

HOLD HEARING ON AND APPROVE  
DEVELOPMENT AGREEMENT AND  
TAX INCREMENT PAYMENTS

(Hotel & Conference Facility Project)

421464-42

Muscatine, Iowa

December 18, 2014

A meeting of the City Council of the City of Muscatine, Iowa, was held at \_\_\_\_ o'clock \_\_\_\_m., on December 18, 2014, at the \_\_\_\_\_, Muscatine, Iowa, pursuant to the rules of the Council.

The Mayor presided and the roll was called, showing members present and absent as follows:

Present: \_\_\_\_\_

Absent: \_\_\_\_\_.

The City Council investigated and found that notice of the intention of the Council to conduct a public hearing on a Development Agreement between the City and Riverview Hotel Development in connection with the development of a hotel and conference center on certain real property in the City's downtown, which Agreement provides for certain financial incentives in the form of annual appropriation, incremental property tax payments in a total amount not exceeding \$6,000,000, had been published according to law and as directed by the Council and that this is the time and place at which the Council shall receive oral or written objections from any resident or property owner of the City. All written objections, statements, and evidence heretofore filed were reported to the Council, and all oral objections, statements, and all other exhibits presented were considered.

The following named persons presented oral objections, statements, or evidence as summarized below; filed written objections or statements, copies of which are attached hereto; or presented other exhibits, copies of which are attached hereto:

(Here list all persons presenting written or oral statements or evidence and summarize each presentation.)

There being no further objections or comments, the Mayor announced that the hearing was closed.

Council Member \_\_\_\_\_ introduced the resolution next hereinafter set out and moved its adoption, seconded by Council Member \_\_\_\_\_; and

after due consideration thereof by the Council, the Mayor put the question upon the adoption of said resolution, and the roll being called, the following named Council Members voted:

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_.

Whereupon, the Mayor declared said resolution duly adopted, as follows:

RESOLUTION \_\_\_\_\_

Approving Development Agreement with Riverview Hotel Development, Authorizing Annual Appropriation Tax Increment Payments and Pledging Certain Tax Increment Revenues to the Payment of the Agreement

WHEREAS, the City of Muscatine, Iowa (the “City”), pursuant to and in strict compliance with all laws applicable to the City, and in particular the provisions of Chapter 403 of the Code of Iowa, has adopted an Urban Renewal Plan for the Consolidated Muscatine Urban Renewal Area (the “Urban Renewal Area”); and

WHEREAS, this City Council has adopted an ordinance providing for the division of taxes levied on taxable property in the Urban Renewal Area pursuant to Section 403.19 of the Code of Iowa and establishing the fund referred to in Subsection 2 of Section 403.19 of the Code of Iowa (the “Urban Renewal Tax Revenue Fund”), which fund and the portion of taxes referred to in that subsection may be irrevocably pledged by the City for the payment of the principal and interest on indebtedness incurred under the authority of Section 403.9 of the Code of Iowa to finance or refinance in whole or in part projects in the Urban Renewal Area; and

WHEREAS, an agreement between the City and Riverview Hotel Development, (the “Developer”) has been prepared (the “Agreement”), in connection with the development of a hotel and conference center on certain real property in the City’s downtown in the Urban Renewal Area (the “Riverview Hotel Development Project”); and

WHEREAS, under the Agreement, the City would provide annual appropriation tax increment payments to the Developer in a total amount not exceeding \$6,000,000; and

WHEREAS, this City Council, pursuant to Section 403.9 of the Code of Iowa, has published notice, has held a public hearing on the Agreement on December 18, 2014, and has otherwise complied with statutory requirements for the approval of the Agreement; and

WHEREAS, Chapter 15A of the Code of Iowa (“Chapter 15A”) declares that economic development is a public purpose for which a City may provide grants, loans, tax incentives, guarantees and other financial assistance to or for the benefit of private persons; and

WHEREAS, Chapter 15A requires that before public funds are used for grants, loans, tax incentives or other financial assistance, a City Council must determine that a public purpose will reasonably be accomplished by the spending or use of those funds; and

WHEREAS, Chapter 15A requires that in determining whether funds should be spent, a City Council must consider any or all of a series of factors;

NOW, THEREFORE, It Is Resolved by the City Council of the City of Muscatine, Iowa, as follows:

Section 1. Pursuant to the factors listed in Chapter 15A, the City Council hereby finds that:

(a) The Riverview Hotel Development Project will add diversity and generate new opportunities for the Muscatine and Iowa economies;

(b) The Riverview Hotel Development Project will generate public gains and benefits, particularly in the potential creation of new jobs, which are warranted in comparison to the amount of the proposed financial incentives.

