

## DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of University Heights, Iowa (the "City") and Jeff Maxwell (the "Developer") as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

WHEREAS, the City has established the [University Heights Urban Renewal Area] (the "Urban Renewal Area"), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Developer has proposed to acquire certain real property which is situated within the Urban Renewal Area and is more specifically described on Exhibit A hereto (the "Property"), and the Developer has proposed to undertake the construction of a two-building mixed use development on the Property in accordance with the terms and conditions set forth in a certain PUD Development Agreement (the "PUD Agreement") between the City and the Developer (attached hereto as Exhibit B); and

WHEREAS, the Developer has requested tax increment financing assistance in support of the Project; 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, and the City desires to provide economic development assistance to the commercial activity associated with the Project;

NOW THEREFORE, the parties hereto agree as follows:

**A. Developer's Covenants**

1. The Developer agrees to acquire the Property and to develop, construct and maintain the Project and the Property in accordance with the PUD Agreement.

2. The Developer agrees to ensure timely payment of all property taxes with respect to all portions of the Property, so long as they remain under the ownership of the Developer, as they come due throughout the Term (as hereinafter defined) and to submit a receipt or cancelled check in evidence of each such payment.

3. The Developer agrees to enter into a Minimum Assessment Agreement (the "Assessment Agreement"), as set forth in Section 403.6 of the Code of Iowa, with respect to the Property and the Project fixing the minimum actual valuation for the Property at \$\_\_\_\_\_ as of January 1, 20\_\_\_\_. The Developer shall produce a plan, subject to review and agreement by the City and the Johnson County Assessor, for the reasonable apportionment of the minimum actual value agreed to under the Assessment Agreement amongst the proposed property interests that will comprise the Project and be subjected to a condominium regime upon completion.

4. The Developer agrees to submit documentation to the satisfaction of the City by no later than each October 15 of each year during the Term, commencing October 15,

2012, demonstrating (1) ownership status of the Property; (2) progress with respect to the construction of the Project; (3) costs incurred to-date in connection with the construction of the Project; (4) compliance with the terms and provisions of the PUD Agreement; and (5) Compliance with the terms and conditions of this Agreement.

5. The Developer agrees to demonstrate to the satisfaction of the City Developer's ability to finance the acquisition of the Property and the construction of the Project. Developer hereby acknowledges that the demonstration required under this Section is a condition precedent to all other terms of this Agreement, and the City shall be under no obligation to perform hereunder unless and until satisfied under this Section.

6. The Developer agrees to include on the ground floor space of the completed Project 2500 square feet of space (the "Community Center Space") for use as a community center by the City. The Community Center Space shall be completed to an acceptable commercial-grade finish prior to conveyance to the City. The Community Center Space shall be conveyed to the City by lease during the Term, such lease to be prepared and drafted as a separate document. Under the lease the City shall enjoy the use of the Community Center Space at a cost of not more than \$1.00 per annum and fee simple title to the Community Center Space shall transfer to the City upon the remittance of all Payments as contemplated in Section B of this Agreement.

7. The Developer hereby acknowledges that the City's available constitutional debt capacity at the outset of this Agreement under Article XI, Section 3 of the Constitution of the State of Iowa, based upon property valuations as January 1, 2010 is \$5,130,246.

8. The Developer agrees to certify to the City by no later than November 1 of each year during the Term, commencing November 1, 2016, an amount equal to 37% of an amount equal to 90% of the estimated Incremental Property Tax Revenues (as hereinafter defined) anticipated to be paid with respect to the Property in the fiscal year immediately following such certification (the "Developer's Estimate"). Incremental Property Tax Revenues are produced by multiplying the consolidated property tax levy (city, county, school, etc.) times the incremental valuation of the Property, then subtracting debt service levies of all taxing jurisdictions, subtracting the school district physical plant and equipment levy and subtracting any other levies which may be exempted from such calculation by action of the Iowa General Assembly.

9. The City and the Developer agree that the financial incentives from the City to the Developer under this Agreement are intended to promote and encourage the Developer's commercial business activity in the construction of the Project and the provision of the commercial space and facilities comprised therein. To the extent that through action of the legislature, an administrative body or court of law, it is ever determined that the provisions of Section 403.22 of the Code of Iowa apply to the provision of Incremental Property Tax Revenues hereunder, the Developer agrees that the Payment provisions set forth in B, below shall be modified to (1) fund any low and moderate income set aside as may be requires; and (2) comply with any time limitations imposed by law on the collection of Incremental Property Tax Revenues.

