

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

**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 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 such as walkways, benches, bicycle racks, exterior light fixtures, library book drop, entrance amenities, 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 easements, with appropriate plats, as may be reasonably sufficient for all public and private utilities and services supplying the Project as shown on the approved PUD Plan, with such easements and plats being subject to (i) review by the City's engineering consultants for sufficiency, and (ii) such approvals as may be needed from the City of Iowa City in regard to water main and sanitary sewer.

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.
- 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.
  - 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.
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 (the "Project Condominium Documents"). As a condition for the approval of the first occupancy permit for the Project it shall be established by the Developer that the Project Condominium 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 walk up service window to pedestrians or to motor vehicles.
  - 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 Project Condominium Documents 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.
- e. To the extent that a unit is for rent, one "For Rent" sign no larger than three feet by three feet (excluding stand) may be placed in or on the leased unit, or near the leased unit at a location approved by the Association. Additionally, if such sign is not reasonably visible to the general public from Melrose Avenue, one additional such sign may be placed within the Project at another location approved by the Association that is reasonably visible to the general public from Melrose Avenue. In connection with the initial leasing of the Developer's 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 at a location reasonable visible to the general public from Melrose Avenue.
- f. To the extent that a unit is for sale, one "For Sale" sign no larger than three feet by three feet (excluding stand) may be placed in or on the unit for sale, or near the leased unit at a location approved by the Association. Additionally, if such sign is not reasonably visible to the general public from Melrose Avenue, an additional such sign may be placed within the Project at another location approved by the Association that is reasonably visible to the general public from Melrose Avenue. In connection with the initial sale of the Developer's 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 at a location reasonable visible to the general public from Melrose Avenue.
- g. All Project 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. on Sundays through Thursdays, or after 10:00 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. Unless additional extended hours are approved by Resolution of the City Council, Commercial uses, other than fitness centers, 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. Fitness centers may operate twenty-four (24) hours per day seven (7) days per week, provided all such fitness activities are conducted inside the establishment.

- i. Commercial uses shall be limited to those uses specifically permitted by City ordinance, now or in the future, in the Multiple-Family Commercial zone. 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.
- 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 Project Condominium Documents.
- l. The total number of multi-family residential dwelling units (residential condominium units) within the Project will initially be established by the Project Condominium Documents at or below the 104 maximum dwelling units permitted for the Project by City Ordinances # 17, #180 and #188. In accordance with any additional requirements of the Project Condominium Documents, (i) a residential condominium unit may be combined horizontally or vertically with one or more other residential condominium units to allow such combined units to be used as a larger single family dwelling unit under applicable City ordinances, or (ii) a larger residential condominium unit (or combined condominium units) may be divided into two or more smaller residential condominium sub-units (or units) to allow such smaller sub-units (or units) to be used as separate single family dwelling units under applicable City ordinances; provided the total number of residential dwelling units does not exceed the 104 residential dwelling units permitted for the Project by City ordinance. Similarly, in accordance with any additional requirements of the Project Condominium Documents, (i) a commercial condominium unit may be combined horizontally with one or more other commercial condominium units to allow such combined units to be used as a larger commercial space under applicable City ordinances, or (ii) a larger commercial condominium unit (or combined condominium units) may be divided into two or more smaller commercial condominium sub-units (or units) to allow such smaller sub-units (or units) to be used as separate commercial spaces under applicable City ordinances.
- m. No left turns shall be permitted from the Project directly onto Sunset Street.