Section 2. The City Council further finds that a public purpose will reasonably be accomplished by entering into the Agreement and providing the incremental property tax payments to the Developer.

Section 3. The Agreement is hereby approved and the Mayor and City Clerk are hereby authorized and directed to execute and deliver the Agreement on behalf of the City, in substantially the form and content in which the Agreement has been presented to this City Council, and such officers are also authorized to make such changes, modifications, additions or deletions as they, with the advice of bond counsel, may believe to be necessary, and to take such actions as may be necessary to carry out the provisions of the Agreement.

Section 4. All payments by the City under the Agreement shall be subject to annual appropriation by the City Council, in the manner set out in the Agreement. As provided and required by Chapter 403 of the Code of Iowa, the City's obligations under the Agreement shall be payable solely from a subfund (the "Riverview Hotel Development Subfund") which is hereby established, into which shall be paid that portion of the income and proceeds of the Urban Renewal Tax Revenue Fund attributable to property taxes derived from the property described as follows:

Certain real property situated in the City of Muscatine, County of Muscatine, State of Iowa more particularly described as follows:

The area comprised of Block 11 of Original Town and the Mississippi Drive right-of-way adjoining Block 11.

Section 5. The City hereby pledges to the payment of the Agreement the Riverview Hotel Development Subfund and the taxes referred to in Subsection 2 of Section 403.19 of the Code of Iowa to be paid into such Subfund, provided, however, that no payment will be made under the Agreement unless and until monies from the Riverview Hotel Development Subfund are appropriated for such purpose by the City Council.

Section 6. After its adoption, a copy of this resolution shall be filed in the office of the County Auditor of Muscatine County to evidence the continuing pledging of the Riverview Hotel Development Subfund and the portion of taxes to be paid into such Subfund and, pursuant to the direction of Section 403.19 of the Code of Iowa, the Auditor shall allocate the taxes in accordance therewith and in accordance with the tax allocation ordinance referred to in the preamble hereof.

Section 7. All resolutions or parts thereof in conflict herewith are hereby repealed.

Section 8. This resolution shall be in full force and effect immediately upon its adoption and approval, as provided by law.

Passed and approved this 18th day of December, 2014.

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Mayor

Attest:

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City Clerk

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On motion and vote the meeting adjourned.

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

STATE OF IOWA  
COUNTY OF MUSCATINE SS:  
CITY OF MUSCATINE

I, the undersigned, Clerk of the City of Muscatine, hereby certify that the foregoing is a true and correct copy of the minutes of the Council of the City relating to holding a public hearing and adopting a resolution to approve a Development Agreement.

WITNESS MY HAND this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
City Clerk

STATE OF IOWA

SS:

COUNTY OF MUSCATINE

I, the undersigned, County Auditor of Muscatine County, in the State of Iowa, do hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 2014, the City Clerk of the City of Muscatine filed in my office a certified copy of a resolution of the City shown to have been adopted by the City Council and approved by the Mayor thereof on April 1, 2014, entitled: "Resolution Approving Development Agreement with Riverview Hotel Development, Authorizing Annual Appropriation Tax Increment Payments and Pledging Certain Tax Increment Revenues to the Payment of the Agreement", and that I have duly placed the copy of the resolution on file in my records.

WITNESS MY HAND this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
County Auditor

December 15, 2014

**VIA EMAIL**

Gregg Mandsager  
City Administrator/City Hall  
Muscatine, IA

Re: Riverview Hotel Development  
Development Agreement  
File No. 421464-42

Dear Gregg:

Attached are copies of proceedings covering the City Council's December 18 public hearing on the proposed Development Agreement with Riverview Hotel Development, followed by a resolution approving the Agreement and pledging certain incremental property tax revenues to the payment of the Agreement

A copy of the Resolution must be filed with the Muscatine County Auditor. Please print an extra copy of the Resolution for that purpose.

We would appreciate receiving one fully-executed copy of these proceedings and of the executed Development Agreement as soon as they are available.

Best regards,

John P. Danos

Attachments

cc: Gregg Mandsager  
David Gobin

## DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is entered into between the City of Muscatine, Iowa (the “City”) and Riverview Hotel Development, (the “Company”) as of the \_\_\_\_ day of \_\_\_\_\_, 2014 (the “Commencement Date”).

