

Prepared by and return to:	Steven Ballard, Leff Law Firm, P.O. Box 2447, Iowa City, Iowa 52244-2447, (319) 338-7551
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### **PUD DEVELOPMENT AGREEMENT**

This Agreement is entered into by and between **Jeff Maxwell**, hereinafter referred to as "Developer" and the **City of University Heights, Iowa**, hereinafter referred to as "City", pursuant to University Heights Ordinance, No. 79.

#### **RECITALS:**

A. Developer is the owner of the real estate described and referred to as the Maxwell Parcel on the attached Exhibit A.

B. Under a written purchase agreement, St. Andrew Presbyterian Church is the Seller, and Developer is the purchaser, subject to certain seller contingencies, of the real estate described and referred to as the St. Andrew Parcels on the attached Exhibit A.

C. The Maxwell Parcel and St. Andrew Parcels are located within the City's limits and together comprise land zoned Multiple-Family Commercial. When used for multi-family and commercial purposes, Ordinance No. 79 requires the submittal of a Planned Urban Development (PUD) application and compliance with Ordinance 79(13), which section requires the Developer and the City to enter into a Development Agreement establishing development requirements and addressing certain other items enumerated in the ordinance.

D. The Developer has submitted a PUD Application for development of the Maxwell and St. Andrew parcels under a single project known presently as "One University Place" and referred to herein as the "Project".

E. St. Andrew Presbyterian Church (“Church”), as owner of the St. Andrew Parcels, has previously delivered to the City its continuing express written consent for Developer to submit to the City a Multi-Family Commercial PUD Plan Application together with such other materials, applications and requests as may be related to such PUD Plan Application and the project described therein. The Church is not a developer of the Project.

F. Developer and City wish to comply with the requirements of Ordinance 79(13), by entering into this Development Agreement setting out their agreements.

**IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:**

1. **Purpose.** This Development Agreement is prepared for the purpose of complying with the Ordinance 79(13(E)).
2. **Building Plans and Construction Drawings.** Before any building permit is issued for all or any part of the Project, Developer shall submit to the City for approval detailed building plans, construction drawings, and related plans and applications for the Project in accordance with City requirements and procedures. Such plans shall reflect the design features and details of the PUD Plan approved by the City (“approved PUD Plan”) and provide explanation of any variances. To the extent that the submitted plans contain new or modified details not already shown in the approved PUD Plan, the Council may establish reasonable conditions for approval of such newly provided details in accordance with its ordinances and state law. The City shall not issue building permits until such time as the City Council has in the exercise of its reasonable discretion approved by resolution all of the plans, drawings, and applications set forth below in this paragraph. Once approved by the City, the Project shall be constructed in accordance with the approved plans, drawings, and applications, which shall not be amended, changed, or otherwise altered in any material way without further resolution adopted by the City Council. Minor adjustments may be approved administratively by the City Engineer or other authorized party in accordance with the City’s standard policies, practices, and procedures. The required plans and drawings shall include the following:
  - a. Building plans consistent in all material respects with the approved PUD Plan showing final design features applicable to the proposed Project, including but not limited to these:
    - i. Design of exterior lighting so that all site and building-mounted luminaires produce a maximum initial illuminance value no greater than 0.10 horizontal and vertical footcandles at the site boundary and no greater than 0.01 horizontal footcandles 10 feet beyond the site boundary. Document that no more than 2% of the total initial designed fixture lumens (sum total of all fixtures on site) are emitted at an angle of 90 degrees or higher from nadir (straight down).

- ii. Site plan showing the location of all buildings and improvements for the Project, including but not limited to these: the placement of all refuse receptacles (including trash cans, dumpsters, and grease traps) and proposed screening for such receptacles; driveways and parking plans showing appropriate dimensions for vehicle turning movements on site for garbage trucks, delivery vehicles, buses, and fire trucks.
  - iii. Grading plan, including Sensitive Areas Development Plan to the extent required pursuant to Ordinance 128.
  - iv. Landscaping Plan showing species and size of plantings as well as amenities ~~including but not limited to~~ such as walkways, benches, bicycle racks, exterior light fixtures, library book drop, entrance amenities, ~~and~~ trash receptacles and other public amenities.
  - v. Storm Water Management Plan sufficient for the City to issue a Construction Site Runoff Permit pursuant to Ordinance 169.
  - vi. Storm Water Pollution Prevention Plan and application sufficient for the City to issue a Construction Site Runoff Permit pursuant to Ordinance 155.
  - vii. The granting and recording of utility plats and easements as may be reasonably sufficient for all public and private utilities and services supplying the Project as shown on the ~~A~~ approved PUD Plan, with such easements being subject to review by the City's engineering consultants for sufficiency.
  - viii. Developer shall produce to the City a water main easement agreement and corresponding plat and a sanitary sewer easement and corresponding plat approved by the City of Iowa City and in recordable form.
- b. Final Construction drawings consistent in all material respects with the approved PUD Plan showing:
- i. All final dimensions of the buildings and improvements to be included in the Project.
  - ii. All exterior building materials.
  - iii. All exterior colors.
  - iv. Other matters generally required to be shown for building permit approval.
  - v. The Developer need not include construction drawings of interior improvements intended to be built-out or finished by the owners or tenants of commercial or residential units. Such improvements will be subject to separate building permits, to the extent applicable, in accordance with standard City practices.

