

SET DATE FOR HEARING ON
DEVELOPMENT AGREEMENT AND
TAX INCREMENT PAYMENTS

(JNB Family 1, LP/Ales Foundation)

421464-63

Muscatine, Iowa

February 4, 2021

A meeting of the City Council of the City of Muscatine, Iowa, was held at 7:00 o'clock p.m., on February 4, 2021, pursuant to the rules of the Council.

The City Council met electronically via GoToMeeting, which was accessible at the following:

<<https://global.gotomeeting.com/join/517956477>>

The City Council conducted this meeting electronically due to federal and state government recommendations in response to COVID-19 pandemic conditions. Electronic access information was included in the posted agenda of this public meeting.

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 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 NO. 2021-0037

Resolution Setting a Date of Meeting at Which it is Proposed to Approve a Development Agreement with JNB Family 1, LP and the Ales Foundation, Including Annual Appropriation Tax Increment Payments

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 of 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 proposes to enter into a certain development agreement (the "Development Agreement") with JNB Family 1, LP and the Ales Foundation (the "Developer") in connection with the construction of housing affordable to families of low and moderate income in the Urban Renewal Area; and

WHEREAS, the Development Agreement would provide financial incentives to the Developer in the form of annual appropriation incremental property tax payments in an amount not to exceed \$460,000 under the authority of Section 403.9(1) of the Code of Iowa; and

WHEREAS, it is necessary to set a date for a public hearing on the Development Agreement, pursuant to Section 403.9 of the Code of Iowa;

NOW THEREFORE, It Is Resolved by the City Council of the City of Muscatine, Iowa, as follows:

Section 1. This City Council shall meet on February 18, 2021, at Seven o'clock p.m., electronically, at which time and place proceedings will be instituted and action taken to approve the Development Agreement and to authorize the annual appropriation incremental property tax payments.

Section 2. The City Clerk is hereby directed to give notice of the proposed action, the time when and place where said meeting will be held, by publication at least once not less than four (4) and not more than twenty (20) days before the date of said meeting in a legal newspaper of general circulation in the City. Said notice shall be in substantially the following form:

[NOTICE OF ELECTRONIC HEARING]

**NOTICE OF MEETING FOR APPROVAL OF DEVELOPMENT
AGREEMENT WITH JNB FAMILY 1, LP AND THE ALES FOUNDATION
AND AUTHORIZATION OF ANNUAL APPROPRIATION TAX
INCREMENT PAYMENTS**

The City Council of the City of Muscatine, Iowa, will meet on February 18, 2021, at Seven o'clock p.m., at which time proceedings will be instituted and action taken to approve a Development Agreement (the "Agreement") between the City, JNB Family 1, LP, and the Ales Foundation (the "Developer") in connection with the construction of housing affordable to families of low and moderate income in the Consolidated Muscatine Urban Renewal Area, which Agreement provides for certain financial incentives in the form of incremental property tax payments to the Developer in a total amount not exceeding \$460,000 as authorized by Section 403.9 of the Code of Iowa.

The commitment of the City to make incremental property tax payments to the Developer under the Agreement will not be a general obligation of the City, but such payments will be payable solely and only from incremental property tax revenues generated within the Consolidated Muscatine Urban Renewal Area. Some or all of the payments under the Agreement may be made subject to annual appropriation by the City Council.

Due to federal and state government recommendations in response to COVID-19 pandemic conditions, the meeting will be held electronically via GoToMeeting, which will be accessible at the following:

<https://global.gotomeeting.com/join/292805117>

In addition to electronic access, written comments may be filed or made prior to the meeting and will be recorded in the minutes.

At the meeting, the City Council will receive oral or written objections from any resident or property owner of the City. Thereafter, the City Council may, at the meeting or at an adjournment thereof, take additional action to approve the Agreement or may abandon the proposal.

This notice is given by order of the City Council of Muscatine, Iowa, in accordance with Section 403.9 of the Code of Iowa.

Carol Webb
City Clerk

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Section 4. This resolution shall be in full force and effect immediately upon its adoption and approval, as provided by law.

Passed and approved February 4, 2021.