WHEREAS, the City has established the Muscatine Consolidated Urban Renewal Area (the “Urban Renewal Area”), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Company owns certain real property situated in downtown Muscatine in the Urban Renewal Area, such property being legal described on Exhibit A hereto (the “Property”); and

WHEREAS, the Company has proposed to undertake the development of a conference center and hotel facility (the “Project”) on the Property; and

WHEREAS, the Company has requested that the City provide financial assistance in the form of incremental property tax payments to be used by the Company in defraying the costs of constructing and maintaining the Project; and

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons;

NOW THEREFORE, the parties hereto agree as follows:

### **A. Company’s Covenants**

**1. Project.** The Company agrees to cause the completion of the Project on the Property and to ensure that the completed Project is used in the operations of a hotel and conference center throughout the Term, as hereinafter defined, of this Agreement. The Company will complete the Project in accordance with the preliminary plans and specifications (the “Project Plans”) for the Project which have been reviewed and approved by the City and are attached hereto as Exhibit B. It is anticipated that the Company will invest not less than \$41,000,000 into the development of the Project. The Project will be completed and placed into service by no later than December 31, 2016.

The Project shall be comprised of a 11,500 square foot conference center with an attached hotel comprised of not less than 112 guest rooms. In the construction of the Project and affiliated development of the Property, the Company shall meet all municipal regulations, including, but not limited to, building code, fire code, zoning, platting and hard surfacing requirements.

The Company and the City agree to execute a certificate of completion, in substantially the form attached hereto as Exhibit C, when the Project is completed to evidence compliance with this provision. The Company hereby acknowledges that its rights to receive the Payments, as set forth in Section B, hereof, is contingent upon its ongoing ownership and use of the

Property and the Project in its business operations in accordance with the requirements of this Section A.1.

**2. Operational Certification.** The Company agrees to submit documentation to the satisfaction of the City by no later than October 15 of each year during the Term (as hereinafter defined) demonstrating that the completed Project is being used as a conference center and hotel facility.

**3. Minimum Assessment Agreement.** The Company agrees to enter into an assessment agreement (the "Assessment Agreement"), pursuant to Section 403.6 of the Code of Iowa fixing the minimum assessed valuation of the Property, in contemplation of the value to be added by the proposed Project, at not less than Twelve Million Dollars (\$12,000,000) (the "Minimum Assessed Valuation") as of January 1, 2017 (the "First Valuation Date"). It is intended by the Company that the Minimum Assessed Valuation shall be established on the Muscatine County property tax rolls as of the First Valuation Date regardless of the then-current degree of completion or incompleteness of the Project. The Assessment Agreement shall remain in effect throughout the Term (as hereinafter defined).

**4. Property Taxes.** The Company agrees to ensure timely payment of all property taxes as they come due with respect to the Property throughout the Term (as hereinafter defined).

**5. Property Tax Payment Certifications.** The Company agrees to certify (the "Triggering Certification") to the City its intent for the Payments, as hereinafter defined, to commence. The Triggering Certification shall be made by no later than October 1 of the year immediately preceding the fiscal year in which the Developer intends for the Payments to be made. Furthermore, the Company agrees to certify to the City by no later than November 1 of each year, commencing November 1 of the year in which the Triggering Certification is made, an amount (the "Company's Estimate") the estimated Incremental Property Tax Revenues anticipated to be paid in the fiscal year immediately following such certification with respect to the Property relative to new value added as a result of the property tax assessment of the Project (which amount shall not be less than the Minimum Assessed Valuation) factored by the Annual Percentage (as hereinafter defined). In submitting each such Company's estimate, the Company will complete and submit the worksheet attached hereto as Exhibit D. The City reserves the right to review and request revisions to each such Company's Estimate to ensure the accuracy of the figures submitted. For purposes of this Agreement, Incremental Property Tax Revenues are produced by multiplying the consolidated property tax levy (city, county, school, etc.) times the incremental valuation of the Property, then subtracting debt service levies of all taxing jurisdictions, subtracting the school district instructional support and physical plant and equipment levies and subtracting any other levies which may be exempted from such calculation by action of the Iowa General Assembly.

Upon request, the City staff shall provide reasonable assistance to the Company in formulating the annual estimates required under this Section A.5.