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- vi. Containing the utility boring specifications for storm sewer, sanitary sewer, and water main as were called out for boring on the Approved PUD Plan.
- c. The Developer will comply with City ordinances and good practices regarding fill materials and will employ a qualified geotechnical consultant to perform appropriate analysis and testing and to provide recommendations. Developer's consultant will make periodic reports on such matters to the City Engineer and/or the City's engineering consultants, as directed by the City. The City retains the right to conduct geotechnical testing, materials testing, and/or inspections and the right to enforce applicable standards, including the right to halt further construction if -the City Engineer -and/or the -City's engineering consultants conclude applicable standards are not met.
- d. The Project will be designed and built using current sustainable principles and with the intent to obtain LEED Certification. At the Construction Document phase of the Project, Developer shall submit to the City the Project's LEED Score Card demonstrating the Developer's intent to obtain LEED Certification for the Project (or the applicable portion thereof) based upon the LEED criteria existing at the time the Project's LEED Score Card is submitted to the City.
- e. The Developer and/or the Project's owners' association shall maintain any exterior public space that is shown on the PUD plan or otherwise incorporated into the Project.
- f. Upon 100% occupancy of the Project, the Metropolitan Planning Organization for Johnson County (MPO-JC) or its successor organization (~~MPO JC~~) shall conduct a traffic study of the intersection of the Project's principal entrance drive and Melrose Avenue. If the study reasonably establishes the need for traffic signage and/or signals in addition to those then in place, then the Developer (or the Aowners' association as Developer's successor) shall at its expense install such recommended signage/signals to City specifications. After such installation and the City's acceptance thereof, ~~the~~ maintenance shall become the responsibility of the City.
- g. Excluding any space in the Project occupied by the City, Developer shall not sell or lease more than 2,000 square feet of the commercial portion of the project and none of the residential portion of the project to an owner or tenant whose use will exempt the applicable unit from real estate taxes.
- h. Developer shall be responsible for payment of all costs associated with the replacement of existing traffic signals and **standard (not epoxy) street striping** at the intersection of Melrose Avenue and Sunset Street, to the extent the City Engineer concludes such replacement and striping is necessary due to the realignment of that intersection and associated construction activities.

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3. **Restrictions on Use.** Developer and the City understand that the property constituting this Project will be submitted to a horizontal property regime pursuant to Iowa Code Chapter 499B; that is, the project will be a multi-use condominium comprising commercial and residential units configured in compliance with the zoning classification. At such time as Developer prepares a condominium declaration, Developer will record such declaration in accordance with applicable laws, and it shall contain restrictions as to use; rules and regulations; owners' association ("Association") matters (including, but not limited to, articles of incorporation and bylaws); and other governing provisions required by law and typical of condominium projects of this type; all to be appurtenant to the land. As a condition for the approval of the first occupancy permit for the Project it shall be established by the Developer that the condominium declaration and accompanying documents shall have been recorded and shall include the following restrictions on the Project, which specific restrictions shall be enforceable by the City (in addition to the Association and/or unit owners) and shall not be permitted to be amended, deleted or otherwise modified without approval of the City by appropriate resolution of the City Council:

a. Commercial uses may use outdoor sales areas within the Project only in compliance with local ordinances. This restriction applies at all times, including, but not limited to any day on which The University of Iowa plays football games in Kinnick Stadium ("Game Day"). All Game Day activities on both the commercial and residential portions of the Project shall be in compliance with City ordinances and any additional rules that may be imposed by the Association.

