



FINANCE & RECORDS

MEMO

To: Gregg Mandsager, City Administrator

From: Nancy A. Lueck, Finance Director

Date: October 14, 2016

Re: Resolutions Approving Development Agreements with (1) Harrison Lofts, LLC, and (2) KRE, LLC

Introduction and Background

Previously, the City Council adopted a Consolidated Urban Renewal Area and Urban Renewal Plan as provided for in the State Code of Iowa. All subsequent changes to the Area or the Plan require further action by the City Council in the form of Urban Renewal Plan Amendments. At the September 15, 2016 meeting, the City Council set a public hearing for October 20 on several amendments to the Urban Renewal Plan. These amendments include proposed development agreements with (1) Harrison Lofts, LLC for the construction of an apartment complex which will provide for low and moderate income housing, and (2) KRE, LLC for redevelopment of a commercial facility.

At the October 6 meeting, City Council set public hearings for the proposed development agreements with Harrison Lofts, LLC and KRE, LLC. The public hearings on the Urban Renewal Plan Amendment and the two development agreements will all be held at the October 20 meeting.

Resolutions Approving Development Agreements

After the public hearings on the Urban Renewal Plan Amendments and the two development agreements, the City Council will be asked to consider resolutions approving each development agreement and authorizing annual appropriation tax increment payments to each developer. The general provisions of the two development agreements are as follows:

1. Harrison Lofts, LLC – annual appropriation economic development payments funded from incremental taxes on the property in an amount not to exceed \$675,000 over a 15-year period.
2. KRE, LLC – annual appropriation economic development payments funded from incremental taxes on the property in an amount not to exceed \$155,000 over a 10-year period.

Summary

Please include the two resolutions approving development agreements and annual appropriation tax increment payments with Harrison Lofts, LLC and KRE, LLC on the agenda for the October 20, 2016 City Council agenda. Please contact me if you have any questions or need any additional information.

HOLD HEARING ON AND APPROVE
DEVELOPMENT AGREEMENT AND
TAX INCREMENT PAYMENTS

(Harrison Lofts, LLC)

421464-50

Muscatine, Iowa

October 20, 2016

A meeting of the City Council of the City of Muscatine, Iowa, was held at 7:00 o'clock p.m., on October 20, 2016, at the City Hall Council Chambers, 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 Harrison Lofts, LLC had been published according to law and as directed by the City 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 City 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 City 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 _____

Resolution Approving Development Agreement with Harrison Lofts, LLC,
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 Harrison Lofts, LLC (the “Developer”) has been prepared (the “Agreement”), pursuant to which the Developer would construct and develop a new apartment complex in the Urban Renewal Area (the “Harrison Lofts Project”) with approximately fifty-two units and to price at least 25% of the units at levels that will be affordable to families of low and moderate income as defined in Iowa Code Section 403.17(14) and the City would provide annual appropriation tax increment payments to the Developer in a total amount not exceeding \$675,000; 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 October 20, 2016, 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 Harrison Lofts Project will add diversity and generate new opportunities for the Muscatine and Iowa economies;

(b) The Harrison Lofts Project will generate public gains and benefits, particularly in the creation of new low and moderate income housing, which is warranted in comparison to the amount of the proposed property tax 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 "Harrison Lofts 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, Muscatine County, State of Iowa bearing Muscatine County Property Tax Parcel Identification Numbers 0825276036 as of October 1, 2016.

Section 5. The City hereby pledges to the payment of the Agreement the Harrison Lofts 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 Harrison Lofts 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 Harrison Lofts 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.

Passed and approved this 20th day of October, 2016.

Mayor

Attest:

City Clerk

• • • • •

On motion and vote the meeting adjourned.

Mayor

Attest:

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 _____, 2016, 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 October 20, 2016, entitled: "Resolution Approving Development Agreement with Harrison Lofts, LLC, 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 _____, 2016.

County Auditor

DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Muscatine, Iowa (the “City”) and Harrison Lofts, LLC, an Iowa limited liability company, (the “Developer”) as of the ___ day of _____, 2016 (the “Commencement Date”).

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

WHEREAS, the Developer owns certain real property which is situated in the City and lies within the Urban Renewal Area and is more specifically described on Exhibit A hereto (the “Property”); and

WHEREAS, the Developer has proposed to undertake the construction of an apartment complex (the “Project”) with approximately fifty-two units (the “Units”) on the Property and to price at least 25% of the units at levels that will be affordable to families of low and moderate income as defined in Iowa Code Section 403.17(14); and

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

WHEREAS, the City desires to support the undertaking of new commercial construction activity and the provision of affordable housing options for people of low and moderate income; and

WHEREAS, the base valuation of the Property for purposes of Section 403.19 of the Code of Iowa is \$114,740 (the “Base Valuation”); 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. Developer’s Covenants

1. Project Construction. The Developer agrees to construct the Project on the Property and to maintain the completed Project throughout the Term, as hereinafter defined. Furthermore, the Developer agrees to invest not less than \$7,000,000 into capital improvements for the Project, including construction work, equipment, furnishings and other capital improvements (the “Improvements”). The Developer has submitted a detailed site plan (the “Site Plan”) for the development of the Project to the City which was approved on August 25, 2016 and is set forth as Exhibit B hereto. The Developer agrees to construct the Project in accordance with the Site Plan and to substantially complete such construction (the “Completion”) by no later than December 31, 2018.