**B. City's Obligations**

1. **Payments.** In recognition of the Developer's obligations set out above, the City agrees to make annual economic development tax increment payments (the "Payments") to the Developer during the Term, pursuant to Chapters 15A and 403 of the Code of Iowa, provided, however, that the aggregate, total amount of the Payments shall not exceed \$6,500,000, and a portion of the Payments under this agreement shall be subject to annual appropriation by the City Council as set forth in Section B.4 below.

The Payments will be made on June 1 of each fiscal year, beginning on the first June 1 for which incremental property tax revenues become available, and continuing for a total of twenty (20) fiscal years, or until such time as Payments in the aggregate amount of \$6,500,000 have been made hereunder. This Agreement assumes that a portion of the taxable value of the Project will go on the property tax rolls as of January 1, 2016. Accordingly, Payments would be made on June 1 of each fiscal year, beginning June 1, 2018, and continuing through and including June 1, 2037, or until such earlier date upon which total Payments equal to \$6,500,000 have been made.

It is intended by the City that the Payments made on each June 1, a portion of which shall be subject to the right of non-appropriation as set forth below, shall be in an amount equal to 90% of the Incremental Property Tax Revenues available with respect to the Property during the twelve months immediately preceding each Payment date.

2. **Security.** The Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Johnson County Treasurer which are attributable to the Property.

3. **Full Recourse Payments.** A portion of the Payments (the "Full Recourse Payments") shall not be subject to annual appropriation by the City Council. At the outset of the Agreement the aggregate amount of Full Recourse Payments to be made hereunder hereunder shall not exceed \$4,104,196.80, such amount being equal to 80% of the available constitutional debt capacity of the City as set forth in Section A.7 above. The Full Recourse Payments shall be made on each June 1, commencing on June 1, 2018. Each Full Recourse Payment shall be in an amount equal to 63% of an amount equal to 90% of the Incremental Property Tax Revenues available to the City with respect to the Property from the Johnson County Treasurer in the twelve months preceding the respective Payment date.

By December 1, 2016, the City shall certify to the Johnson County Auditor an amount of Full Recourse Payments owing hereunder equal to \$4,104,196.80. To the extent that the aggregate amount of Full Recourse Payments due hereunder increases beyond said amount, the City shall submit additional certifications to the Johnson County Auditor with respect thereto.

4. **Annual Appropriation Payments.** A portion of the Payments (the "Annual Appropriation Payments") shall be subject to annual appropriation by the City Council. At the outset of the Agreement the aggregate amount of Annual Appropriation Payments to be made hereunder hereunder shall not exceed \$2,395,803.20, such amount being equal to 20% of the available constitutional debt capacity of the City as set forth in Section A.7 above. Prior to

December 1 of each year during the term of this Agreement, commencing in the fall of 2016, 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 of tax increment revenues to be collected in the following fiscal year equal to or less than 37% of the most recent Developer's Estimate (the "Appropriated Amount").

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 Annual Appropriation 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 Annual Appropriation Payments or to seek damages relative thereto. 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.8 above, provided, however, that no Annual Appropriation Payments shall be made after June 1, 2037.

In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, then the City Clerk will certify by December 1 of each such year to the Johnson County Auditor an amount equal to the most recently obligated Appropriated Amount, in satisfaction of the certification requirements of Section 403.19 of the Code of Iowa.

5. **Payment Conversion.** Prior to December 1 of each year, commencing in the fall of 2016, the City Council shall consider in good faith the question of converting some or all of an amount equal to the Annual Appropriation Payments then-remaining to be made hereunder into Full Recourse Payments, provided, however, that at no time will the aggregate amount of Full Recourse Payments owing under this Agreement be adjusted to an amount in excess of 80% of the City's then-available constitutional debt limit. The Council shall make such determination by resolution amending this Agreement. It is the intent of the City and the Developer that as the City's constitutional debt limit increases as a result of the construction and valuation of the Project, that Annual Appropriation Payments will be converted in accordance with this Section.

### **C. Administrative Provisions**

1. This Agreement may not be amended or assigned by either party without the express permission of the other party. However, the City hereby gives its permission that the Developer's rights to receive the Payments hereunder may be assigned by the Developer to a private lender, as security on a credit facility related to the payment of costs of the Project, without further action on the part of the City.

2. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

3. The term (the "Term") of this Agreement shall run from the date first written above to the date upon which the City makes the last Payment to the Developer as set forth in Section B above, unless sooner terminated by actions of the parties hereto.

4. This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

The City and the Developer have caused this Agreement to be signed in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

CITY OF UNIVERSITY HEIGHTS, IOWA

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

Attest:

\_\_\_\_\_  
City Clerk

JEFF MAXWELL

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

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

Certain real property situated in the City of University Heights,  
County of Johnson, State of Iowa legally described as follows:

**[Insert legal Description Here]**

**EXHIBIT B**  
**PUD DEVELOPMENT AGREEMENT**