Mayor

Attest:

City Clerk

• • • •

On motion and vote the meeting adjourned.

Mayor

Attest:

City Clerk

STATE OF IOWA
COUNTY OF MUSCATINE SS:
CITY OF MUSCATINE

I, the undersigned, City 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 the adoption of a resolution to fix a date of meeting at which it is proposed to take action to approve a Development Agreement.

I do further certify that the notice of hearing, to which the printed slip attached to the publisher's original affidavit hereto attached is a true and complete copy, was published on the date and in the newspaper specified in such affidavit, which newspaper has a general circulation in the City.

WITNESS MY HAND this ____ day of _____, 2021.

City Clerk

(Attach here the publisher's original affidavit with clipping of the notice as published.)

(PLEASE NOTE: Do not sign and date this certificate until you have checked a copy of the published notice and have verified that it was published on the date indicated in the publisher's affidavit.)

**DEVELOPMENT AGREEMENT
(Steamboat Apartments)**

This Development Agreement (the "Agreement") is entered into between the City of Muscatine, Iowa (the "City"), JNB Family 1, LP, an Iowa limited partnership (the "Owner") and the Ales Foundation (the "Developer") as of the ____ day of _____, 2021 (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 an apartment complex consisting of forty-two rental units (the "Housing Project") on the Property and to price at least thirty-seven 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) ("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 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 \$_____ (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; Maintenance; Insurance. The Owner agrees to construct the Housing Project on the Property and to substantially complete the Housing Project by no later than December 31, 2022. The Developer expects to invest approximately \$9,500,000 into capital improvements for the Housing Project, including construction work, equipment, furnishings and other capital improvements.

The Owner agrees to submit a Development Plan (the "Development Plan") for the development of the Housing Project to the City. The submitted Development Plan shall include a site plan containing all information required by City Code Section 10-2-7(I)(3) (the "Site

Plan”) and the elements set forth in the architectural elevation (the “Architectural Elevation”) attached hereto as Exhibit C. Upon approval by the Site Plan Review Committee in accordance with City Code Section 10-2-7(2), the approved Site Plan shall be attached hereto as Exhibit B. The Site 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 in all material respects with the Development Plan.

The Owner hereby acknowledges that construction of the Housing Project shall not begin until the City has issued the required building permit (the “Building Permit”) to the Owner for such Housing Project. The Owner further acknowledges that once the City’s Community Development Department determines that the Developer’s application (the “Building Permit Application”) for such Building Permit is complete, the Community Development Department may take up to four (4) weeks to review such Building Permit Application before the City issues the Building Permit.

The Owner agrees to maintain, preserve, and keep the Property, including but not limited to the Housing Project, useful and in good repair and working order, ordinary wear and tear excepted, and from time to time will make all necessary repairs, replacements, renewals, and additions.

Further, the Owner agrees to obtain and continuously maintain adequate insurance covering the Property, including the Housing Project. The Owner agrees to notify the City promptly in the case of damage exceeding \$250,000 in amount to, or destruction of the Housing Project resulting from fire or other casualty.

2. Housing Project Development Schedule. The Owner hereby agrees to submit a schedule (the “Development Schedule”) for the undertaking of the Housing Project to the City by no later than _____, 20___. The Development Schedule shall address the timeline for completion of the major project elements set forth on Exhibit D hereto. Upon approval of the Development Schedule by City staff, it shall be attached as an addendum to Exhibit D. The Owner agrees that it will meet the timing requirements established on the Development Schedule for the completion of the elements of the Housing Project, unless given prior written consent to an anticipated delay by the City.

The Owner further acknowledges that if it fails to meet the timing requirements set forth on the Development Schedule without the City’s prior consent, the City will automatically deduct from the next succeeding Payment(s) (as hereinafter defined in Section B.1) an amount equal to any reasonable costs incurred by the City as a result of such delay without prior notice of any such deduction to the Owner. This remedy shall be in addition to the rights of the City to withhold the Payments (as hereinafter defined in Section B.1) pursuant to Section A.8 below.

3. 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.

