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FINANCE & RECORDS

MEMO

To: Gregg Mandsager, City Administrator

From: Nancy A. Lueck, Finance Director

Date: April 2, 2019

Re: Resolution Approving Amended Development Agreement with TIF Oak Park, Inc. and JNB Oak Park, LP

Introduction and Background:

On July 5, 2018 City Council approved a development agreement with TIF Oak Park, Inc. for their construction of a senior living complex consisting of 16 triplexes and a clubhouse, 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). The original agreement provided that the development would be substantially completed by no later than December 31, 2019. On March 7, 2019, the City approved an amendment to that agreement which extended the date for substantial project completion to no later than December 31, 2020. The extension was due to issues which delayed the closing date for the property acquisition.

Additional Requested Amendment to the Development Agreement:

The City has now received a request for further amendments to the development agreement. The original development agreement was between the City and TIF Oak Park, Inc. The developer and owner for the project have requested that the parties to the agreement be changed to JNB Oak Park, LP as the owner and TIF Oak Park as the developer. The City's bond attorney has worked with the attorney for the owner and developer to incorporate the requested changes into an amended development agreement. There were other minor language changes but the financial provisions in the development agreement have not changed (this remains a 15-year, 70% rebate agreement).

Summary:

Please include the attached resolution approving the amended development agreement with TIF Oak Park, Inc. and JNB Oak Park, LP on the agenda for the April 4, 2019 City Council meeting.

Please contact me if you have any questions or need additional information.

**"I remember Muscatine for its sunsets. I have never seen any
on either side of the ocean that equaled them" — Mark Twain**

APPROVE AMENDED DEVELOPMENT AGREEMENT

(TIF Oak Park, Inc./JNB Oak Park LP)

421464-55

Muscatine, Iowa

April 4, 2019

A meeting of the City Council of the City of Muscatine, Iowa, was held at _____ o'clock p.m., on April 4, 2019, at the _____, City Hall, 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: _____.

Council Member _____ introduced the resolution next hereinafter set out and moved its adoption, seconded by Council Member _____; 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: _____

Nays: _____.

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

RESOLUTION _____

Resolution Approving Amended Development Agreement with TIF Oak Park, Inc. and JNB Oak Park, LP

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, 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 has previously authorized and executed a certain development agreement (the Agreement”) with TIF Oak Park, Inc. (the “Developer”) in connection with the development (the “Project”) of a senior living complex consisting of sixteen triplexes (to be priced affordable to people of low and moderate) income and a clubhouse on certain real property situated in the Urban Renewal Area; and

WHEREAS, the City and the Developer now propose to amend the Agreement in order to add JNB Oak Park LP (the “Owner”) as a party thereto and to modify certain other provisions therein; and

WHEREAS, an amended development agreement (the “Amended Agreement”) has been prepared to set forth the new understanding between the City, the Owner and the Developer; 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; and

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 reaffirms that:

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

(b) The Project will generate public gains and benefits, particularly in the creation of new jobs and the fostering of commercial enterprises, which are warranted in comparison to the amount of the proposed property tax incentives.

Section 2. The City Council further finds and reaffirms that a public purpose will reasonably be accomplished by entering into the Amended Agreement and providing the Payments, as defined therein, to the Developer.

Section 3. The Amended Agreement is hereby approved, and the Mayor and City Clerk are hereby authorized and directed to execute and deliver the Amended Agreement on behalf of the City, in substantially the form and content in which the Amended 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 Amended Agreement.

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

Passed and approved on April 4, 2019.

Mayor

Attest:

City Clerk

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On motion and vote the meeting adjourned.

Mayor

Attest:

City Clerk

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 adopting a resolution to approve an Amended Development Agreement.

WITNESS MY HAND hereto affixed this ____ day of _____, 2019.

City Clerk

April 2, 2019

Via Email

Nancy Lueck
City Finance Director/City Hall
Muscatine, IA

Re: JNB Oak Park LP/TIF Oak Park, Inc.
Amended Development Agreement
Our File No. 419241-56

Dear Nancy:

Attached please find proceedings covering the adoption of a resolution approving the Amended Development Agreement with JNB Oak Park, LP and TIF Oak Park, Inc.

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

Please contact me if you have questions.

Best regards,

John Danos

Attachments

cc: Gregg Mandsager

AMENDED DEVELOPMENT AGREEMENT

This Amended Agreement (the “Amended Agreement”) is entered into between the City of Muscatine, Iowa (the “City”), JNB Oak Park, LP, an Iowa limited partnership (the “Owner”) and TIF Oak Park, Inc. (the “Developer”) as of the ___ day of _____, 2019 (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 Owner 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 is a limited partner of the Owner and a developer of the Housing Project (as hereinafter defined); and

WHEREAS, the Owner 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 and the Owner have requested that the City provide financial assistance in the form of incremental property tax payments to the Developer; and

WHEREAS, the City and the Developer have previously entered into a Development Agreement, dated _____, 2018, regarding the Housing Project; and

WHEREAS, the City and the Developer have authorized and executed this Amended Agreement as of the Commencement Date to add the Owner as a party hereto and to update their mutual understanding with respect to the terms hereinafter set forth; 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 Owner agrees to construct the Housing Project on the Property. Furthermore, the Owner 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 and the Owner have submitted a 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 July 19, 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 Owner agrees to construct the Housing Project in accordance with the Development Plan and to substantially complete such construction by no later than December 31, 2020.

2. Property Taxes. While the Owner retains ownership of the Property, the Owner 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 and the Owner hereby acknowledge 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 and the Owner hereby represent that the units to be 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 and the owner further agree 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 and the Owner shall be jointly and severally 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 and/or the Owner.

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 Owner to commence and complete construction of the Housing Project pursuant to the terms and conditions of this Agreement.
- b) Failure by the Owner to fully and timely remit payment of property taxes when due and owing.
- c) Failure by the Developer and/or the Owner 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 and/or the Owner describing the cause of the default and the steps that must be taken by the Developer and/or the Owner in order to cure the default. The Developer and/or the Owner 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 and/or the Owner 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 Owner’s and 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 and the Owner 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, the Owner 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: _____
James N. Bergman, President

JNB OAK PARK, LP

By: Oak Park, LLC, General Partner

By: Iceberg Development Group, Managing Member

By: _____
James N. Bergman, Sole Member

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.

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EXHIBIT B
DEVELOPMENT 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 (\$_____)