b. Unless with the prior approval by Resolution of the City Council, no commercial use shall employ or have as an amenity or feature any sort of drive-through service area or hand-through service window to **pedestrians or to** motor vehicles. **DEVELOPER'S COMMENT: To our recollection, not having a pedestrian walk-through was not previously discussed. The negatives of a pedestrian pass-through are not readily apparent, and this needs to be further discussed.**

c. Any proposed sign (whether lighted or not) associated with the advertising of any commercial use must either 1) be approved by the City Council, or 2) be in full compliance with sign covenants and restrictions applicable to the Project as may be incorporated into the Condominium Declaration and expressly approved by Resolution of the City Council.

d. No temporary signs on or visible from the exterior of a commercial establishment will be permitted except when located in a window of the establishment filling not more than 25% of the window space and for no more than 20 business days during any calendar year. Signs indicating that a business is open or closed or hours of operation, or containing governmentally required disclosures, shall not be deemed temporary signs.

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- e. To the extent that a unit remains for rent, one unlighted "For Rent" sign no larger than three feet by three feet (excluding stand) may be placed in or on the leased unit. In connection with the initial leasing of units, the Developer may either abide by the foregoing requirement or in lieu thereof place one leasing sign no larger than ten feet by ten feet (excluding stand) within the Project.
- f. To the extent that a unit remains for sale, one unlighted "For Sale" sign no larger than three feet by three feet (excluding stand) may be placed in or on the unit for sale. In connection with the initial sale of units, the Developer may either abide by the foregoing requirement or in lieu thereof place one for sale sign no larger than ten feet by ten feet (excluding stand) within the Project.
- g. All unit owners, occupants and guests shall comply with the noise ordinances of the City and otherwise not create any noise nuisances. Additionally, no music shall be permitted to be played through exterior speakers within any outdoor commercial service areas after 9:00 P.M.p.m. on Sundays through Thursdays, or after 10:00 P.M.p.m. on Fridays and Saturdays. Any music played through exterior speakers within outdoor commercial service areas shall otherwise be in compliance with City Ordinances and any additional rules that may be imposed by the Association.
- h. Commercial uses may operate and remain open to the public between the hours of 6:00 a.m. and 10:00 p.m. on Sundays through Thursdays, and between the hours of 6:00 a.m. and 12:00 a.m. (midnight) on Fridays and Saturdays. Owners, tenants and Employees may enter upon and remain in the commercial space at other times for business purposes that do not involve the coming and going of customers or clients.
- i. Commercial uses shall be limited to those uses specifically permitted by City ordinance, now or in the future, in ~~a the multi~~Multiple-family-Family ~~commercial-Commercial~~ zone. ~~In the event such uses are modified by zoning amendment, previously existing permitted uses shall be grandfathered until such time as such use ceases to be operated for one year.~~ In the event such uses are modified by zoning amendment, previously existing permitted uses will be subject to the then applicable non-conforming use regulations of the zoning ordinance.
- j. Residential units may be occupied by a single "family" and no more than one person not a member of the family occupying the premises as part of an individual housekeeping unit. "Family" is defined for purposes of this Agreement in the same manner as it is defined by the City Ordinance 79 3(12), as now existing or hereafter amended, modified, renumbered, or substituted: "Family" is defined as one person or two or more persons related by blood, marriage, or adoption occupying a dwelling as an individual housekeeping unit.

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Comment [SEB1]: This property will be subject to the pre-existing non-conforming use provisions of the zoning ordinance, as any other.

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- k. The Developer's obligations to remove snow and ice from City sidewalks as set forth in this Agreement shall be made part of the obligations of the Association in the condominium declaration.
- l. No residential unit may be subdivided.
- m. No left turns shall be permitted from the Project directly onto Sunset Street.
- n. The Developer or Developer's successors (the Association and/or unit owners) shall be responsible in perpetuity for the removal of snow and ice on City sidewalks on the north side of Melrose Avenue from the intersection of Melrose Avenue and Sunset Street west to the Project boundary. Snow removed shall not be deposited upon City streets by may be deposited adjacent to the sidewalk upon the area within the City right-of-way All snow removed from these sidewalks, and that from any other areas of the Project shall be deposited on the Project's property or elsewhere but not upon City streets, City right-of-way, or any other property owned or controlled by the City or upon private property (other than the Project) except with the permission of the property owner.