4. **Property Tax Payment Certification.** The Developer agrees to provide written notification (the “Triggering Certification”) to the City of its intent for the Payments (as hereinafter defined) to commence in a particular fiscal year. Such Triggering Certification shall be due by no later than October 15 of the calendar year immediately preceding the start of the fiscal year in which the initial Payments are intended to begin. In any event, the Triggering Certification shall be made by no later than October 15, 2023. (It is hereby acknowledged that the City’s fiscal years begin on July 1 and end on the following June 30.)

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 E.

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.4.

5. **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 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.

6. **Storm Water Protection Plan.** The Owner agrees to maintain compliance with the storm water protection plan (the "Storm Water Protection Plan") with respect to the Housing Project, throughout the Term (as hereinafter defined) of this Agreement. The Storm Water Protection Plan is attached hereto as Exhibit F.

Upon receipt of a notice (each, a "SWPP Violation Notice") from the City indicating that a violation of the Storm Water Protection Plan has occurred, the Owner hereby agrees to undertake all actions necessary to remediate such violation within the time period (the "Remediation Period") set forth in such SWPP Violation Notice, which in any event shall not be less than thirty (30) days. The Owner hereby acknowledges that if it does not undertake such remediation actions within the applicable Remediation Period, the City will undertake all necessary remediation actions and submit an invoice (each, an "SWPP Remediation Invoice") for repayment by the Owner of the costs incurred by the City in undertaking such remediation actions. The Owner agrees to remit payment of the amount due and owing as set forth on each SWPP Remediation Invoice on the due date set forth therein, which date shall be not sooner than 30-days following the sending of the respective invoice.

The Developer and the Owner further acknowledge that if an SWPP Remediation Invoice is not paid in-full on or before the due date set forth therein, the City will automatically deduct from the next succeeding Payment(s) (as hereinafter defined) an amount equal to the unpaid amount without prior notice of any such deduction to the Developer or the Owner. This remedy shall be in addition to the rights of the City to withhold the Payments (as hereinafter defined in Section B.1) pursuant to Section A.8 below.

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 \$10,000. 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. **Default Provisions.**

A. Events of Default. 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:

- I. Failure by the Owner to complete construction of the Housing Project pursuant to the terms and conditions of this Agreement.
- II. Failure by the Owner to fully and timely remit payment of property taxes when due and owing.
- III. Failure by the Developer and/or the Owner to comply with Sections A.3, A.4, A.5, A.6 and A.7 of this Agreement.
- IV. Failure by the Developer and/or the Owner to observe or perform any other material covenant on its part, to be observed or performed hereunder.

B. Notice and Remedies. Whenever any Event of Default described in this Agreement occurs, the City shall provide written notice to the Developer and 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 the Owner shall have thirty (30) days after receipt of the notice to cure the default or to provide assurances reasonably satisfactory to City that the default will be cured as soon as reasonably possible. If the Developer and/or the Owner fail to cure the default or provide assurances, City shall then have the right to:

- I. Pursue any action available to it, at law or in equity, in order to enforce the terms of this Agreement.
- II. 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 and the Owner'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 \$460,000 (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 on October 15, 2023 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 2024-2025 fiscal year, and continuing for a period of fourteen additional fiscal years thereafter, provided, however, that no Payments shall be made after the sooner of June 1, 2039 or the date on which aggregate Payments equal to the Maximum Payment Total have been made.

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.4 above, provided however that no Payment shall be made after June 1, 2039.

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, 2024 and on June 1, 2025, the aggregate maximum amount of such Payments would be determined by the Appropriated Amount determined for certification by December 1, 2023). 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, 2039 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

ALES FOUNDATION

By: _____
Chris Ales, President

JNB FAMILY 1, LP

By JNB Family 1 GP, LLC, its general partner

By Iceberg Development Group, LLC, its 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 0822351012.

EXHIBIT B
SITE PLAN

EXHIBIT C
ARCHITECTURAL ELEVATION

EXHIBIT D
DEVELOPMENT SCHEDULE

Elements to be addressed in Development Schedule:

EXHIBIT E
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 (\$_____)

EXHIBIT F
STORM WATER PROTECTION PLAN