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COMMUNITY DEVELOPMENT

**Planning,
Zoning,
Building Safety,
Construction Inspection Services,
Public Health,
Housing Inspections,
Code Enforcement**

Date: November 14, 2016
To: Mayor and City Council
From: Dave Gobin, Community Development Director
Cc: Gregg Mandsager, City Administrator
Re: Resolution to Approve Land Lease to MLC Land Lease Co.

INTRODUCTION: Over the last several years, the City has engaged in discussions to assist the development of a new downtown hotel and provided significant efforts to assist with financing the facility.

BACKGROUND: Staff has been involved with coordinating the hotel project and the upgrades to the Mississippi Drive corridor project. The City is considering a 99-year ground lease of a small portion of Mississippi Drive.

RECOMMENDATION: Staff is requesting Council approve a Resolution to enter into a ground lease of a small portion of Mississippi Drive.

RESOLUTION NO. _____

**RESOLUTION APPROVING PROPOSED LEASE AGREEMENT
WITH MLC LAND COMPANY LLC FOR PORTION OF
MISSISSIPPI DRIVE AS PART OF HOTEL PROJECT**

WHEREAS, the City of Muscatine in cooperation with MLC Land Company LLC, the developers of the new downtown hotel, is proposing a 99-year lease agreement for a small portion of Mississippi Drive as part of the Hotel Project; and

WHEREAS, a public hearing must be conducted for any lease agreement that involves more than a three (3) year lease of real property; and

WHEREAS, said public hearing was held on November 17, 2016; and

WHEREAS, an acceptable lease has been received from the MLC Land Company LLC.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA, that the lease agreement with MLC Land Company LLC is approved upon execution of said lease agreement.

PASSED, APPROVED AND ADOPTED THIS 17TH DAY OF NOVEMBER, 2016.

CITY COUNCIL OF THE CITY OF MUSCATINE, IOWA

Diana L. Broderson, Mayor

ATTEST:

Gregg Mandsager, City Clerk

GROUND LEASE OF CITY RIGHT-OF-WAY

The City of Muscatine, Iowa, an Iowa municipal corporation, (hereinafter referred to as “Lessor” or “City”) hereby agrees to lease to MLC Land Company LLC, an Iowa limited liability company, its successors and assigns, (hereinafter referred to as “Lessee”) the following described premises located in the City of Muscatine, Iowa:

A part of the presently established Mississippi Drive Right-of Way adjacent to Block 11 of the original Town of Muscatine, Muscatine County, Iowa. Beginning at the Southwest corner of Block 11; Thence North 51°46’19” East 217.00 Feet along the Northerly Right-of-Way of Mississippi Drive; Thence South 38°13’41” West 33.00 Feet to the point of Beginning. Containing 7,161 Square Feet. (the “Premises”)

1. **Term.** The term of this Lease shall be for ninety-nine (99) years, commencing on the 1st day of August, 2016, and terminating on the ninety-ninth (99th) anniversary thereafter, unless sooner terminated by the Lessor or Lessee as hereinafter provided.
2. **Rent.** Lessee agrees to pay as rent for the Premises the total sum of Fifty Thousand Two Hundred Thirty Dollars (\$50,230.00). Such amount shall be paid in one lump sum payment on or before six (6) months from the date the Lessee opens the hotel on the Premises.
3. **Premises; Inspections: As Is.** It is the responsibility of the Lessee, at the Lessee’s sole expense, to satisfy itself, prior to the execution of this Lease, as to the title and condition of the Premises. Accordingly, the taking of possession of the Premises by the Lessee shall be conclusive evidence that the Premises was in satisfactory condition when possession was taken by Lessee.
4. **Notices:** All notices required by law and by this Lease to be given by one party to the other shall be in writing, and the same may be served by certified mail, return receipt requested, to Lessor, City of Muscatine at 215 Sycamore Street, Muscatine, Iowa 52761, and to Lessee at the address of the Registered Agent shown by the Iowa Secretary of State, or to such other address as Lessor or Lessee may by writing to the other so designate. Notice to Lessee may also be served by personal delivery.

5. Use by Lessee:

5.1. The Lessee shall use the Premises only for the following purpose: Drop off and drive around lane, hotel entrance features, and temporary parking area for the operation and maintenance of the adjoining hotel. The Lessee shall not use or permit the Premises or any part of the Premises to be used for any unauthorized or unlawful purpose, or for any purpose other than as set forth herein.

5.2 Written permission from the City of Muscatine shall be obtained prior to making any permanent improvement to the Premises that is not part of the approved site plan for the hotel as may be amended or modified in accordance with City procedures from time to time (the "Site Plan").

