

RESOLUTION \_\_\_\_\_

Resolution Consenting to Assignment of Development Agreement and Tax Increment Payments

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 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, the City previously authorized and entered into a development agreement with Financial District Properties MM, LLC, KRE LLC and Mogul Holdings, LLC (collectively, the “Original Developer”), pursuant to which Original Developer agreed to undertake the redevelopment, renovation and improvement of the Muscatine Mall and adjacent out-lots in the Urban Renewal Area (the “Project”) and the City agreed to provide tax increment payments to the Original Developer; and

WHEREAS, under the Agreement, assignment of rights and responsibilities thereunder was made subject to prior consent of the contracting parties; and

WHEREAS, the Original Developer has requested that the City consent to the assignment of all of its rights and responsibilities under the Agreement to Muscatine Mall Management II, LLC (the “Successor Developer”); and

WHEREAS, it is now necessary for the City to provide consent to the assignment and approve an Assignment and Assumption Agreement to carry out the assignment of the Development Agreement;

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

Section 1. The City hereby consents to the request by the Original Developer that all of its rights and responsibilities under the Agreement be assigned to the Successor Developer, and the assignment is hereby consented to and approved. The Assignment and Assumption Agreement is hereby approved, and the Mayor and City Clerk are hereby authorized and directed to execute and deliver Assignment and Assumption Agreement in substantially the form and content in which the Assignment and Assumption 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 Assignment and Assumption Agreement.

Section 2. Subject to due authorization, execution and delivery of the Assignment and Assumption Agreement; the Original Developer is hereby released from all remaining duties to be performed under the Agreement, and all remaining communications and payments to be made with respect to the Agreement shall exclusively be directed to the Successor Developer. The Successor Developer shall in all ways be substituted into the Agreement on the same terms and basis as the Original Developer.

Section 3. Nothing contemplated herein shall be interpreted as interfering with the division of incremental property tax revenues and the payments to be funded therefrom as contemplated in the Agreement regardless of the future recipient of such payments.

Section 4. All resolutions or parts thereof in conflict herewith are hereby repealed.

Passed and approved this 15<sup>th</sup> day of October, 2015.

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Mayor

Attest:

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City Clerk

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On motion and vote the meeting adjourned.

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Mayor

Attest:

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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 consenting to the assignment of a Development Agreement.

WITNESS MY HAND this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

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

## **ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is entered into by and among the City of Muscatine, Iowa (the "City"), Financial District Properties MM, LLC, KRE LLC, Mogul Holdings, LLC and Muscatine Mall Management II, LLC as of the \_\_\_ day of \_\_\_\_\_, 2015 (the "Commencement Date").

### **RECITALS:**

WHEREAS, 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 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, the City previously authorized and entered into a development agreement (the "Development Agreement") attached hereto as Exhibit A with Financial District Properties MM, LLC, KRE LLC and Mogul Holdings, LLC (collectively, the "Original Developer"), pursuant to which the Original Developer agreed to undertake redevelopment, renovation and improvement of the Muscatine Mall and adjacent out-lots (the "Project") on the Property (as defined in the Development Agreement), and the City agreed to provide tax increment payments to the Original Developer; and

WHEREAS, under the Agreement, assignment of rights and responsibilities thereunder was made subject to prior consent of the contracting parties; and

WHEREAS, the Original Developer has requested that the City consent to the assignment of all of its rights and responsibilities under the Agreement to Muscatine Mall Management II, LLC (the "Successor Developer");

NOW, THEREFORE, in consideration of the foregoing promises, the covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. The Original Developer assigns to the Successor Developer the obligations and entitlements of the Original Developer under the Development Agreement with respect to the Property and the Project.
2. The Successor Developer assumes all obligations and entitlements of the Original Developer under the Development Agreement with regard to the Property and the Project, subject to all conditions and restrictions therein.
3. The Successor Developer hereby (a) expressly warrants and represents to the City that the Successor Developer has all the qualifications, financial capabilities and financial responsibility necessary and adequate to fulfill the obligations undertaken by the Successor Developer by its assumption of the Development Agreement, (b) agrees to pay ordinary real estate taxes with respect to the Property, pursuant to that certain Minimum Assessment Agreement contemplated in the Development Agreement, (c) agrees to indemnify, defend and protect the Original Developer and hold the Original Developer harmless from and against any and all claims, losses, costs, expenses, damages and liability that may arise under or in connection with the Development Agreement or the Project.
4. The City hereby releases the Original Developer from and relieves the Original Developer of its obligations under the Development Agreement.
5. The City hereby consents to this Assignment and Assumption of Development Agreement.
6. This Agreement shall be for the express benefit of City, the Original Developer and the Successor Developer and no other person.
7. This Agreement may be executed in any number of counterparts, each of which shall for the purposes hereof be deemed to be an original, and all of which are identical. All such counterparts together shall constitute one instrument.
8. This Agreement constitutes the entire understanding of the parties hereto with respect to the obligations contemplated hereby and supercedes all prior agreements and understandings between the parties with respect to the subject matter hereof. No representations, warranties, undertakings or promises, whether oral, implied, written or otherwise, have been made by either party to the other unless expressly stated in this Agreement and the Development Agreement, or unless mutually agreed to in writing between the parties thereto after the date hereof, and neither party has relied upon any verbal representations, agreements or understandings not expressly set forth herein.

**[Signatures Commence on Following Page]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CITY OF MUSCATINE, IOWA, an Iowa  
municipal corporation

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

Attest:

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

FINANCIAL DISTRICT PROPERTIES  
MM, LLC, KRE LLC.  
an Iowa limited liability company

By \_\_\_\_\_

MOGUL HOLDINGS, LLC.  
an Iowa limited liability company

By \_\_\_\_\_

MUSCATINE MALL MANAGEMENT II,  
LLC  
an Iowa limited liability company

By \_\_\_\_\_

**Exhibit A**