During any period that the Developer is receiving TIF tax abatement on the Project, the Developer or the Developer's successor (or the Association) shall also be responsible, at its expense, for the removal of snow and ice on public sidewalks on the south side of Melrose Avenue from the intersection of Melrose Avenue and Sunset Street west to a point that is due south of the point of intersection of the easterly line of Birkdale Ct and the northerly line of Melrose Avenue. Snow removed shall not be deposited upon City streets by may be deposited adjacent to the sidewalk upon the area within the City right-of-way.

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~~o. The Developer and/or the owners' association shall have the right to convert green space within the Project into additional surface parking if approved by the City Council and consistent with the applicable zoning ordinances.~~

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o. No more than 25% of the residential units in the Project may at any given time be rented (as such term is defined by City Ordinance 110.02(23) as now existing or hereafter amended, modified, renumbered, or substituted) to tenants. The Association shall develop rules for enforcement of such rental restriction.

- 4. **Easements.** Before the issuance of any building permit for the Project, the Developer shall have granted to the City the following easements to be in a form approved by the City Attorney:
  - a. An easement for the City's erection, maintenance, replacement and use of a bus shelter along Melrose Avenue as shown on the PUD Plan. The bus shelter shall be installed, maintained, repaired and replaced by the City.

b. An easement for any portion of the sidewalk along Melrose Avenue not within City right-of-way, which sidewalk shall be installed and maintained by the Developer or Developer's successors (Association and/or unit owners).

c. An easement for the use of the public space shown on the approved PUD Site Plan as "public plaza area", which will permit the non-exclusive use of the area by the general public according to such rules and regulations as the City may from time to time impose, provided such rules do not materially interfere with the rights of general use and access by the owners of units in the Project. The initial installation of the improvements in the easement area as shown on the approved PUD plan shall be at Developer's cost, and such improvements shall thereafter be maintained, repaired and replaced by the Developer or Developer's successors (the Association and/or unit owners), with the right to recover the cost of repair or replacement from any party damaging such improvements.

5. Taxation of Rented Residential Portions of Project. All rented residential portions of the project shall be taxed on their full assessed values and will not be subject to residential rollback. [DEVELOPER'S COMMENT: To our recollection this was not discussed previously and is not acceptable. The Developer's projections for increased tax have been based on the residential units being subject to the rollback. This will need to be discussed with Council. We do not believe such a provision would be consistent with Iowa law.]

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6. Cessation of TIF for Noncompliance. Any tax increment financing (TIF) rebate that would otherwise accrue or be paid to the benefit of Developer shall cease upon Developer's failure to comply with any term of the PUD Plan as approved; the any TIF Agreement applicable to the Project; any building permit(s) issued regarding the Project; any occupancy permit(s) issued regarding the Project; or this Agreement. [DEVELOPER'S COMMENT: We were anticipating the substance of this language to be in the TIF Agreement, but it is OK to be in this agreement also.]

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7. Dedication of Right-of-way. Before the issuance of any building permit for the Project, the Developer shall have dedicated to the City the portions of Melrose Avenue shown on approved PUD Plan for dedication, with such dedication documentation to be in a form approved by the City Attorney.

8. Public Infrastructure. Before issuance of any occupancy permit for the Project, the Developer shall have completed constructed all City street, Traffic signal and sidewalk infrastructure improvements as shown on the approved PUD Plan according to plans and specifications approved by the City's engineer, and such improvements shall have been accepted by the City.

9. Timing of Construction. The Project is likely to be built in phases: Phase One being the south commercial /residential building, and Phase Two being the north residential building. Once construction commences on each Phase, Developer shall use all reasonable efforts to complete construction of such phase as efficiently and in as timely a

manner as the parameters of the project permit and to be substantially completed within two years after the commencement date for such phase. In any event, construction on the Project shall commence within ten years of after the date the City approves Developer's PUD Plan Application, and if construction does not commence within that period, then the City's approval of that PUD Plan Application and this Agreement are revoked automatically without requirement of further action by City; provided, however, the City shall give the Developer (or Developer's successor, as may be then applicable) not less than twenty-four months nor more than thirty-six months advance written notice of the automatic expiration of such ten year development period.

