

FOR YOUR RECORDS

HOLD HEARING ON AND APPROVE
DEVELOPMENT AGREEMENT AND
TAX INCREMENT PAYMENTS

(Muscatine Mall Project)

421464-23

Muscatine, Iowa

January 10, 2008

A meeting of the City Council of the City of Muscatine, Iowa, was held at 7:00 o'clock p.m., on January 10, 2008, 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: Marie Press, Phil Fitzgerald, Bob Howard, Osama Shihadeh,
Bob Bynum, Dyann Roby, Jerry Lange

Absent: None.

The City Council investigated and found that notice of the intention of the Council to conduct a public hearing on a Development Agreement for the Muscatine Mall Project, which Development Agreement provides for certain financial incentives in the form of incremental property tax payments in a total amount not exceeding \$5,325,000, 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 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 Press introduced the resolution next hereinafter set out and moved its adoption, seconded by Council Member Lange; 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: Press, Fitzgerald, Howard, Shihadeh, Bynum, Roby, Lange

Nays: None.

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

RESOLUTION 90350-0108

Approving Development Agreement for Muscatine Mall Project, Authorizing Tax Increment Payments and Pledging Certain Tax Increment Revenues to the Payment of the Agreement

WHEREAS, the City Council (the "Council") 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 Muscatine Mall 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, a certain Development Agreement between the City and Financial District Properties MM, L.L.C., KRE, LLC, Cedar Holdings, LLC, and Mogul Holdings, L.L.C (collectively the "Company") has been prepared (the "Agreement"), pursuant to which the Company has agreed to undertake the redevelopment, renovation and improvement of the Muscatine Mall and adjacent commercial out-lots (the "Muscatine Mall Project") and the City has agreed to provide tax increment payments in a total amount not exceeding \$5,325,000; 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 January 10, 2008, 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 Council hereby finds that:

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

(b) The Muscatine Mall Project will generate public gains and benefits, particularly in the 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 Company

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. 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 "Muscatine Mall Project 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 in the City of Muscatine, County of Muscatine, State of Iowa, more particularly described as follows:

It is generally described as a point beginning at the easterly right-of-way line of Park Avenue and the northerly right-of-way line of Harrison Street; thence northeasterly along the north right-of-way line of Harrison Street extended to a point on the easterly property line of the Muscatine Mall; thence northerly along the east line of Muscatine Mall; thence westerly to a point at the intersection of the easterly property line of the Bemis parcel; thence northerly to the north right-of-way line of Ford Avenue; thence westerly along the north right-of-way line of Ford Avenue as extended to Park Avenue; thence southerly along the east property line of Park Avenue to the point of beginning.

Section 5. The City hereby pledges to the payment of the Agreement the Muscatine Mall Project Subfund and the taxes referred to in Subsection 2 of Section 403.19 of the Code of Iowa to be paid into such Subfund.

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 Muscatine Mall Project 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 10th day of January, 2008.



City Clerk

Richard W. Brien
Mayor

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On motion and vote the meeting adjourned.



City Clerk

Richard W. O'Brien
Mayor

STATE OF IOWA
COUNTY OF MUSCATINE SS:
CITY OF MUSCATINE

I, the undersigned, Clerk of the aforementioned City, 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 and the seal of the City hereto affixed this 10th day of
January, 2008.





City Clerk

STATE OF IOWA

SS:

COUNTY OF MUSCATINE

I, the undersigned, County Auditor of the aforementioned County, in the State of Iowa, do hereby certify that on the 26th day of February, 2008, the City Clerk of the City of Muscatine filed in my office a certified copy of a resolution of such City shown to have been adopted by the Council and approved by the Mayor thereof on January 10, 2008, entitled: "Resolution Approving Development Agreement for Muscatine Mall Project, Authorizing 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 and the seal of the County hereto affixed this 26th day of February, 2008.

Heidi A. Soule
County Auditor



DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Muscatine, Iowa (the "City") and Financial District Properties MM, L.L.C., KRE, LLC, Cedar Holdings, LLC, and Mogul Holdings, L.L.C. (collectively the "Company") as of the 10th day of January, 2008.

WHEREAS, the City has established the Muscatine Mall 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 which is situated within the Urban Renewal Area and more specifically described on Exhibit A hereto (the "Property"), and the Company has proposed to undertake the redevelopment, renovation and improvement of the Muscatine Mall and adjacent out-lots on the Property (the "Project"); and

WHEREAS, the Company has requested tax increment financing assistance in paying the costs of 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. The Company agrees to construct the Project on the Property as hereinafter set forth:

a) Calendar Year 2007—The Company anticipates investing \$2,100,000 to pay the costs of replacing approximately one-third of the mall roof structure; re-facing approximately one-half of the mall façade; demolishing existing build out of north end retail shops to make space ready in "vanilla shell" condition for new frontage retailers; preparing out-lot surfaces for pad retail developments anticipated in 2007 and 2008; constructing general repairs to parking surfaces; and installing new entrance pad at main mall entrance.

b) Calendar Year 2008—The Company anticipates investing \$3,000,000 to pay the costs of facilitating open and build-to-suit development on remaining out-lot parcels of the mall; remodeling the mall theater; subdividing the current Menards space, including the adjacent lumber yard space, into three retailers including demising spaces and re-facing of building façade; finalizing construction of mall roof repairs; and installing new Pylon signage for the mall anchors with digital reader board.

c) Calendar Year 2009 - The Company anticipates investing \$1,750,000 to pay the costs of finalizing the resurfacing of the mall parking facilities; installing new parking lot lighting; and effecting improvements and additions to the mall interior for anticipated new mall tenants.

d) Calendar Year 2010 - The Company anticipates investing \$2,000,000 to pay the costs of completing new mall entrances and mall approaches, including major arterials leading into the facility; and developing of remaining mall out-lots.

e) Calendar Year 2011 - The Company anticipates investing \$1,500,000 to pay the costs of completing the improvement interior mall corridors and common spaces; and constructing as needed interior and exterior improvements for anticipated mall tenants and shops.

The City and the Company hereby acknowledge that the details set forth in this Section A.1 of this Agreement with respect to the Project are subject to change from time-to-time as conditions and circumstances develop on the Property. The City and the Company agree to meet (the "Annual Meetings") by no later than March 1 of each year, commencing March 1, 2008 to discuss the details of the Project and to update this Section of the Agreement. The City and the Company agree to use their best efforts to take such authorizing action as will be necessary to amend this Agreement from time to time to respond to the results of each year's Annual Meeting. Nothing in this Section shall be interpreted as requiring the City to increase the maximum amount of the Payments (as hereinafter defined) to be made pursuant to Section B of this Agreement.

2. The Company agrees to submit documentation to the City by no later than the start of each year's Annual Meeting, commencing March 1, 2008, demonstrating the actual project investment costs paid by the Company in the immediately preceding calendar year and the actual work constructed in such calendar year on the Property. The documentation submitted shall be in sufficient form and substance to show the amount, nature and timing of such costs and may include, billing statements, receipts, cancelled checks, spread sheets and other summary documents for organizational purposes. The City reserves the right to request such additional documentation as may from time to time be necessary to clarify the actual costs paid and the work completed. The City shall maintain a running cumulative total (the "Total Investment Costs") of the documented costs under this Section and shall adjust such total from time to time as additional costs are submitted.

3. The Company agrees to use its best efforts to promote commercial development on the Property and to create such facilities and conditions thereon as will attract and retain first class tenants and businesses. The Company agrees to submit an annual report to the City at each Annual Meeting detailing the then-current tenants on the Property, the square footage, the length of the lease and the rents being charged to each such tenant. In addition the report shall include a list of all prospective tenants that the Company is then in negotiations with for location on the Property.

4. The Company agrees to submit documentation to the satisfaction of the City by no later than each October 15 during the term of this Agreement demonstrating the estimated amount of Incremental Property Tax Revenues anticipated to be available with respect to the Property in the fiscal year immediately following such certification (the "Company's Estimate"). Incremental Property Tax Revenues shall mean the amount produced from time to time 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 physical plant and equipment levy and subtracting any other levies which may be exempted from such calculation by action of the Iowa General Assembly.

5. The Company agrees to pay 50% of the reasonable legal and administrative costs (the 'City's Costs') incurred by the City in connection with the establishment of the Urban Renewal Area and the negotiation, drafting and authorization of this Agreement up to the maximum amount of \$6,500. Such payment shall be due by the Company in a form satisfactory to the City within 30-days following presentation to the Company of bills, statements and/or invoices demonstrating the amount and nature of the City's Costs.

B. City's Obligations

In recognition of the Company's obligations set out above, the City agrees to make 40 semiannual economic development tax increment payments (the "Payments") to the Company as hereinafter set forth, pursuant to Chapters 15A and 403 of the Code of Iowa. The Payments will be made on June 1 and December 1 of each fiscal year, beginning on the first December 1 for which Incremental Property Tax Revenues become available with respect to the Property, and continuing for a total of twenty fiscal years. It is intended that the total amount of Payments shall be in an amount equaling the Incremental Property Tax Revenues available from the Property during the twenty fiscal year Payment period., provided however that the aggregate, total amount of the Payments shall not exceed the lesser of (i) \$5,325,000 or (ii) an amount equal to 50% of the Total Investment Costs as may from time to time be in effect pursuant to Section A.2 of this Agreement.

