

DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of Muscatine, Iowa (the “City”) and TIF Oak Park, Inc. (the “Developer”) as of the ___ day of _____, 2018 (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 development of a senior living complex consisting of sixteen triplexes and a clubhouse with a total of approximately forty-eight units (the “Housing Project”) on the Property and to price the units at levels that will be affordable to seniors of low and moderate income as defined in Iowa Code Section 403.17(14) (“Low and Moderate Income”); 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 the Housing Project; and

WHEREAS, the base valuation of the Property for purposes of calculating Incremental Property Tax Revenues (as hereinafter defined) under Section 403.19 of the Code of Iowa and this Agreement is \$61,440 (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. Housing Project Construction. The Developer agrees to construct the Housing Project on the Property. Furthermore, the Developer expects to invest approximately \$8,100,000 into capital improvements for the Housing Project, including construction work, equipment, furnishings and other capital improvements. The Developer has submitted a detailed final Development Plan (the “Development Plan”) for the development of the Housing Project to the City which was approved in accordance with City Code Section 10-10-11 on _____, 2018. The Development Plan is attached hereto as Exhibit B. The Development Plan may be amended in accordance with the Muscatine City Code by mutual written consent of the parties. The Developer agrees to construct the Housing Project in accordance with the Development Plan and to substantially complete such construction by no later than December 31, 2019.

2. **Property Taxes.** While the Developer retains ownership of the Property, the Developer agrees to make timely payment of all property taxes as they come due with respect to the Property with the completed Housing Project thereon throughout the Term (as hereinafter defined) and to submit a receipt or cancelled check in evidence of each such payment. The Developer hereby acknowledges that the funding of Payments (as hereinafter defined in Section B.1) is contingent upon the full and timely payments of such property taxes as may from time to time become due and owing with respect to the Property and any taxable parcels that may be subdivided therefrom.

3. **Property Tax Payment Certification.** The Developer agrees to certify (the "Triggering Certification") to the City of its intent for the Payments (as hereinafter defined) to commence. The Triggering Certification shall be made by no later than October 15, 2021. Furthermore, the Developer agrees to certify to the City by no later than October 15 of each year, commencing October 15 of the year in which the Triggering Certification is made, 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 seventy percent (70%) (the "Annual Percentage"). 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 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 the Property.

Upon request, the City staff shall provide reasonable assistance to the Developer in completing the worksheet required under this Section A.3.

4. **Low and Moderate Income Housing Assistance.** The Developer hereby represents that the units completed in connection with the Housing Project will be offered for occupancy at price levels affordable to families of Low and Moderate Income. The Developer further agrees that if at any time during the Term (as hereinafter defined) of this Agreement a future judicial, administrative 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 Housing Project, then the Developer shall be liable to the City for the provision of an amount equal to the then-required low and moderate income assistance amount (the "LMI Amount"). In satisfaction of this liability, the City shall first withhold an amount equal to the LMI Amount from the Payments (as hereinafter defined) remaining to be made hereunder before seeking cash payment from the Developer.

5. **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 \$7,500. 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.

6. Default Provisions. The following shall be “Events of Default” under this Agreement, and the term “Event of Default” shall mean, whenever it is used in this Agreement (unless otherwise provided), any one or more of the following events:

- a) Failure by the Developer to commence and complete construction of the Housing Project pursuant to the terms and conditions of this Agreement.
- b) Failure by the Developer to fully and timely remit payment of property taxes when due and owing.
- c) Failure by the Developer to comply with Sections A.3 and A.5 of this Agreement.

Whenever any Event of Default described in this Agreement occurs, the City shall provide written notice to the Developer describing the cause of the default and the steps that must be taken by the Developer in order to cure the default. The Developer shall have thirty (30) days after receipt of the notice to cure the default or to provide assurances satisfactory to City that the default will be cured as soon as reasonably possible. If the Developer fails to cure the default or provide assurances, City shall then have the right to:

- a) Pursue any action available to it, at law or in equity, in order to enforce the terms of this Agreement.
- b) Withhold the Payments under Section B.1 of this Agreement, such right being additional to the right of annual appropriation as set forth in Section B.2 below.

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, individually each, 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 to be made under this Agreement during the Term (as hereinafter defined) shall not exceed \$497,445 (the “Maximum Payment Total”). 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 the Annual Percentage of Incremental Property Tax Revenues received by the City from the Muscatine County Treasurer attributable to the taxable valuation of the Property.

The Payments will be made on December 1 and June 1 of each fiscal year following an affirmative appropriation decision as provided for under Section B.2 below, beginning on

December 1 of the fiscal year immediately succeeding the year in which the Triggering Certification is made, and continuing through the expiration of the Term (as hereinafter defined).

For example, assuming the Triggering Certification is made October 15, 2020 and all appropriation determinations are approved affirmatively by the City Council under Section B.2 below, then Payments will be made on December 1 and June 1, beginning in the City's 2021-2022 fiscal year, and continuing for a period of fourteen more fiscal years, provided, however, that no payments shall be made after June 1, 2037 or in excess of the Maximum Payment Total.

2. Annual Appropriation. The Payments 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, commencing in calendar year in which the Triggering Certification is filed, 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 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.3 above, provided however that no Payment shall be made after June 1, 2037.

3. Payment Amounts. The aggregate Payments to be made in a fiscal year shall not exceed an amount equal to the corresponding Appropriated Amount (for example, for the Payments due on December 1, 2021 and on June 1, 2022, the aggregate maximum amount of such Payments would be determined by the Appropriated Amount determined for certification by December 1, 2020). Furthermore, the amount of each such Payment 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 from the Muscatine County Treasurer attributable to the taxable incremental valuation of the Property in the six months immediately preceding the extant Payment due date.

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.

C. Administrative Provisions

1. Amendment and Assignment. Neither party may cause this Agreement to be amended, assigned, assumed, sold or otherwise transferred without the prior 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 Housing 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, 2037 or on such earlier date upon which the aggregate sum of Payments made to the Developer equals the Maximum Payment Total.

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 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

TIF OAK PARK, INC.

By: _____

EXHIBIT A
LEGAL 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 Number 0826226005. (Parcel number as of July 5, 2018)

EXHIBIT B
SITE PLAN

EXHIBIT C

DEVELOPER'S ESTIMATE WORKSHEET

- (1) Date of Preparation: October ____, 20__.
- (2) Assessed Taxable 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 = \$_____ (the "TIF Estimate")
- (7) TIF Estimate (\$_____ x .70 (70%) = Developer's Estimate (\$_____)



June 18, 2018

Via Email

Gregg Mandsager
City Administrator/City Hall
Muscatine, IA

Re: Development Agreement (TIF Oak Park, Inc.)
Our File No. 421646-55

Dear Gregg:

Attached please find copies of proceedings to enable the City Council to act on June 21st to set July 5th as the date for a public hearing on the proposed Development Agreement with TIF Oak Park, Inc., including the proposal for tax increment payments.

The notice of public hearing on the Development Agreement must be published once, not less than four (4) and not more than twenty (20) days prior to the City Council meeting at which the hearing will be held. The last date on which the notice can effectively be published is July 1, 2018. Please print an extra copy of the notice for delivery to the newspaper. Please insert the time and place of the hearing in both the resolution and the notice and email a copy of the published notice to us at lemke.susan@dorsey.com.

We will prepare and forward to you in time for the July 5th meeting the necessary proceedings to approve the Development Agreement.

We would appreciate receiving one fully executed copy of these proceedings as soon as they are available.

Please contact John Danos or me if you have questions.

Kind regards,

Amy Bjork

Attachments

cc: Nancy Lueck