be, contemplated, sought, or expected to be received by Lessee for said purpose, the adequacy, nature and timeliness of said financing, funds and/or credit to be determined solely at the discretion of the Lessee and specifically the City Council of the City of Mason City, Iowa.

26. LAWFUL AUTHORITY. The parties hereto acknowledge and agree that all of the obligations of the Lessee under this Lease shall be subject to, and performed by the Lessee in accordance with all applicable statutory, common law or constitutional provisions and procedures consistent with the Lessee's lawful authority, including but not limited to Iowa Code § 364.4(4) and the publication of notice and holding of a public hearing or election, as required by law, compliance with all laws regarding bidding public improvements, including but not limited to the holding of a public hearing on the Project plans and specifications, urban renewal laws and procedures, including adoption of amendments or plans, as necessary, and all other processes, procedures, hearings, and council approvals required by law and/or as recommended by bond counsel. In the event that future events cause the City Council to abandon or modify the Agreement or its terms as a result of public feedback, changed expectations regarding the Lessee's financial obligations or otherwise in connection with the legal approval of this Agreement, this Agreement may be terminated unilaterally by the Lessee, in which event it shall be null and void as of the date of such termination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, all on the day and year first above written.

[signature pages follow]

SOUTHBRIDGE MALL REALTY HOLDING, LLC

By: [Signature]
Its: Mike V. Kent

STATE OF NEW YORK)
COUNTY OF NASSAU) SS

On this 10th day of Dec, 2018, before me the undersigned, a Notary Public in and for said State, personally appeared Mike V. Kent, to me personally known, who, being by me duly sworn, did say that he/she is the authorized representative of the Southbridge Mall Realty Holding, LLC, and that said instrument was signed on behalf of said limited liability company; and that the said _____, as such authorized representative, acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company, by him/her voluntarily executed.

RAYMOND D. RADOW
Notary Public
State of New York
County of Nassau
No. 02RA501644
Commission Expires
August 16, 2021

[Signature]
Notary Public in and for said State

[Signature page to Lease Agreement – Southbridge Mall Realty Holding, LLC]

(SEAL)

CITY OF MASON CITY, IOWA

By: _____
Bill Schickel, Mayor

ATTEST:

By: _____
Aaron Burnett, City Administrator/City Clerk

STATE OF IOWA)
) ss
COUNTY OF CERRO GORDO)

On this _____ day of _____, 2018, before me a Notary Public in and for said State, personally appeared Bill Schickel and Aaron Burnett, to me personally known, who being duly sworn, did say that they are the Mayor and City Administrator/City Clerk, respectively, of the City of Mason City, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council, and said Mayor and City Administrator/City Clerk acknowledged said instrument to be the free act and deed of said Municipality by it voluntarily executed.

Notary Public in and for the State of Iowa

[Signature page to Lease Agreement – City of Mason City]

01507451-1\10866-192

DELIVERY CERTIFICATE

We the undersigned, City Officials, do hereby certify that we are the officers, respectively above indicated, of a political subdivision in the State of Iowa, known as the City of Mason City; that in pursuance of the provisions of Chapter 403 and Sections 364.4(4) and 384.25 of the Code of Iowa, there has been heretofore lawfully authorized and this day by us lawfully executed, issued and caused to be registered, authenticated and delivered a fully registered Lease Agreement (the "Lease") dated _____, 2019 between the City of Mason City and Southbridge Mall Realty Holding, LLC, requiring payments as set forth in said Lease.

The Lease has been delivered to:

Southbridge Mall Realty Holding, LLC

We further certify that no controversy or litigation is pending, prayed or threatened involving the incorporation, organization, existence or boundaries of the City, or the titles of the undersigned officers to their respective positions, or the validity of the Lease, and that none of the proceedings or authority of the Lease has been repealed, revoked, rescinded, or modified in any manner.

We further certify that each of the officers whose signatures appear on the Lease were in occupancy and possession of their respective offices at the time the Lease was executed and do hereby adopt and affirm their signatures appearing in the Lease.

We further certify that the present financial condition of the City is as follows:

Assessed and taxable value of all taxable property within the City, except moneys and credits and tax free lands (Year 2016), according to the last completed State and County tax lists (100% - Before Rollback)

\$1,832,927,527

Total general obligation bonded indebtedness of the City

\$ 24,965,000

All other general obligation indebtedness, INCLUDING THIS LEASE (and including warrants, judgments, contracts of purchase or lease/purchase, self-insurance or local government risk pool obligations, loan agreements, and revenue bonds issued under Code Section 403.9), of the City of any kind

\$ 694,361.00

IN WITNESS WHEREOF, we have hereunto affixed our hands at Mason City, Iowa, this
_____ day of _____, 2019.

Mayor

City Administrator/Clerk

Deputy City Clerk

(SEAL)

01552768-1\10866-198

RESOLUTION NO. 18 -

RESOLUTION AUTHORIZING ACTION TO ENTER INTO A
(TAXABLE) LEASE AGREEMENT AND LEVYING A TAX
TO PAY SAID LEASE AGREEMENT

WHEREAS, by Resolution No. 15-238, adopted October 20, 2015, this Council found and determined that certain areas located within the City are eligible and should be designated as an urban renewal area under Iowa law, and approved and adopted the Mason City Downtown Reinvestment Urban Renewal Plan (the "Plan") for the Mason City Downtown Reinvestment Urban Renewal Area (the "Area" or "Urban Renewal Area"), which Plan is on file in the office of the Recorder of Cerro Gordo County, Iowa; and

WHEREAS, by Resolution No. 17-88 adopted May 11, 2017 this Council adopted an Amendment No. 1 to the Plan ("Amendment No. 1" or "Amendment") for the Urban Renewal Area to add to and/or confirm the list of proposed projects within the Area; and

WHEREAS, the City is in need of funds to pay costs of entering into a Lease Agreement with Southbridge Mall Realty Holding, LLC ("Lessor"), for an essential corporate urban renewal purpose of the City, such lease agreement being entered into to facilitate the lease of a recreational center and multipurpose arena facility ("Facility") proposed to be constructed by the City on the leased property, pursuant to Iowa Code Chapter 403 and the Plan; and

WHEREAS, the Lease Agreement provides for annual rental payments to be paid by the City to Lessor for lease of the Facility over twenty years in the aggregate amount of \$4,174,000; and

WHEREAS, Iowa Code Chapters 15A and 403 authorize cities to make loans and grants for economic development in furtherance of the objectives of an urban renewal project and to appropriate such funds and make such expenditures as may be necessary to carry out the purposes of said Chapters, and to levy taxes and assessments for such purposes; and

WHEREAS, pursuant to notice published as required by Sections 364.4(4) and 384.25 and Chapter 403 of the Code of Iowa, as amended (the "Code"), this Council published notice of the proposed action of the Council to institute proceedings for the authorization of the Lease Agreement and the right to petition for an election, and a petition was later filed in the Clerk's office requiring that the question of approving the Lease Agreement be submitted to the qualified electors of the City; and

WHEREAS, the City called a special City election on Tuesday, the 7th day of November, 2017, at which election there was submitted to the registered voters of the City the question as to whether to approve entry into a Lease Agreement in a principal amount not to exceed \$18,000,000 for an essential corporate urban renewal purpose of the City, to facilitate construction of a recreational center and multipurpose arena facility and subsequent lease of the facility by the City; and