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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 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.
 - e. Failure by the City to identify a building code deficiency during plan review does not relieve the Developer from any obligation to comply with all applicable code provisions. Approval of building plans and/or construction drawings by the City shall not relieve any obligation to comply with the terms and provisions of this Agreement, or the provisions of applicable federal, State and local laws, ordinances and regulations. Approval of plans and/or construction drawings hereunder is solely for purposes of this Agreement, and shall not constitute approval for any other City purpose nor subject the City to any liability for the Project as constructed.
 - f. Walls separating units with bedrooms on each side of such party wall shall be designed to have a Sound Transmission Class (STC) of no less than 60 according to the ASTM E90 Standard Test Method for Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions and Elements.
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 for the Project ("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; provided, however, that all outdoor service areas shall close no later than 11:00 p.m. 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)(32), 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 #79, #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.
- q. The Developer and/or the Project's owners' association will report to the City Council any intention to install more surface parking within the Project than is shown on the approved PUD Plan. The maximum amount of surface parking is 108 spaces pursuant to Ordinance 79(13)(B)(6).
- r. In the event the City becomes the owner of the easterly most commercial unit on the ground level of the south building of the Project, the condominium Declaration shall provide that the exterior fenced green-space area adjacent to and east of such unit (as shown on the attached Exhibit B) and the area on the south plaza adjacent to the entry door to such unit (also shown on Exhibit B) shall be a limited common element of the condominium associated exclusively with such City-owned unit, to be insured (general liability, not casualty) by the City and to be subject to the City's rules and regulations for use by the City and its invitees, guests and the general public. This limited common element shall be maintained by the Association. The limited common element will exclude the sidewalk at the east end of the South building that will be reserved as a general common element for all unit owners, and the City agrees that it will not impede the other unit owners and their invitees, customers, clients and guests from traversing upon the sidewalk (general common element) adjacent to the City-owned unit and associated limited common elements, for reasonable access to and from other condominium units in the Project. The condominium Association shall be responsible for the care, upkeep, maintenance, and repair of the sidewalk as a general common element.
- s. In the event the City becomes the owner of a commercial unit of the Project, and so long as the City is such an owner, then in addition to being a voting member of the Association with all rights of membership afforded to unit owners by the Declaration, one (1) representative of the City, as appointed from time to time by the City Council, shall a member of the Association's Board of Directors (its governing board).
- t. The Developer agrees for itself and for its successors and assigns that each deed or other conveyance shall contain the following covenants on the part of the Developer for itself and all such successors and assigns:
 - i. That the real property comprising the Project shall be devoted only to and in accordance with the uses specified in this Agreement subject to any modification of such uses that might be contained in the Urban Renewal Plan that will be adopted as part of a separate economic incentives agreement between the Developer and the City upon which this Agreement is Conditioned (see paragraph 16 below).

- ii. That any owner of the real property comprising the Project shall not discriminate upon the basis of age, race, creed, color, disability, gender identity, marital status, sex, sexual orientation, religion, national origin, or the presence or absence of dependents or public assistance source of income in the sale, lease, or rental or in the use or occupancy of the property or any improvements erected or constructed or to be erected or constructed on that property or any part thereof.
 - u. It is intended that the City and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in paragraph 3(t)(ii) above, both for and in its own right and also for purposes of protecting the interests of the community and other parties, public and/or private, in whose or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the City. The City shall have the right in the event of any breach of any such agreement or covenant to exercise all the rights and remedies and to maintain any actions or suits at law and/or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled, and shall be entitled to recover, in addition to its court costs, reasonable lawyer fees and litigation expenses.
4. **Easements.** Before the issuance of any occupancy 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 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 or, in accordance with a 28E agreement, by the municipal provider of the bus service.
 - 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).

In addition to the forgoing easements to be granted to the City, before the issuance of any building permit for the Project, the Developer shall have obtained easements as needed from any adjacent property owner for implementation of the storm water management plan approved by the City for the Project.