2. **Project Costs Certification.** Upon completion of the Project, the Developer agrees to provide documentation, in such form as may be requested by the City, of the costs incurred in the completion thereof, including all hard and soft costs (the “Project Costs”). Such costs may include all land acquisition costs; cost of designing and constructing the Project; landscaping, site preparation and grading all land for the Project; interest expense and other costs of financing; and other reasonably related costs of carrying out the Project including legal fees as provided for in this Agreement.

Each documentation of the Project Costs made under this Section will be accompanied by invoices, and such other documentation as is reasonably requested by the City, confirming that the costs detailed in such documentation were in fact incurred in the installation of the Project. Upon acceptance of such demonstrated costs, the City shall record a summary of the date, amount and nature of the costs on the Summary of Accepted Project Costs attached hereto as Exhibit D, and such summary shall be the official record of the Project Costs for purposes of tallying the maximum amount of Payments (as hereinafter defined) allowed to the Developer under this Agreement.

3. **Property Taxes.** The Developer agrees to make timely payment of all property taxes as they come due with respect to the Property with the completed Project thereon throughout the Term, as hereinafter defined, and to submit a receipt or cancelled check in evidence of each such payment.

4. **Developer’s Certifications.** The Developer agrees to submit documentation to the satisfaction of the City by no later than each October 15 during the Term, as hereinafter defined, commencing October 15, 2019, demonstrating that the completed Project is being maintained and operated as a rental apartment complex and that at least 25% of the units contained therein are affordable to families of low and moderate income as defined in Iowa Code Section 403.17(14).

5. **Property Tax Payment Certification.** Furthermore, the Developer agrees to certify to the City by no later than October 15 of each year, commencing October 15, 2018 (the Initial Developer’s Certification Date”), an amount (the “Developer’s Estimate”) equal to the estimated Incremental Property Tax Revenues anticipated to be paid in the fiscal year immediately following such certification with respect to the taxable valuation of the Property factored by the Annual Percentage (as hereinafter defined) scheduled to be in effect in such fiscal year. In submitting each such Developer’s estimate, the Developer will complete and submit the worksheet attached hereto as Exhibit C. The City reserves the right to review and request revisions to each such Developer’s Estimate to ensure the accuracy of the figures submitted. For purposes of this Agreement, Incremental Property Tax Revenues are defined as and calculated by: (1) determining the consolidated property tax levy (city, county, school, etc.) then in effect with respect to taxation of the Property; (2) subtracting (a) the debt service levies of all taxing jurisdictions, (b) the school district instructional support and physical plant and equipment levies, and (c) any other levies which may be exempted from such calculation by action of the Iowa General Assembly; (3) multiplying the resulting modified consolidated levy rate times any incremental growth in the taxable valuation of the Property, as shown on the property tax rolls of Muscatine County, above and beyond the Base Valuation; and (4) deducting any property tax credits which shall be available with respect to taxable incremental valuation of the Property.

At the Developer's option, the Initial Developer's Certification Date may be delayed (the "One Year Delay") by one year to December 1, 2019. The One Year Delay will only be implemented if the Developer notifies the City in writing of its desire to execute this option by no later than October 15, 2018.

Upon request, the City staff shall provide reasonable assistance to the Developer in completing the worksheet required under this Section A.5.

6. Low and Moderate Income Housing Assistance. The Developer hereby represents that at least 25% of the Units will be offered for occupancy at price levels affordable to families of low and moderate income as defined in Iowa Code Section 403.17(14). The Developer agrees that if at any time during the Term, as hereinafter defined, of this Agreement a future judicial or legislative determination is made, resulting in the City being required to satisfy the "low and moderate income assistance" requirement, as set forth in Section 403.22 of the Code of Iowa, with respect to the Project, then the Developer shall be liable to the City for an amount equal to the then-required low and moderate income assistance amount with respect to the Project (the "LMI Amount"). In satisfaction of this contingent liability, the City shall first withhold an amount equal to LMI Amount from the Incremental Property Tax Revenues available from the Property prior to making any Payments, as hereinafter defined, remaining to be made hereunder before seeking cash payment from the Developer. Any payment required to be made under this Section will be due and owing within thirty-days of written notification by the City to the Developer of the requirement to make the payment. The City will be required to provide evidence to the Developer of the judicial or legislative determination requiring the payment of the LMI Amount prior to such payment becoming due.

7. Legal and Administrative Costs. The Developer 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 \$4,500. The Developer agrees to remit payment to the City within 30-days of the submission of reasonable documentation by the City to the Developer evidencing such costs.

8. Remedy. The Developer 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, until such time as the Developer or its Investor Member has demonstrated, to the satisfaction of the City, that it has cured such non-compliance.