**6. Legal and Administrative Costs.** The Company hereby agrees to pay for the legal fees and administrative costs incurred by the City in connection with the drafting,

negotiation and authorization of this Agreement, including the prerequisite amendment to the urban renewal plan, up to an amount not in excess of \$6,000. The Company agrees to remit payment to the City within 30-days of the submission of reasonable documentation by the City to the Company evidencing such costs.

**7. Employment Requirements.** The Company agrees to establish and maintain a workforce (the “Workforce Requirement”) of not less than seventy (70) employees with a minimum annual payroll of not less than One Million Eight Hundred Eighty Eight Thousand Dollars (\$1,888,000.00) in connection with the Company’s business operations on the Property. The Company agrees to demonstrate to the satisfaction of the City, by no later than October 15 of each year, commencing October 15, 2016, the number of employees hired and the annual payroll anticipated with respect to the compensation of such employees. Failure to comply with this Section will give the City the right to withhold Payments, as defined in Section B, below.

**8. Insurance.**

(a) The Company, and any successor in interest to the Company, shall obtain and continuously maintain insurance on the Property and the completed Project and, from time to time at the request of the City, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Company must obtain and continuously maintain, provided that the Company shall obtain the insurance described in clause (i) below prior to the commencement of construction of the Project (excluding excavation and footings):

- (i) Builder’s risk insurance, written on the so-called “Builder’s Risk—Completed Value Basis,” in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called “all risk” form of policy.
- (ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner’s/Contractor’s Policy naming the City, as an additional insured, with limits against bodily injury and property damage of not less than \$2,500,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.
- (iii) Workers compensation insurance, with statutory coverage.

(b) All insurance required in this Section shall be obtained and continuously maintained in responsible insurance companies selected by the Company or its successors that are authorized under the laws of the State of Iowa to assume the risks covered by such policies. Unless otherwise provided in this Section, each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Company, or its successors or assigns, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section. In lieu of separate policies, the Company or its successors or assigns, may maintain a

single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

(c) The Company, its successors or assigns, agrees to notify the City promptly in the case of damage exceeding \$250,000 in amount to, or destruction of the Project resulting from fire or other casualty. Furthermore, the Company further agrees to apply the proceeds from any and all casualty claims against the insurance detailed in this Section to the restoration and improvement of the Property and/or the Project.

**9. Remedy.** The Company hereby acknowledges that failure to comply with the requirements of this Section A, will result in the City having the right to withhold Payments under Section B of this Agreement at its sole discretion.

**B. City's Obligations**

**1. Payments.** In recognition of the Company's obligations set out above, the City agrees to make twenty (20) annual economic development tax increment payments (the "Payments") to the Company during the Term of this Agreement (as hereinafter defined), pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the aggregate, total amount of the Payments shall not exceed \$6,000,000 (the "Max Payment Amount"), and all Payments under this Agreement shall be subject to annual appropriation by the City Council, as provided hereunder.

The Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer attributable to the Property.

The Payments will be made on June 1 of each fiscal year, beginning on June 1 of the fiscal year immediately succeeding the year in which the Triggering Certification was made, and continuing for a total of twenty (20) fiscal years.

For example, assuming the Triggering Certification is made October 1, 2017, then Payments will be made on June 1 of each fiscal year, beginning June 1, 2019, and continuing through and including June 1, 2038, or until such earlier date upon which total Payments equal to the Max Payment Amount have been made.

**2. Annual Appropriation.** Each Payment shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the Term (as hereinafter defined) of this Agreement, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Payments due in the following fiscal year, an amount (the "Appropriated Amount") of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the most recently submitted Company's Estimate factored by the annual percentage (the "Annual Percentage") scheduled to be in effect the following fiscal year. The Annual Percentage in each year during the Term of this Agreement shall be as follows:

For the first through fifth Payment years:	100%
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For the sixth through fifteenth Payment years: 75%

For the sixteenth through twentieth Payment years: 50%

In any given fiscal year, if the City Council determines to not obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Payments scheduled to become due in the following fiscal year, and the Company will have no rights whatsoever to compel the City to make such Payments or to seek damages relative thereto or to compel the funding of such Payments in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year's Payments shall not render this Agreement null and void, and the Company shall make the next succeeding submission of the Company's Estimate as called for in Section A.5 above, provided however that no Payment shall be made after June 1, 2040.

**3. Payment Amounts.** Each Payment shall be in an amount equal to the corresponding Appropriated Amount (for example, for a Payment due on June 1, 2020, the amount would be determined by the Appropriated Amount determined for certification by December 1, 2018).