5.3 Construction, repair and replacement of private utilities in, on or under the Premises is permitted as shown on the Site Plan. City agrees to provide separate easement agreements for private utility lines to the extent required by Lessee's mortgagee or any subsequent owner of the hotel property.

5.4 Lessee may also use the Premises for elements of the hotel building that extend into or over the Premises and are shown on the Site Plan, including without limitation construction and maintenance of balcony and awning structures. The Lessee agrees that such elements shall be constructed at no cost to the City, and shall be constructed in a good and workmanlike manner.

5.5 Lessee shall be responsible for the cost of all labor and materials furnished or provided in connection with the construction of the hotel and any elements upon the Premises and shall not permit the filing of any mechanics liens against the Premises, title to which at all times remains in the City. If any lien is filed against the Premises, Lessee must discharge the lien or provide adequate bond or other surety in a manner and amount reasonably satisfactory to the City within thirty (30) days after the filing of the lien.

6. Title to Improvements: Lessee may, at its own expense and only upon written approval by Lessor, make alterations and improvements to the Premises as necessary for the conduct of its business. Lessee shall be owner of any improvements made by Lessee during the lease term. Lessee specifically agrees that any and all improvements, except, equipment and trade fixtures installed, upon the Premises shall become the property of the Lessor upon termination of this Lease, except as otherwise noted in this Lease.

7. Public Utilities:

7.1 The installation and repair of public utilities on the Premises without compensation to the Lessee is authorized, provided that any such installation or repair shall be designed and undertaken in such manner to limit interference with the use and operation of the hotel.

7.2. The Lessee at all times shall permit any utility or its agents to enter into and upon the Premises for the purpose of installing, maintaining, or repairing any public utility infrastructure that has been installed within the Premises, subject to Section 7.1.

8. Lessor's Right of Entry: The Lessee upon 48 hours notice to Lessee (except in the event of emergency) shall permit Lessor or its agents to enter into and upon the Premises for the purpose of inspecting the same.

9. Lessor Obligations: In consideration for this Lease, and Lessee's construction of the adjacent hotel, Lessor agrees:

9.1 To construct the portion of Mississippi Drive directly adjoining the Premises as shown on Exhibit A attached hereto. Construction of Mississippi Drive in manner inconsistent with Exhibit A shall be permitted by mutual written consent.

9.2 To pay before delinquency any real estate taxes on the Premises.

10. Approvals: Except to the extent contrary to the terms of this Lease, nothing in this Lease shall be construed to exempt the Lessee from full compliance with any requirements imposed by the City Code or other applicable laws, rules, and regulations regarding any permits or approvals necessary for the anticipated use of the premises by Lessee, including but not limited to building permits, zoning or conditional use permits as may be legally required. By executing this Agreement, Lessor does not waive any of its regulatory authority over activities occurring on or improvements to the Premises.

11. Maintenance:

11.1 Lessee, at its sole cost and expense, shall maintain, repair, and replace all improvements made by the Lessee on the Premises.

11.2 Lessee, at its sole cost and expense shall at all times keep all portions of the Lessor's property in good order, condition, and repair and in a clean, sanitary, and safe condition and in accordance with any and all applicable laws.

11.3 Lessee shall not cause damage or injury to the Premises, or permit any waste or nuisance on the Premises.

11.4 Lessee is solely responsible for snow removal, mowing and weed control on the Premises.

11.5 In the event the Premises are not maintained as required by this Lease, the City may provide notice to the Lessee as set forth in Section 4 herein, giving the Lessee ten (10) days to cure the deficiencies. In the event Lessee fails to cure within such timeframe, the City may cause the Premises to be maintained and the cost thereof will be billed to Lessee.

12. **Parking Spaces:** In addition to the Premises set forth above, the Lessor agrees to grant Lessee the right to utilize four (4) parking spaces on Mississippi Drive ("Parking Spaces") for hotel use purposes. The location of such parking spaces is depicted on Exhibit B and incorporated herein. In the event that Lessee acquires additional on-street parking at any point during the Term of this Lease, the right to use the Parking Spaces shall expire and use shall revert back to Lessor. All other terms of this Lease apply to the Lessee's use of the Parking Spaces.

13. **Indemnification:** Lessee, solely with respect to its use of the Premises, agrees to indemnify, protect, defend, and hold harmless Lessor, its successors and assigns, and its agents, servants, employees, elected officials, and officers, from any and all loss, damage, liability, cost or expense (including but not limited to, attorneys fees and court costs) and all other sums which Lessor, its successors and assigns, and its agents, servants, employees, elected officials, and officers may incur, be subjected to, or may reasonably pay or become obligated to pay on account of any, all and every demand, claim, or action arising out of any negligent act or omission of Lessee, its agents, servants or employees.