5. **Dedication of Right-of-way.** Before the issuance of any occupancy 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 Street Improvements/Project Turn Lane Improvements.**

a. As a public improvements project, the City shall be responsible for intersection and related improvements to the intersection of Sunset Street and Melrose Avenue, including paving relocation, traffic controls and sidewalks within City right-of-ways (“Intersection Improvements”) as may be determined by the City. Developer shall dedicate to the public, without cost to the City, any right-of-way needed for the Intersection Improvements provided such dedication does not make the Project nonconforming with any applicable governmental requirements. The Developer shall, at Developer’s expense, provide to the City the necessary design, plans and bidding documents for the Intersection Improvements. The City shall bid the project in accordance with applicable laws and regulations and pay for the Intersection Improvements with City revenue other than any tax increment revenues the parties contemplate and agree that any indebtedness the City may incur for such Intersection Improvements will constitute a protected levy and will be paid, in proportionate part, by incremental taxes generated by and from the Project with priority over any tax rebate pursuant to an economic incentives agreement between the parties, all to be in accordance with Iowa law. Upon the City’s completion of the Intersection Improvements the Developer shall gift to the City, if the land area is not otherwise needed for Project zoning or other regulatory compliance, the easterly wooded portion of the Maxwell Parcel (commonly known as the “Ravine”) to thereafter be owned and maintained by the City as a natural area. The City and the Developer shall have an inspection of the Ravine area prior to the turnover to the City to ensure that there are no major environmental or structural issues needing remedy prior to the turnover.

b. As part of the Developer’s Project, the Developer shall be responsible for desired left turn lane improvements into the Project’s private entrance drive from Melrose Avenue as shown on the PUD Plan, including paving, any traffic controls and sidewalks (“Project Turn Lane Improvements”). Developer shall dedicate to the public, without cost to the City, any right-of-way needed for the Project Turn Lane Improvements. The Developer, at Developer’s expense, shall be responsible for the design, plans and construction of the Project Turn Lane Improvements, which shall be installed according to plans and specifications approved by the City’s engineer. The Developer’s construction of the Project Turn Lane Improvements shall commence after the issuance of a building permit for Phase One of the Project, with the objective of completing the Project Turn Lane Improvements by the time the first Occupancy Permit for Phase One of the Project is ready for issuance. The City and the Developer agree that any damage to Melrose Avenue caused by heavy traffic due to construction of the front or back building shall be the responsibility of the Developer. In addition, if the private north/south road is used by an entity to construct facilities north of the property, then the Developer shall also be responsible for any necessary repair to Melrose Avenue due to excess traffic or construction equipment traffic.

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"; iv) 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. Before issuance of a building permit for Phase One, the Developer will provide the City with a Church parking plan to be used during the Construction of Phase One while the Church remains operational at the Project sight. 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 church 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 five (5) 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 five (5) 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. **Sale or Lease of Space to Property Tax Exempt Entities.** Unless approved in advance by Resolution of the City Council, until 25 years after the approval of the initial building permit for the Project, the Developer (including its successors and assigns) shall not sell or lease any commercial unit of the Project to a property-tax exempt entity if such sale or lease will result in such commercial unit becoming property exempt from the payment of property tax. Until 30 years after the last payment of any TIF benefits to the Developer, the Developer (including its successors and assigns) shall not sell or lease any residential unit of the Project to a property tax exempt entity if such sale or lease will result in such residential unit becoming exempt from the payment of property tax.
10. **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.
11. **Conflicts of Interest.** Developer agrees that, to the best of his knowledge and belief, no member, officer or employee of the City, or its designees or agents, nor any consultant or member of the governing body of the City, and no public official of the City who exercises or has exercised or will exercise any functions or responsibilities with respect to the Project during his or her tenure, or who was or is in a position to participate in a decision-making process or gain insider information with regard to the Project, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.
12. **Lease Clause.** Any lease that the Developer (or its successors or assigns) may enter into for a commercial Unit in the Project shall provide that the tenant shall not approach the City Council for, or receive, any direct or indirect lease subsidy.
13. **Representations and Warranties of Developer.**
 - a. The Developer is a person of legal age and is competent and otherwise has the power to enter into and perform this Agreement. The Developer is contemplating assigning this Agreement and the Developer's obligations hereunder to a development entity in which the Developer will be one of the principal owners ("Development Entity"). The Development Entity will have the power and authority to assume and fully perform this Agreement. The Development Entity will have the power to perform all of the obligations hereunder without violating any provisions of its organizational documents, any other agreement or the laws of the State of Iowa. Developer shall promptly notify the City of any and all changes whatsoever with respect to the identity of

the parties in control of the Development Entity and the parties owning the real property comprising the Project or any part of that property through the time an occupancy permit is issued for Phase One of the Project.