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10. **Neighborhood Grocery Market.** Developer will use Developer's best commercially reasonable efforts to secure a tenant or owner agreeing to operate a neighborhood grocery market/deli within one of the commercial units within the Project.
11. **Payment by the Developer of Costs and Fees.** The Developer has in writing already agreed to reimburse, and has already commenced reimbursing, the City for certain costs and fees associated with Developer's PUD Application. The Developer affirms its obligations to reimburse the City as specified in the previously executed agreement.
12. **Binding.** This Agreement is binding on the parties hereto and their respective successors and assigns.
13. **Complete Agreement.** The Agreement and the Approved PUD Plan represents the complete agreement of the parties on the matters contained herein.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

CITY OF UNIVERSITY HEIGHTS, IOWA

DEVELOPER

By: \_\_\_\_\_

\_\_\_\_\_

Louise From, Mayor

Jeffrey L. Maxwell

ATTEST: \_\_\_\_\_

Christine Anderson, City Clerk

[\[Add Acknowledgement Forms\]](#)

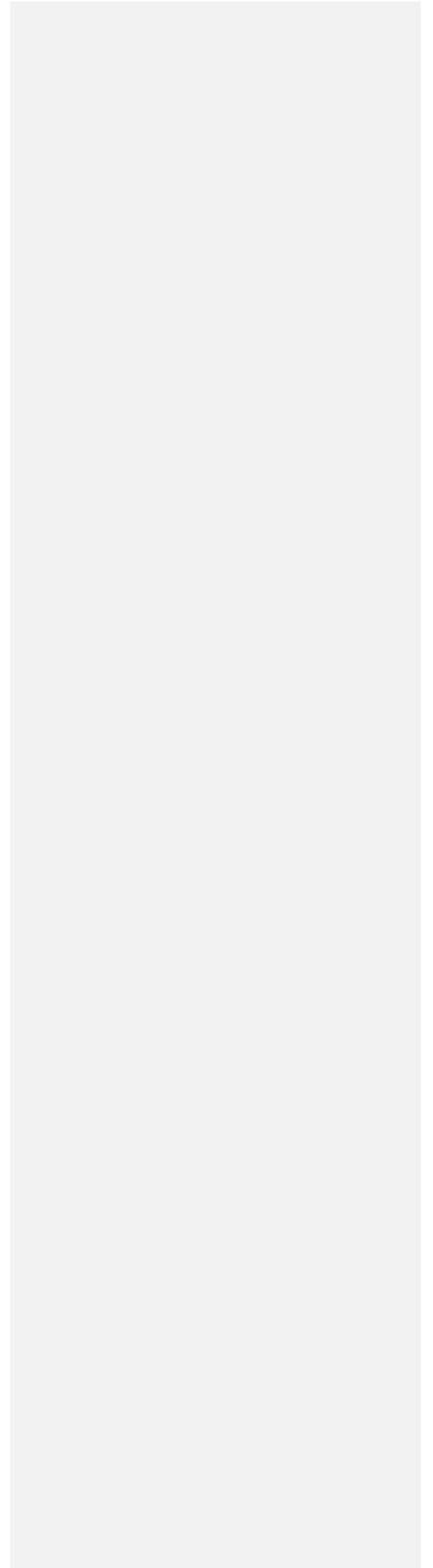


Exhibit A – Legal Description of Site for

**One University Place Project**

**St. Andrew Parcels**

Beginning at the Northeast Corner of Section 17, Township 79 North, Range 6 West of the 5<sup>th</sup> P.M.; thence North 89 degrees West along the North line of said Section 17, 402.6 feet, thence South 16 degrees East 490 feet to the Northerly line of Snook's Grove Road as now established; thence North 73 degrees East along the Northerly line of said road 291.3 feet; thence North 1 degree 40' West to the point of beginning, as shown by Plat recorded in Plat Book 4, Page 383.

and

That part of the northeast quarter of the northeast quarter of Section 17, Township 79 North, Range 6 West of the 5<sup>th</sup> P.M., described as Auditor's Parcel 96091 on plat of survey recorded in Book 38, Page 125, Plat Records of Johnson County, Iowa.

**Maxwell Parcel**

Auditor's Parcel 2005091 according to the Plat of Survey recorded in Book 49, Page 284, Plat Records of Johnson County, Iowa, being a portion of Outlot 1 and of Lot 238, University Heights, Second Subdivision, according to the plat thereof recorded in Book 2, Page 76, Plat Records of Johnson County, Iowa; EXCEPT beginning at the Southwest corner of Auditor's Parcel 2005091, thence North 0°00'00" East 19.48 feet along the West Line of said Auditor's Parcel (assumed bearing for this description only), thence North 74°40'39" East 8.58 feet to a point of intersection of the Westerly right-of-way line of Sunset Street, thence South 20°48'18" West 23.29 feet along said right-of-way to said point of beginning and containing 81 square feet more or less.