14. **Assignment of Lease by Lessee:** This Lease and the Premises hereunder are assignable by the Lessee without Lessor's consent to the following: (1) any person or business entity which is a parent, subsidiary or affiliate of Lessee; (2) any person or business entity which controls or is controlled by or under a common control with Lessee; (3) any person or business entity which is merged or consolidated with Lessee; (4) any person or business entity which purchases or acquires ownership in the hotel property; and (5) in connection with any leasehold mortgage or collateral assignment for financing. Any other assignment of this Lease and the Premises hereunder by the Lessee shall not occur without the Lessor's consent, which consent shall not be unreasonably withheld, conditioned or delayed. Lessee shall notify Lessor in writing of the name and address of any assignee or collateral assignee. In the event the Lessee's leasehold mortgagee, its designee or nominee, shall acquire ownership of the leasehold estate, either following foreclosure of such mortgage or by transfer or assignment in lieu of foreclosure, the Lessee's leasehold mortgagee; its designee or nominee, shall have the right, without the consent of Lessor, to further assign this Lease.

15. **Insurance:** Lessee shall maintain the following insurance coverage:

(a) Comprehensive general liability insurance insuring Lessee against any liability arising out of this Lease, or the use, occupancy, or maintenance of the Premises and all areas appurtenant to the Premises. Such insurance shall be in the amount of not less than Two Million Dollars (\$2,000,000.00) per occurrence for property damage, bodily injuries, or deaths of persons occurring in and about the Premises. The insurance policy shall insure the hazards of the Premises and operations conducted in and on the Premises, independent contractors, contractual liability (covering the indemnity included in this Lease), and shall name the City as an additionally insured party.

Any policy issued to the City providing duplicate or similar coverage shall be deemed excess over Lessee's policies. Lessee waives any subrogation rights against the City on all claims and

insurance policies. Lessee shall not use or permit the Premises to be used in any manner that would void Lessee's or the City's insurance or increase the insurance risk.

16. Default; Remedies:

16.1 Default. The occurrence of any one or more of the following events, if not timely cured, shall constitute a default on the part of the Lessee:

- (1) the Lessee fails to pay when due any rental or any other sum of money payable hereunder on the date due;
- (2) the conduct of any business or performance of any acts on the Premises not specifically authorized in the Lease;
- (3) the Lessee abandons, deserts or vacates the Premises;
- (4) the Lessee sells, assigns, subleases, transfers, or mortgages this Lease except as otherwise permitted;
- (5) the Lessee fails to carry the insurance required under this Lease, any insurance required under this Lease is cancelled, terminated, expires, or is reduced or materially changed so as to not comply with this Lease;
- (6) the Lessee fails to discharge, by payment or bond, any lien or encumbrance placed upon the Premises or improvements in violation of this Lease; or
- (7) the Lessee breaches or fails to comply with any other term, provision, covenant or condition of this Agreement.

Any or all of the foregoing, if not timely cured, shall hereinafter be referred to as "Events of Default". Upon the occurrence of any of the above Events of Default, the Lessor shall give written notice of such default to Lessee at the address set forth in this Lease. The effective date of notice shall be the date that the notice is personally served on the Lessee and deposited in certified U.S. Mail return receipt requested. If the default is for failure to pay rent or any other sum of money when due, then the Lessee shall have sixty (60) days after the effective date of notice to cure. If the default is for any other Event of Default then the Lessee shall have thirty (30) days after the effective date of notice to cure, or if such failure by its nature cannot reasonably be corrected within such 30-day period, then the Lessee shall have a reasonable time after the effective date of notice to cure but in no event longer than one hundred twenty (120) days.

16.2 Remedies: If the Lessee fails to cure the default within the time allowed in Section 16.1, Lessor may at the Lessor's option elect one or more of the following remedies:

- (1) without releasing the Lessee from its obligations under this Lease, attempt to cure the default. The City may enter the Premises for such purpose and take such action as it deems desirable or appropriate to cure the default;
- (2) sue for payment of the unpaid rents or other payments as they become due;
- (3) subject to the terms of Section 16 below, terminate the Lease by giving Lessee and any mortgagee (of which Lessor has actual notice) written notice of termination and work a forfeiture thereof, in which event every covenant, term and condition on the part of the Lessor to be performed, fulfilled and kept, shall terminate as to all purposes whatsoever, and in such event, it shall be lawful for

the Lessor to re-enter, repossess and enjoy the Premises and Lessor's interest therein; or

(4) exercise any other right or remedy, legal or equitable, including injunctive relief.