b. The Developer has the full power and authority to execute this Agreement (and the Development Entity will have the full authority to assume this agreement as successor to Developer) and this Agreement shall constitute the legal, valid and binding obligation of the Developer (the Development Entity once assigned) in accordance with its terms, and the consent of no other party is required for the execution and delivery of this Agreement by the Developer or the consummation of the transaction contemplated thereby by the Developer or the Development Entity.

c. The making of this Agreement by the Developer, and the performance of this Agreement by the Developer or Development Entity and the execution and delivery of the documents to be delivered by the Developer and/or the Development Entity pursuant hereto, have been duly authorized by all necessary action of the Developer (or will be duly authorized by all necessary action of the Development Entity) and this Agreement and such documents will be valid and binding obligations of the Developer (or Development Entity) enforceable in accordance with their terms.

d. The Developer (or Development Entity) will cause the Project to be constructed and maintained in accordance with this Agreement, and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations), except for minor variances necessary to construct the Project contained in any construction plans approved by the City.

e. The Developer (or Development Entity) will use its best efforts to obtain, or cause to be obtained, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations that must be obtained or met before the Project may be lawfully constructed. The Developer's (or Development Entity's) architect will work with the City's staff on the final designs of the Project to confirm that they are materially in compliance with the approved PUD Plan. If the final exterior design substantially deviates from the PUD Plan, it shall be subject to approval by the City Council.

f.) Through the time an occupancy permit is issued for Phase One of the Project, the Developer (or Development Entity) may not and shall not engage in any financing or any other transaction creating any mortgage, encumbrance, or lien upon the property comprising the Project, whether by express agreement or operation of law, or suffer any encumbrance to be made on or attach to that property, except for the purposes of obtaining funds to the extent necessary for making the improvements associated with the Project, including, all direct and indirect Project costs including, but not limited to, the costs of land, demolition, project phasing, temporary access for Developer and the Church, development, design, architecture, engineering, legal, accounting, construction, administration, management, marketing, financing, accounting, exterior and interior

improvements, furnishings, fixtures, and any other direct and indirect cost associated with the Project.

g. The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement are not prevented by, limited by, in conflict with, or result in a breach of the terms, conditions or provisions of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which he is bound (nor to which the Development Entity will become a party or will become bound), nor do they constitute a default under any of the forgoing.

h. The Developer (or Development Entity) will spend enough in construction of the Project, when combined with the value of the real estate and related site improvements, to equal or exceed any Assessor's Minimum Actual Value that may be set forth in a separate economic incentives agreement with the City upon which this Agreement is Conditioned (see paragraph 16 below). Any covenants and agreements of the Developer (or Development Entity) applicable to any Assessor's Minimum Actual Value shall be specified in the separate economic incentives agreement. The Developer (or Development Entity) will document his or its investment in the Project and provide evidence of such investment in accordance with the requirements of the economic incentives agreement to be entered into with the City. The economic incentives agreement will specify a minimum amount of investment in the Project to be shown by the Developer (or Development Entity).

i. The Developer has not received any notice from any local, state or federal official that the activities of the Developer with respect to the Project's underlying real estate may or will be in violation of any environmental law or regulation (other than those notices, if any, of which the City has been notified or has notice). The Developer is not aware of any violation of any local, state or federal law, regulation or review procedure which would give any person valid claim under any state or federal environmental statute.