B. City's Obligations

1. Payments. In recognition of the Developer's obligations set out above, the City agrees to make thirty (30) semiannual economic development tax increment payments (the "Payments" and each, individually a "Payment") to the Developer during the Term, 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 Six Hundred Seventy-Five Thousand Dollars (\$675,000) (the "Maximum Payment Total"), 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 taxable valuation of the Property.

Each Payment shall not exceed an amount which represents a percentage (the “Annual Percentage”) of the Incremental Property Tax Revenues available to the City with respect to the Property during the Twelve (12) months immediately preceding each Payment date. The Annual Percentages to be in effect from time to time shall be as follows:

For City Fiscal Year 2019-2020 to and including Fiscal Year 2024-2025: 75%

For City Fiscal Year 2025-2026 to and including Fiscal Year 2033-2034: 70%

This Agreement assumes that the new valuation from the Project will go on the property tax rolls as of January 1, 2018. Accordingly, Payments will be made on December 1 and June 1 of each fiscal year, beginning December 1, 2019, and continuing through and including June 1, 2034, or until such earlier date upon which total Payments equal to the Maximum Payment Total have been made. To the extent that the Developer opts to give effect to the One Year Delay, then all references to dates in this Section will be delayed by one year.

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 of this Agreement, commencing in calendar year 2018, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Payment 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 Developer’s Estimate.

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 Developer 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 Developer shall make the next succeeding submission of the Developer’s Estimate as called for in Section A.5 above, provided however that no Payment shall be made after June 1, 2034. To the extent that the Developer opts to give effect to the One Year Delay, then all references to dates in this Section will be delayed by one year.

3. Payment Amounts. The Payments to be made in any given fiscal year shall be in an amount equal to the corresponding Appropriated Amount determined in the prior fiscal year (for example, for the Payments due on December 1, 2020 and June 1, 2021, the aggregate amount of such Payments would be determined by the Appropriated Amount approved for certification by December 1, 2019), provided, however, that the amount of such Payments shall not exceed the amount of Incremental Property Tax Revenues (excluding allocations of “back-fill” or “make-up” payments from the State of Iowa for property tax credits or roll-back) actually received by the City

during the fiscal year in which the Payments are to be made from the Muscatine County Treasurer attributable to the taxable valuation of the Property.

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.1 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.

C. **Administrative Provisions**

1. **Amendment and Assignment.** This Agreement may not be amended or assigned by either party without the written consent of the other party. However, the City hereby gives its permission that the Developer's rights to receive the Payments hereunder may be assigned by the Developer to a private lender, as security on a credit facility taken with respect to 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 June 1, 2034 or on such earlier date upon which the aggregate sum of Payments made to the Developer equals the Maximum Payment Total. To the extent that the Developer opts to give effect to the One Year Delay, then all references to dates in this Section will be delayed by one year.

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.

5. **Notice and Demands.** A notice, demand, or other communication under this Agreement by any party to the other shall be sufficiently given if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

a. In the case of the Developer, is addressed or personally delivered to Harrison Lofts, LLC at 9349 Waterstone Blvd., Cincinnati, OH 45249, Attn: David R. Liette;

b. In the case of the City, is addressed or delivered personally to the City at 215 Sycamore Street, Muscatine, IA 52761, Attn: City Administrator; and

c. In each case with copies sent as follows:

U.S. Bancorp Community Development Corporation
1307 Washington Avenue, Suite 300
Mail Code SL MO RMCD
St. Louis, MO 63103
Attn: Director of LIHTC Asset Management;

Kutak Rock LLP
1650 Farnam Street
Omaha, NE 68102
Attn: Jill H. Goldstein, Esq.; and

Dorsey & Whitney LLP
801 Grand Avenue, Suite 4100, Des Moines, IA 50309
Attn: John Danos

The City and the Developer 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

HARRISON LOFTS, LLC

MV Harrison Lofts LLC,
an Ohio limited liability company,
its Administrative Managing Member

By: MV Affordable Housing LLC
Its: Sole Member

By: _____

Name: _____

Its: Authorized Signer

EXHIBIT A
DESCRIPTION OF THE PROPERTY

Certain real property situated in the City of Muscatine, Muscatine County, State of Iowa bearing Muscatine County Property Tax Parcel Identification Numbers 0825276036 as of October 1, 2016.

EXHIBIT C
DEVELOPER'S ESTIMATE WORKSHEET

- (1) Date of Preparation: October _____, 20____.
- (2) Assessed Valuation of Property as of January 1, 20____:
\$ _____.
- (3) Base Taxable Valuation of Property:
\$ _____.
- (4) Incremental Taxable 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) Subtract anticipated property tax credits \$ _____
- (8) Developer's Estimate = \$ _____ x Annual Percentage* ____% = \$ _____

***Effective Annual Percentages**

For City Fiscal Year 2019-2020 to and including Fiscal Year 2024-2025: 75%

For City Fiscal Year 2025-2026 to and including Fiscal Year 2033-2034: 70%

To the extent that the Developer opts to give effect to the One Year Delay (as defined in the Agreement), then all references to dates in this footnote will be delayed by one year.