16.3 Expenses: The Lessee shall fully reimburse and compensate the Lessor upon demand for any costs and expenses incurred in connection with any cure, correction or repair undertaken by Lessor, which sums shall be deemed to be additional rent hereunder.

16.4 No Waiver: Lessor's acceptance of payments or other moneys following any event of default hereunder shall not be construed as the Lessor's waiver of such event of default unless the event of default is the delinquency in the payment of the amount accepted. No forbearance by the Lessor of action upon any violation or breach of any of the terms, provision and covenants herein contained shall be deemed or construed to constitute a waiver of the terms, provisions and covenants herein contained. Forbearance by the Lessor to enforce one or more of the remedies herein provided upon an Event of Default shall not be deemed or construed to constitute a waiver of any such remedy.

16.5 Effect on Utility Lines; Easements: Upon termination or expiration of the Lease for any reason, any private utilities constructed on the Premises as permitted under Section 5.3 of this Lease, and any building appurtenances extending onto the Premises as permitted under Section 5.4 of this Lease, shall be permitted to remain as easements on the Premises so long as they remain in good working order, do not endanger public, health, safety or welfare, and do not interfere with necessary improvements to any public infrastructure.

17. Leasehold Mortgagee Rights:

17.1 Mortgagee Notice. In the event Lessor provides notice of default to Lessee pursuant to Section 16, then Lessor shall give like written notice of said default to Lessee's mortgagee or mortgagees appearing as such upon the mortgage records in the office of the Recorder of Muscatine County, Iowa. Thereupon, said mortgagee or mortgagees shall have like opportunity to cure said default within the periods specified above, or if not curable within such time periods, within such longer period of time as shall reasonably be required, provided such mortgagee acts in good faith to correct such default and diligently pursues such correction to completion. Copies of any notices sent to mortgagees hereunder shall be sent to Lessee simultaneously, and notice of such default shall not be deemed to be effective until both Lessee and such mortgagee shall have received such notice.

17.2 Mortgagee Right to Cure. Notwithstanding the above, if Lessor elects to exercise the remedy of termination provided in Section 16 above by giving the written notice required under such section, such notice from Lessor to Lessee and Lessee's mortgagee must state that Lessor is electing to terminate this Lease, and work a forfeiture, and such notice may only be given as permitted above after Lessor's obtaining of a final monetary judgment which remains unsatisfied. Upon receipt of such notice of termination, the

mortgagee of Lessee shall have the right (i) to nullify the notice of termination as fully as though no default had occurred by giving Lessor notice within ten (10) days after receipt of Lessor's notice, notice of its intent to cure the default within ten (10) days thereafter, paying all rent and other payments then in default, or (ii) indefinitely postponing the termination of this Lease, by giving Lessor, within ten (10) days of Lessor's notice of its intent to foreclose its leasehold mortgage, and within ten (10) days thereafter, paying all rent, and other payments in default, and thereafter promptly commencing and proceeding with reasonable diligence to foreclose its leasehold mortgage, meanwhile paying all rent and other payments due under the Lease. Such postponement shall continue until confirmation of the foreclosure sale, whereupon such notice of termination shall be deemed nullified.

17.3 Pick-Up Lease. Lessor agrees, notwithstanding anything herein to the contrary, that in the event of termination of this Lease by reason of a default by Lessee, as provided above, and upon notice from the leasehold mortgagee given within thirty (30) days after the date upon which this Lease terminates, Lessor will enter into a new lease for the Premises with such leasehold mortgagee; or its designee, for the remainder of the term, effective as of the date of termination, at the rent and otherwise upon the same terms and provisions as are herein contained, subject to the same conditions of title that this Lease is subject to on the date of termination and subject to the rights of any parties of possession of any part of the Premises. Notwithstanding the foregoing, it shall be a condition of Lessor's obligation to enter into such a new lease that the leasehold mortgagee, or its designee pay, to Lessor at the time of execution of said new lease all sums due Lessor by reason of Lessee's default in the payment of rent and other sums due hereunder, together with Lessor's costs and expenses incurred in termination of this Lease and in preparing the new lease, including without limitation, attorneys' fees. Upon the execution and delivery of such new lease, the tenant thereunder shall have the same right, title and interest in and to the improvements then on the Premises as Lessee had under this Lease.