j. The Developer (or Development Entity) shall proceed with due diligence to obtain construction financing commitments, which commitments shall be sufficient to enable the Developer (or Development Entity) to successfully complete the Project as contemplated in this Agreement in accordance with the Approved PUD Plan. Developer (or Development Entity) will obtain all financing commitments necessary for the construction of the Project prior to the issuance of a foundation permit, and provide a copy of such commitments to the City in connection with such permit request. This agreement is contingent upon Developer (or Development Entity) obtaining financing upon terms and conditions satisfactory to the Developer (or Development entity). In the event such financing is not obtained by the Developer within one year from the date of this Agreement, Developer shall have the right to terminate this Agreement.

k. The Developer (or Development Entity) will cooperate fully with the City in resolution of any traffic, parking, trash removal, public safety or any other problems that may arise in connection with the construction or operation of the Project. The Developer (or Development Entity) shall submit a written construction management plan to the City's engineer for approval. The Developer (or Development Entity) will reasonably coordinate staging for construction of the Project with the City's engineer. Developer (or Development Entity) shall obtain from the City any necessary temporary construction easements as may be reasonable required for the Project, and the City shall cooperate in granting necessary easements without unreasonable delay or cost, aside from the City's actual and reasonable costs of reviewing and recording such easements.

l. The Developer (or Development Entity) will keep the City informed regarding the status of the Project by responding to inquiries from representatives of the City and furnishing progress reports as reasonably requested, but not less than quarterly during construction.

14. **Binding.** This Agreement is binding on the parties hereto and their respective successors and assigns.
15. **Complete Agreement.** The Agreement and the Approved PUD Plan represents the complete agreement of the parties on the matters contained herein.
16. **Other Matters.** At the time of negotiation of this Agreement, matters relating to City participation in the Project and City's use of space within the Project were unresolved. The City and Developer reserve for further discussion and resolution by separate written agreement (1) all matters regarding economic incentive financing or other municipal support for the Project, and (2) the City's acquiring or leasing space within the commercial portion of the Project for municipal use. The Developer shall notify the City prior to selling or leasing the final 2,400 square feet of commercial space, in order to determine the City's interest in acquiring or leasing such space.

This Agreement is subject to and conditioned upon a mutually acceptable economic incentives agreement being entered into between the City and the Developer specifying the terms of and conditions for economic incentives that may be provided to the Project by the City.

17. **Notices and Demands.** A notice, demand, request, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, or delivered personally to the other.
- a. In the case of the Developer, such notice, demand, request, or other communication shall be addressed or delivered personally to Jeffrey L. Maxwell, 3011 Sierra Court Southwest, Iowa City, Iowa 52240. A copy shall be sent to

Thomas H. Gelman, 321 East Market Street P.O Box 2150, Iowa City, Iowa 52244.

- b. In the case of the City, such notice, demand, request, or other communication shall be addressed or delivered personally to City of University Heights, 1004 Melrose Avenue, Iowa City, Iowa 52246. A copy shall be sent to Steven E. Ballard, 222 South Linn Street, Iowa City, Iowa 52240.
 - c. Either party may designate such other addresses for purposes of receiving such notice, demand, request, or other communication by providing another address in writing to the other as provided in this paragraph 17.
18. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one Agreement.
19. **Amendment.** This Agreement may be amended only by written instrument signed by both parties.

[Remainder of Page left Blank - Signature Page Follows]

DATED this _____ day of _____, 2015.

CITY OF UNIVERSITY HEIGHTS, IOWA

DEVELOPER

By: _____
Louise From, Mayor

Jeffrey L. Maxwell

ATTEST: _____
Christine Anderson, City Clerk

STATE OF IOWA)
) SS:
COUNTY OF JOHNSON)

On the ____ day of _____, 2015, before me, a notary public in and for the state of Iowa, personally appeared Louise From, Mayor, and Christine Anderson, Clerk of the City of University Heights, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of University Heights, Iowa; that the seal affixed to this instrument is the corporate seal of the City; and that said instrument was acknowledged and sealed on behalf of the City, and that Louise From and Christine Anderson acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of the City, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa

My Commission expires _____

STATE OF IOWA)
) SS:
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me on _____, 2015, by Jeffrey L. Maxwell.

Notary Public in and for the State of Iowa

My Commission expires _____

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 5th 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 5th 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.