



Date September 9, 2019

RESOLUTION RATIFYING THIRD AMENDED AND RESTATED URBAN RENEWAL DEVELOPMENT AGREEMENT WITH RIVER POINT WEST LLC FOR THE GRAY'S LANDING PROJECT

Economic Development Agreement with the Developer

WHEREAS, on July 9, 2007, by Roll Call No. 07-1341, the City Council approved an Urban Renewal Development Agreement (the "Original Agreement") with River Point West LLC (the "Developer"), represented by George Sherman, Manager, whereby the Developer undertook the acquisition, clearance, installation of public infrastructure, and the preparation and sale of 'pad-ready' sites within an area (the "Original Area") generally bounded on the north by Martin Luther King, Jr. Parkway, on the east by SW 9th Street, on the west by the Mid-American Energy electrical substation, and on the south by Tuttle Street and the western extension of Tuttle Street west of SW 11th Street, and by Murphy Street east of SW 11th Street, in consideration of financial incentives provided by the City which included an Economic Development Loan in the amount of \$8.5 million (the "City Loan") which has been advanced to the Developer; and,

WHEREAS, the Original Agreement has been amended and restated as follows:

Table with 3 columns: Date, Roll Call No., Amendment Approved. It lists four amendments to the Urban Renewal Development Agreement from 2007 to 2015.

WHEREAS, the Developer has acquired most of the land within the Original Area and an additional crescent shaped parcel located west of and adjoining SW 11th Street between Tuttle Street and DART Way (all such parcels acquired by the Developer are hereinafter referred to as the "Existing Redevelopment Area"); and,

WHEREAS, the City desires that Developer continue to clear and prepare the Existing Redevelopment Area for redevelopment by creating "pad-ready" redevelopment parcels and selling those parcels for redevelopment with commercial and/or residential buildings and associated improvements; and,

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WHEREAS, on January 14, 2019, by Roll Call No. 19-0073, the City Council conditionally approved a *Third Amended and Restated Urban Renewal Development Agreement* (the "Third Amended Agreement") with the Developer and an amended Conceptual Development Plan to provide for continued redevelopment of the Existing Redevelopment Area with approximately \$70 million in additional development projects, all subject to approval by the U.S. Department of Housing and Urban Development ("HUD") as further addressed below; and,

WHEREAS, to obtain HUD approval, it was necessary to update the Third Amended Agreement and several of the exhibits thereto with additional language regarding ongoing compliance with federal regulations applicable to the parcels acquired or improved by the Developer with the proceeds of the City Loan, and to reflect the refinancing of the Section 108 Loan as identified below, all as set forth in the updated Third Amended Agreement which is on file and available for inspection in the office of the City Clerk; and,

WHEREAS, no changes to the financial terms of the Third Amended Agreement were required by HUD, and the Third Amended Agreement continues to acknowledge the \$8.5 million City Loan previously advanced to the Developer, and to provide for the following economic development grants (collectively the "City Grants") to be paid by the City from up to 100% of the tax increment revenue generated by the Existing Redevelopment Area through FY2039/40:

Parcel Development Grants be provided for the future redevelopment of the remaining "pad-ready" redevelopment parcels (exclusive of those parcels occupied, or to be occupied by the Holiday Inn Express hotel, the Nexus and Edge apartments, and the New Horizon Academy day care). The aggregate amount of all Parcel Development Grants shall not exceed \$2.8 million, and all installments end upon payment of the installments due in FY2035/36. The semi-annual installments on the Parcel Development Grant for the planned Gray's Landing Office Building and Second Hotel are each limited to one-half 50% of the annual project generated increment from each of those parcels. The semi-annual installments on the Parcel Development Grant for each other eligible redevelopment parcel are each limited to one-half of 36% of the annual project generated increment by each such parcel.

Economic Development Grant (Part A) to be paid in semi-annual installments and applied for the benefit of the Developer as a credit against the amount then owned by the Developer in repayment of the City Loan. Each such semi-annual installment shall be in an amount equal to the lesser of:

- 1) The amount of the corresponding installment then due from Developer in repayment of the City Loan (*which is equal to the corresponding installment then due from City in repayment of the Section 108 Loan*); or,



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- 2) An amount equal to one-half of the amount by which the annual project TIF generated by the Existing Redevelopment Area in the current fiscal year exceeds the amount of all installments due in that year on the Parcel Development Grants.