**4. Certification of Payment Obligation.** In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, as set forth in Section B.2 above, then the City Clerk will certify by December 1 of each such year to the Muscatine County Auditor an amount equal to the most recently obligated Appropriated Amount.

**5. Mercer Muscatine RLF Local Match.** To the extent that Riverview Development, LLC or the Company applies for and receives credit through the Mercer Muscatine Revolving Loan Fund for use in connection with the funding of the Project, then the City shall provide a cash grant to the appropriate entity in an amount equal to the local match requirements for the Mercer Loan, provided, however, that such amount shall not be in excess of \$\_\_\_\_\_.

**C. Administrative Provisions**

**1. Assignment.** This Agreement may not be amended or assigned by either party without the prior written consent of the other party. However, the City hereby gives its permission that the Company's rights to receive the Payments hereunder may be assigned by the Company to any "affiliate" or a private lender, as security on a credit facility taken in connection with the acquisition of the Property and/or the construction of the Project, without further action on the part of the City.

**2. Successors.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

**3. Term.** The term (the "Term") of this Agreement shall commence on the Commencement Date and end on the date on which the last Payment is made by the City to the Company under Section B.1 above.

4. **Choice of Law.** This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

The City and the Company have caused this Agreement to be signed in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

CITY OF MUSCATINE, IOWA

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

RIVERVIEW HOTEL DEVELOPMENT

By: \_\_\_\_\_

By: \_\_\_\_\_

**EXHIBIT A:**

**LEGAL DESCRIPTION OF THE PROPERTY**

*Certain real property situated in the City of Muscatine, County of Muscatine, State of Iowa bearing the Muscatine County Property Tax Identification Parcel Numbers as follows:*

*1302226031, 1302226001, 1302226002, 1302226003, 1302226004, 1302226005, 1302226006, 1302226009, 1302226012, 1302226014, 1302226000, & 1302226018.*

*The area comprised of Block 11 of Original Town and the Mississippi Drive right-of-way adjoining Block 11.*

**EXHIBIT B:**

**PROJECT PLANS**

**EXHIBIT C:**

**CERTIFICATE OF COMPLETION**

WHEREAS, the City of Muscatine, (the “City”) and Riverview Hotel Development (the “Company”), did on or about the \_\_\_ day of \_\_\_\_\_, 201\_\_\_, make, execute and deliver, each to the other, a Development Agreement (the “Agreement”), wherein and whereby the Company agreed, in accordance with the terms of the Agreement, to develop and maintain certain real property located within the City, defined in said Agreement as the Property; and

WHEREAS, the Agreement incorporated and contained certain covenants and restrictions with respect to the development of the Property and obligated the Company to construct a certain Project, as defined therein, in accordance with the Agreement; and

WHEREAS, the Company agrees that, to the present date, said covenants and conditions are met insofar as they relate to the construction of said Project in a manner deemed by the City to be in conformance with the approved building plans to permit the execution and recording of this certification.

NOW, THEREFORE, pursuant to Section A.1 of the Agreement, the City hereby certifies that all covenants and conditions of the Agreement with respect to the obligations of the Company to construct the Project on the Property have been completed and performed satisfactorily by the Company. All other provisions of the Agreement shall otherwise remain in full force and effect until termination as provided therein.

CITY OF MUSCATINE, IOWA

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

**EXHIBIT D:**

**COMPANY'S ESTIMATE WORKSHEET**

- (1) Date of Preparation: October \_\_\_\_\_, 20\_\_\_\_.
- (2) Assessed Valuation of Property as of January 1, 20\_\_\_\_:  
\$\_\_\_\_\_.
- (3) Base Valuation of Property:  
\$\_\_\_\_\_.
- (4) Incremental Valuation of Property (2 minus 3):  
\$\_\_\_\_\_ (the "TIF Value").
- (5) Current City fiscal year consolidated property tax levy rate for purposes of calculating Incremental Property Tax Revenues (the "Adjusted Levy Rate"):  
\$\_\_\_\_\_ per thousand of value.
- (6) The TIF Value (4) factored by the Adjusted Levy Rate (5).  
\$\_\_\_\_\_ x \$\_\_\_\_\_/1000
- (7) Company's Estimate = \$\_\_\_\_\_ x Annual Percentage \_\_\_\_\_% = \_\_\_\_\_

Effective Annual Percentages

For the first through fifth Payment years:	100%
For the sixth through fifteenth Payment years:	75%
For the sixteenth through twentieth Payment years:	50%