

Date July 23, 2007

RESOLUTION APPROVING FORM AND AUTHORIZING EXECUTION
AND DELIVERY OF A CONTRACT FOR LOAN GUARANTEE
ASSISTANCE UNDER SECTION 108 OF THE HOUSING AND
COMMUNITY DEVELOPMENT ACT OF 1974, AS AMENDED, IN THE
PRINCIPAL AMOUNT OF \$17,500,000, AND OTHER RELATED
FINANCING DOCUMENTS BY THE CITY OF DES MOINES, IOWA

WHEREAS, the City of Des Moines has applied for and received an offer from the Secretary (the "Secretary") of the United States Department of Housing and Urban Development ("HUD") to enter into a Contract for Loan Guarantee Assistance (the "Section 108 Loan Agreement") under Section 108 of the Housing and Community Development Act of 1974, as amended (the "Act"), in the amount of \$17,500,000, the proceeds of which are proposed to be used to make a loan for the benefit of River Point West LLC, a Minnesota limited liability company (the "Developer"), for the purpose of financing the Developer's acquisition and clearance of properties located generally along the south side of Martin Luther King Jr. Parkway between SW 9th and SW 14th Streets for sale and subsequent redevelopment, and the construction of supporting public infrastructure improvements to serve the developed properties, in accordance with the approved Development Agreement between the City and the Developer; and

WHEREAS, copies of the various financing documents to be approved and entered into by the City in connection with the Section 108 Loan Agreement and the loan of the proceeds thereof, including but not limited to a Brownfields Economic Development (BEDI) Grant Agreement, a Pledge, Assignment and Security Agreement, a Variable/Fixed Rate Note, and a Funding Approval/Agreement (together, the "Related Financing Documents") are now on file for public inspection in the office of the City Clerk; and

WHEREAS, the Section 108 Loan Agreement shall not be a general obligation of the City but shall be secured and payable solely and only from the tax increment revenues of the Metro Center Urban Renewal Area of the City, subject to non-appropriation in any year, as well as (i) all allocations or grants which have been made or for which the City may become eligible in the future under Section 106 or Section 108(q) of the Act, (ii) program income directly generated from the use of the Section 108 Loan Agreement proceeds, including, but not limited to, payments by the Developer pursuant to the Development Agreement, (iii) all rights of the City in the "Security Documents" described in Section 15 of the Section 108 Loan Agreement and to the collateral described therein, (iv) all proceeds (including insurance and condemnation proceeds) from any of the foregoing, and (v) all funds or investments in the accounts established in the Section 108 Loan Agreement; and

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WHEREAS, it is anticipated that the Section 108 Loan Agreement shall be further secured by the Secretary of HUD in accordance with the Act, with the Note being publicly offered for sale by the Secretary of HUD pursuant to the Act and the terms and conditions of a Trust Agreement, a Supplement thereto, and an Amended and Restated Master Fiscal Agency Agreement by and between the Secretary and the Chase Manhattan Bank (formerly known as Chemical Bank), a New York banking corporation, on behalf of the City and certain other municipalities entering into comparable arrangements with the Secretary under Section 108 of the Act; and

WHEREAS, pursuant to notice published as required by law, this Council has held a public meeting and hearing upon the proposal to approve and authorize the Section 108 Loan Agreement and the Related Financing Documents, and has considered the extent of objections received from residents or property owners as to said proposal and, accordingly, the following action is now considered to be in the best interest of the City and the residents hereof.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DES MOINES, IOWA:

Section 1. That the form and content of the Section 108 Loan Agreement and the Related Financing Documents, the provisions of which are incorporated herein by reference, be and the same hereby are in all respects authorized, approved and confirmed and the Mayor and the Mayor Pro Tem and the City Clerk and the Deputy City Clerk be and they hereby are authorized, empowered and directed to execute, attest, seal and deliver the Section 108 Loan Agreement and the Related Financing Documents to the Secretary of HUD for and on behalf of the City in substantially the form and content now on file in the office of the City Clerk, but with such changes, modifications, additions or deletions therein as shall be approved by the City Attorney, and that from and after the execution and delivery of the Section 108 Loan Agreement and the Related Financing Documents, the Mayor and the Mayor Pro Tem and the City Clerk and the Deputy City Clerk are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Section 108 Loan Agreement and the Related Financing Documents as finally executed.

Section 2. That the issuance of one or more Variable/Fixed Rate Notes, (together, the "Note") to the Secretary in the aggregate principal amount of \$17,500,000, maturing on such dates and in such amounts and bearing such rates of interest as set forth in the Section 108 Loan Agreement and the Note, in substantially the form and content now on file in the office of the City Clerk, be and the same hereby is in all respects authorized, approved and confirmed, and the form and content of the Note be and the same hereby is in all respects authorized, approved,

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ratified and confirmed, and the Mayor and the Mayor Pro Tem and the City Clerk and the Deputy City Clerk be and they are hereby authorized, empowered and directed to execute the Note, impress the official seal of the City thereon and deliver the Note for and on behalf of the City to the Secretary.

Section 3. That the Mayor and the Mayor Pro Tem and the City Clerk and the Deputy City Clerk be and they are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents, opinions or other papers and perform all other acts as they may deem necessary or appropriate in order to implement and carry out the intent and purposes of the foregoing resolutions. Without limitation of the above, the Mayor and the Mayor Pro Tem and the City Clerk and the Deputy City Clerk be and they are hereby specifically authorized to execute and deliver for and on behalf of the City the Request for Release of Funds for the proceeds of the Section 108 Loan and BEDI Grant.

Section 4. The Section 108 Loan Agreement shall not be a general obligation of the City but shall be secured and payable solely and only from the tax increment revenues of the Metro Center Urban Renewal Area of the City, subject to non-appropriation in any year, as well as (i) all allocations or grants which have been made or for which the City may become eligible in the future under Section 106 or Section 108(q) of the Act, (ii) program income directly generated from the use of the Section 108 Loan Agreement proceeds, including, but not limited to, payments by the Developer pursuant to the Development Agreement, (iii) all rights of the City in the "Security Documents" described in Section 15 of the Section 108 Loan Agreement and to the collateral described therein, (iv) all proceeds (including insurance and condemnation proceeds) from any of the foregoing, and (v) all funds or investments in the accounts established in the Section 108 Loan Agreement.

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Section 5. That the provisions of this resolution are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions.

(Council Communication No. 07- 460)

MOVED by _____ to adopt.

FORM APPROVED:

Roger K. Brown

Roger K. Brown

Assistant City Attorney

C:\Rog\Eco Dev\Riverpoint\Sec 108\RC 07-07-23 approve agr.doc

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk