

**HOLD HEARING ON AND APPROVE
DEVELOPMENT AGREEMENT AND
TAX INCREMENT PAYMENTS**

(Villas at MCC, LLC)

421464-32

Muscatine, Iowa

January 20, 2011

A meeting of the City Council of the City of Muscatine, Iowa, was held at 7:00 o'clock p.m., on January 20, 2011, 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: LeRette, Fitzgerald, Natvig, Shihadeh, Bynum, Roby, and 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 between the City and Villas at MCC, LLC with respect to the development of new commercial student housing facilities at the Muscatine Community College in the Highway 38 Northeast Urban Renewal Area, which provides for certain financial incentives in the form of incremental property tax payments in a total amount not exceeding \$425,000, 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 LeRette introduced the resolution next hereinafter set out and moved its adoption, seconded by Council Member Natvig; 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: LeRette, Fitzgerald, Natvig, Shihadeh, Bynum, Roby, and Lange

Nays: None

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

RESOLUTION NO. 91512-0111

Approving Development Agreement with Villas at MCC, LLC, Authorizing 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 Highway 38 Northeast 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 Villas at MCC, LLC has been prepared (the "Agreement"), pursuant to which Villas at MCC, LLC has agreed to develop new commercial student housing facilities at the Muscatine Community College in the Urban Renewal Area (the "Villas at MCC, LLC Project") and the City has agreed to provide tax increment payments in a total amount not exceeding \$425,000; 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 20, 2011, 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 Villas at MCC, LLC Project will add diversity and generate new opportunities for the Muscatine and Iowa economies;

(b) The Villas at MCC, LLC 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 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 property tax payments to Villas at MCC, LLC.

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 "Villas at MCC, LLC 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:

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Section 5. The City hereby pledges to the payment of the Agreement the Villas at MCC, LLC 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 Villas at MCC, LLC 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 January, 2011.



Attest:

City Clerk

Mayor

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On motion and vote the meeting adjourned.



Attest:

City Clerk

Leisa Monday

Richard W. O'Brien
Mayor

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 20th day of January, 2011.



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 25th day of January, 2011, 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 January 20, 2011, entitled: "Resolution Approving Development Agreement with Villas at MCC, LLC, 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 this 25th day of January, 2011.



Leslie A. Soule
County Auditor

DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Muscatine, Iowa (the "City") and The Villas at MCC, LLC (the "Company") as of the 1st day of January, 2011.

WHEREAS, the City has established the Highway 38 Northeast Urban Renewal Area (the "Urban Renewal Area"), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Company has proposed to undertake the development of new commercial student housing facilities at the Muscatine Community College in the Urban Renewal Area on certain real property (the "Property"), the legal description of which is set forth on Exhibit A hereto; 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. **Construction and Maintenance of Project.** The Company agrees to construct and maintain the Project on the Property for use as a student housing facility throughout the Term, as hereinafter defined. Furthermore, the Company agrees to ensure that the architectural design and construction of the project will be consistent with and complimentary to the existing student housing facility at Muscatine Community College. In addition, the Company agrees to construct such infrastructure improvements as are necessary address all storm water drainage and run off issues with respect to the Project and the Property to the satisfaction of the City. Finally, the Company agrees to pay for and acquire all necessary construction permits for the Project and to ensure that the Project is designed and constructed in a manner that is compliant and consistent with the City's site plan review requirements with respect thereto.

2. **Property Taxes.** The Company agrees to ensure timely payment of all property taxes as they come due with respect to the completed Project throughout the term of this Agreement and to submit a receipt or cancelled check in evidence of each such payment.

3. **Payment of Legal Fees.** The Company hereby agrees to pay the legal fees incurred by the City in connection with the negotiation, drafting and authorization of this Agreement, including the establishment of the Urban Renewal Area, up to an amount not to exceed \$5,000. The Company will remit payment to the City in-full for such legal fees within 30-days of the submission by the City to the Company of a billing statement evidencing such fees.

B. City's Obligations

In recognition of the Company's obligations set out above, the City agrees to make not more than 20 semiannual economic development tax increment payments (the "Payments") to the Company during the term of this Agreement, pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that the aggregate, total amount of the Payments shall not exceed Four Hundred Twenty-Five Thousand Dollars (\$425,000).

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, and continuing for a total of ten (10) fiscal years. This Agreement assumes that a substantial portion of the new taxable value attributable the Project will go on the property tax rolls as of January 1, 2012. Accordingly, Payments will be made beginning December 1, 2013 and continue to and including June 1, 2023 or until such earlier date upon which total Payments equal to \$425,000 have been made.

Each Payment shall be in an amount which represents Fifty Percent (50%) of the Incremental Property Tax Revenues available to the City with respect to the Property during the six months immediately preceding each Payment date. Incremental Property Tax Revenues are produced by multiplying the consolidated property tax levy (city, county, school, etc.) times the incremental valuation of the Property, with the completed Project thereon, 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.

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, 2012, relative to the Payments to be made under this Agreement an amount equal to \$425,000, with further instructions that the Payments be funded with 50% of the Incremental Property Tax Revenues as may from time to time become available with respect to the Property.

C. Administrative Provisions

1. This Agreement may not be amended or assigned by either party without the express permission of the other party, provided, however, that the City hereby gives its permission that the Company's rights to receive the economic development tax increment payments hereunder may be assigned by the Company to a lender, as security for financing activity with respect to the Project, without further action on the part of the City.

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

3. 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.



[Signature]
City Clerk

CITY OF MUSCATINE, IOWA

By *[Signature]*
Mayor

THE VILLAS AT MCC, LLC

By: *[Signature]*
Tim Baldwin
Managing Member

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:

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