18. Lessee Termination of Lease: Lessee may terminate this Lease at any time upon sixty (60) days prior written notice to the Lessor. In the event of termination under this Section, if Lessee is otherwise in compliance with all other terms of this Lease, Lessee will be entitled to receive a refund of the Rent amount equal to the prorated net present value based upon the remaining Term of the Lease.

19. Covenants with the Land: All rights, privileges, benefits and burdens created herein are covenants running with the land, binding upon and inuring to the benefit of Lessor, Lessee and their respective assigns and successors in title.

20. Captions and Governing Law: The captions included herein are for reference only and should not be used in construing any of the terms hereof. This Agreement shall be construed and enforced in accordance with the laws of the State of Iowa.

IN WITNESS WHEREOF, we have hereunto affixed our hands this _____ day of _____, 2016.

One Signature Page Follows

Signature Page – Ground Lease

CITY OF MUSCATINE, IOWA

Diana L. Broderson, Mayor

ATTEST:

Gregg Mandsager, City Clerk

STATE OF IOWA, COUNTY OF MUSCATINE, ss:

On the ____ day of _____, 2016, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared DIANA L. BRODERSON and GREGG MANDSAGER, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Muscatine, Iowa, a municipal corporation; that said instrument was signed and contained in the Resolution adopted by the City Council of Muscatine, Iowa, on the __ day of _____, 2016, and the said DIANA L. BRODERSON and GREGG MANDSAGER acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of said municipal corporation, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa

MLC LAND COMPANY LLC

By: _____
Name: _____
Title: _____

STATE OF _____, _____ COUNTY, ss:

This record was acknowledged before me on this ____ day of _____, 2016, by _____ as Manager of MLC LAND COMPANY LLC.

Notary Public in and for the State of _____

EXHIBIT A MISSISSIPPI DRIVE IMPROVEMENTS

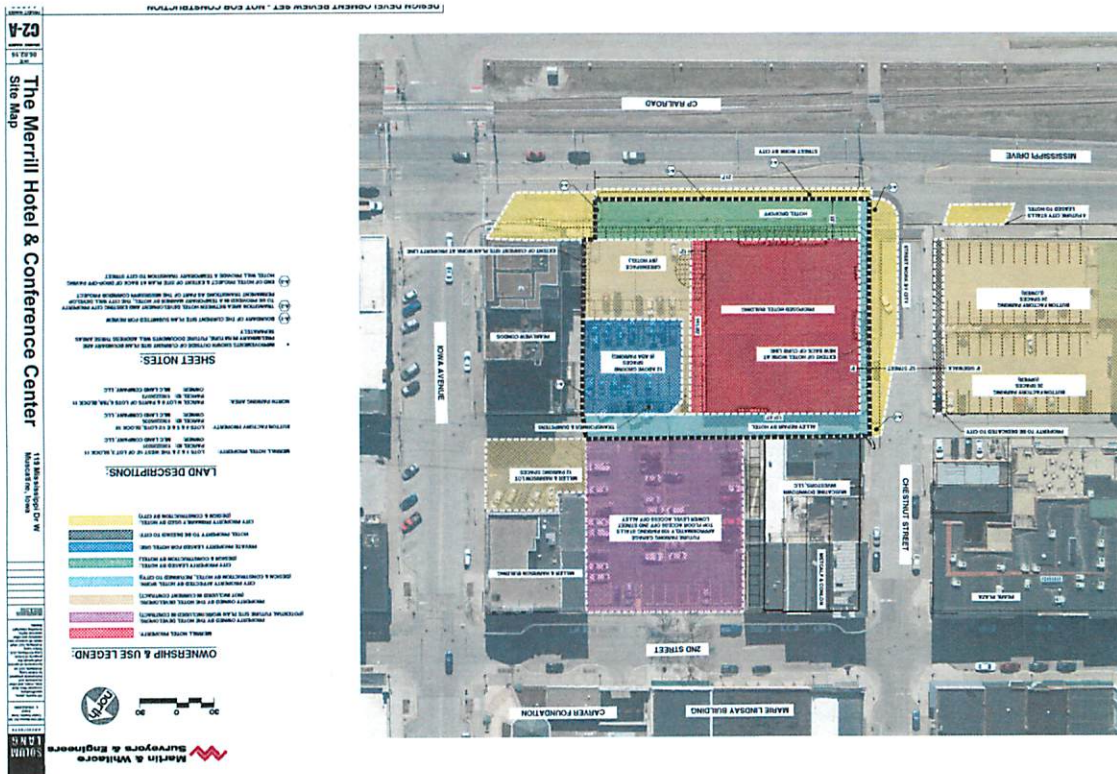


EXHIBIT B RENDERING OF PARKING SPACES