- n. The Developer or Developer's successor (the Association) 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 but may be deposited adjacent to the sidewalk upon the area within the City right-of-way. All snow removed from 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.
  - o. Developer and City acknowledge and agree that the residential portion of the Project is being built to standards consistent with owner occupied residential units, but that rental of such units by the Developer and/or subsequent owners is permissible. The residential units will be subject to the same rental requirements, restrictions, and definitions for family as other residential properties in the City. Additionally, the Condominium Declaration shall contain provisions giving the Association reasonable authority to adopt and implement rules to address any issues that may arise from rented units in order to protect owner occupants' peaceful use, enjoyment and unit values.
  - p. The Developer and/or the Project's owners' association shall under the Project Condominium Documents have the responsibility to maintain any exterior public space that is shown on the PUD plan or otherwise incorporated into the Project.
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, to the extent not within City right-of-way. The bus shelter shall be installed, maintained, repaired and replaced by the City.
  - b. An easement for any portion of the sidewalk adjacent to the Project 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).
5. **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 the approved PUD Plan for dedication, with such dedication documentation to be in a form approved by the City Attorney.
6. **Public Infrastructure.** Before issuance of any occupancy permit for Phase Two (North Building) of the Project, the Developer shall have completed construction of all City

street, traffic signal and sidewalk infrastructure improvements as may be required of the Developer, if any, on the approved PUD Plan or any separate agreement with the City. Any such public infrastructure improvements required of the Developer shall be installed according to plans and specifications approved by the City's engineer, and such improvements shall have been accepted by the City.

7. **Timing of Construction.**

A. The Developer will use commercially reasonable efforts under all relevant circumstances to keep the Project advancing. Commencement of construction will be dependent on multiple factors such as, but not limited to: i) the timing of St. Andrew Church's vacation of the property; ii) final building plans completion; iii) Project financing arrangements; iv) construction bidding "climate"; v) materials availability; vi) public infrastructure installation; vii) marketing, pre-sales and pre-leasing; viii) lender requirements; and ix) availability of municipal Project support.

B. The Project is likely to be constructed in phases, with the first phase to be the construction of the proposed south multi-family residential/commercial building and improvements ("Phase One"). Developer is presently intending, if possible, to start construction on Phase One late summer 2015. Construction on Phase One will likely commence while the Saint Andrew Presbyterian Church ("Church") continues to occupy the existing church building on the North portion of the property. The City shall allow such construction of Phase One during the Church's continuing use and occupancy, provided that before issuance of any occupancy permit for Phase One the Church's use and occupancy of the existing building shall have ceased. The second phase of the Project will be the razing of the existing church building and the construction of the new multi-family residential structure and improvements on the north side of the Project (Phase Two). Developer is presently intending, if possible, to start construction on Phase Two early summer 2016, soon after the Church has vacated the existing building.

C. Once construction commences, Developer shall use commercially reasonable efforts to complete construction as efficiently and in as timely a manner as the parameters of the Project permit and to be substantially completed within three years after the commencement date.

D. In any event, construction on the Project shall commence within ten years 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.

8. **Neighborhood Businesses.** Developer will use commercially reasonable efforts to secure tenants or owners for the commercial units within the Project to operate businesses from among the business uses permitted by applicable City ordinances.
9. **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.
10. **Binding.** This Agreement is binding on the parties hereto and their respective successors and assigns.
11. **Complete Agreement.** The Agreement and the Approved PUD Plan represents the complete agreement of the parties on the matters contained herein.
12. **Other Matters.** At the time of negotiation of this Agreement matters relating to public infrastructure improvements and City participation in the Project were unresolved. The parties reserve for further discussion and resolution all matters to be part of the anticipated discussions regarding "Gap financing". Specific reserved items, not to be exclusive of others, include: 1) the allocation of responsibility and cost for any Sunset and Melrose Avenue intersection improvements and traffic signals; 2) the allocation of responsibility and cost for any Melrose Avenue and Project entrance drive intersection improvements and traffic signals; 3) limitations, if any, on the amount of commercial space that may be acquired by entities that are real estate tax exempt, and 4) municipal space within the commercial portion of the Project.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF UNIVERSITY HEIGHTS, IOWA

DEVELOPER

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

\_\_\_\_\_

Louise From, Mayor

Jeffrey L. Maxwell

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

Christine Anderson, City Clerk

[Add Acknowledgement Forms]

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## 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.

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