This Agreement assumes that the new taxable incremental valuation resulting from the Project will go on the property tax rolls as of January 1, 2008. Accordingly, Payments would be made on December 1 and June 1 of each fiscal year, beginning December 1, 2009, and continuing through and including June 1, 2029, or until such earlier date upon which total Payments equal to the lesser of (i) \$5,325,000 or (ii) an amount equal to 50% of the Total Investment Costs as may from time to time be in effect pursuant to Section A.2 of this Agreement have been made.

Each Payment shall be in an amount which represents the Incremental Property Tax Revenues received by the City with respect to the Property during the 6 months immediately preceding each Payment date.

The Payments shall not constitute general obligations of the City, but shall be made solely and only from incremental property taxes received by the City from the Muscatine County Treasurer which are attributable to the Property.

The City agrees to certify to the Muscatine County Auditor by December 1, 2008 an amount of debt payable from Incremental Property Tax Revenues under this Agreement equal to \$5,325,000 and to instruct the Auditor to cause the Incremental Property Tax Revenues to be derived from the Property in each respective fiscal year to accrue to the City's tax increment revenue fund for the funding of the Payments, provided, however that the City shall annually adjust this number through further certification to the Muscatine County Auditor in order to match an amount equal to 50% of the most recently determined Total Investment Cost.

C. Administrative Provisions

1. 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 consent that the Company's rights to receive the economic development tax increment payments hereunder may be assigned by the Company to one or more lenders of the company's choosing, as security, without further action on the part of the City.

2. Succession.

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

3. 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.

4. Indemnification. It is hereby agreed that the Company shall indemnify, defend and hold harmless the City, its officers, employees and departments, from and against any and all losses, liabilities, penalties, fines, damages, and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) arising from or in connection with any of the following:

(a) Any claim, demand, action, citation or legal proceeding arising out of or resulting from the development of the Property; and

(b) Any claim, demand, action, citation or legal proceeding arising out of or related to occurrences that the Developer will insure against in connection with the development of the Property; and

(c) Any claim, demand, action, citation or legal proceeding arising out of or resulting from an act or omission of the Developer or any of its agents in its or their capacity as an employer of a person in connection with the development of the Property.

5. Preamble. All terms and definitions set forth in the Preamble of this Agreement shall apply and be binding as if set forth thereafter.

6. Notice. Any notices, demand or other communication permitted or required to be given under this Agreement shall be deemed given if either personally delivered or delivered by U.S. Certified Mail, postage prepaid, return receipt requested, or by recognized overnight courier such as Federal Express, U.P.S., or Airborne, and addressed as follows:

To City: City Administrator/City Hall

215 Sycamore
Muscatine, Iowa 52761-3840

To Company: Muscatine Mall
Management, L.L.C.
Attn: Kevin Koellner
1805 State Street, Suite 105
Bettendorf, Iowa 52722

With Copy to: Michael A. Koury, Esq.
Bush, Motto, Creen, Koury & Halligan, P.L.C.
5505 Victoria Avenue, Suite 100
Davenport, Iowa 52807

Changes in the above address may be made by notifying the other party as described above. Notices shall not be deemed effective until received by the party being notified.

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



City Clerk

By: Richard W. O'Brien
Mayor

FINANCIAL DISTRICT PROPERTIES MM, L.L.C.

R A Blackwell

By: _____
Rodney A. Blackwell
Its Manager

MOGUL HOLDINGS, L.L.C.

Thad DenHartog

By: _____
Thad DenHartog
Its Manager

KRE, LLC

Kevin Koellner

By: _____
Kevin Koellner
Its Manager

CEDAR HOLDINGS, LLC

Scott Andersen

By: _____
Scott Andersen
Its Manager/President

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

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

It is generally described as a point beginning at the easterly right-of-way line of Park Avenue and the northerly right-of-way line of Harrison Street; thence northeasterly along the north right-of-way line of Harrison Street extended to a point on the easterly property line of the Muscatine Mall; thence northerly along the east line of the Muscatine Mall; thence westerly to a point at the intersection of the easterly property line of the Bemis parcel; thence northerly to the north right-of-way line of Ford Avenue; thence westerly along the north right-of-way line of Ford Avenue as extended to Park Avenue; thence southerly along the east property line of Park Avenue to the point of beginning.