Economic Development Grant (Part B) to be paid in semi-annual installments. Each such semi-annual installment shall be in an amount equal to the lesser of:

- 1) The total unreimbursed amount of any advances made by the Developer's owners to pay that portion of the prior installments on the City Loan that could not be paid from the installments then due on the Economic Development Grant (Part A), with interest thereon at the rate of 5.0% per annum; or
- 2) An amount equal to one-half of the amount by which the annual project TIF generated by the Existing Redevelopment Area in the current fiscal year exceeds the amount of all installments due in that year on the Parcel Development Grants and the Economic Development Grant (Part A).

Each installment on the Economic Development Grant (Part B) is applied to reimburse the Developer's owners for advancing that portion of the prior installments due on the City Loan that could not be paid with the proceeds of the Economic Development Grant (Part A).

*HUD Guaranteed Section 108 Loan
and requirement for HUD approval of Third Amended Agreement*

WHEREAS, on July 23, 2007, by Roll Call No. 07-1456, the City Council approved a *Contract for Loan Guarantee Assistance* with the U.S. Department of Housing and Urban Development ("HUD") whereby the City obtained a loan (the "Section 108 Loan") of \$8.5 million that was used to fund the City Loan to the Developer, and the Section 108 Loan was secured in part by an assignment of the City's interests in the Original Agreement and a pledge of future TIF Revenues from the Metro Center Urban Renewal Area; and,

WHEREAS, the Developer is obligated to repay the City Loan on the same amortization schedule as the City is obligated to repay the Section 108 Loan; and,

WHEREAS, on January 14, 2019, by Roll Call No. 19-0071, the City Council approved refinancing the Section 108 Loan, which then had an outstanding principal balance of \$8,326,000, to lower the effective interest rate and the amount of the semi-annual installments on both the refinanced Section 108 Loan to be repaid by the City and the City Loan to be repaid by the Developer; and,

WHEREAS, the *Contract for Loan Guarantee Assistance* with HUD requires the City obtain HUD's prior written approval of any amendment to the Original Agreement; and,

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WHEREAS, the City has received HUD's assurance that it will give its written approval of the updated Third Amendment in the form now on file in the office of the City Clerk, upon the execution of that document by the City and Developer.

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

1. The proposed updated *Third Amended and Restated Urban Renewal Development Agreement* with River Point West LLC, and the proposed Conceptual Development Plan incorporated therein as Exhibit "K" thereto, are hereby ratified and approved.
2. The Mayor and City Clerk are hereby authorized and directed to execute the updated Third Amended Agreement, and the following documents ancillary to the Third Amended Agreement on behalf of the City:
 - The *Amended and Restated Limited Conditional Guarantee* as the benefited party, and the assignment thereof to HUD.
 - The *Amended and Restated Loan Agreement* as the "Lender", and the assignment thereof to HUD as the benefitted party.
 - The *Amended and Restated Promissory Note*, as the "Lender" and the Promissory Note Endorsement assigning the Note to HUD as the benefitted party.
3. The Finance Department is hereby authorized and directed to pay the installments on the City Grants as provided by the Third Amended Agreement, upon requisition by the Office of Economic Development confirming that Developer has qualified for the payment of each such installment.
4. The City Manager or the City Manager's designee are hereby authorized and directed to administer the Third Amended Agreement on behalf of the City, and to monitor compliance by the Developer with the terms and conditions of that agreement. The City Manager is further authorized to grant or withhold consent to any actions by the Developer that are specifically allowed under the Third Amended Agreement subject to the City's prior written approval. The City Manager is further directed to forward to City Council all other matters and documents that require City Council review and approval in accordance regarding the Third Amended Agreement.

★ Roll Call Number

Agenda Item Number
43B

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5. The Director of the Office of Economic Development or the Director's designee are directed to submit a copy of the fully executed Third Amended Agreement to the Finance Department for purposes of required Electronic Municipal Market Access disclosure filings.

(Council Communication No. 19- 388)

MOVED by _____ to adopt.

FORM APPROVED:

By: Roger K. Brown
Roger K. Brown, Assistant City Attorney

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| COUNCIL ACTION | YEAS | NAYS | PASS | ABSENT |
|----------------|----------|------|------|--------|
| COWNIE | | | | |
| BOESEN | | | | |
| COLEMAN | | | | |
| GATTO | | | | |
| GRAY | | | | |
| MANDELBAUM | | | | |
| WESTERGAARD | | | | |
| 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