

## DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of University Heights, Iowa (the “City”) and Jeffrey L. Maxwell, (the “Developer”) as of the \_\_\_ day of \_\_\_\_\_, 2015 (the “Commencement Date”).

WHEREAS, the City has established the University Heights One University Place Urban Renewal Area (the “Urban Renewal Area”), and has adopted a tax increment ordinance for the Urban Renewal Area; and

WHEREAS, the Developer owns certain real property and has the right to acquire certain adjacent real property which is situated in the City and lies within the Urban Renewal Area and is more specifically described on Exhibit A hereto (the “Property”); and

WHEREAS, the Developer has proposed to undertake the construction and development of the One University Place development project on the Property (the “Project”) in accordance with the terms and conditions set forth in a certain PUD Plan Application and the PUD Development Agreement (the “PUD Documents”) between the City and the Developer (attached hereto as Exhibit B); and

WHEREAS, the Project will consist of the construction of a building containing residential condominium units and a second building containing commercial/retail condominium units, an additional space that will be available to the City for use as a community center and residential condominium units above; and

WHEREAS, the Developer has requested that the City provide financial assistance in order to complete the construction of the commercial/retail units (the “Commercial Project”), such assistance to be in the form of incremental property tax payments to be used by the Developer in paying the costs of designing, constructing and maintaining the Commercial Project; and

WHEREAS, the base valuation of the Property for purposes of Section 403.19 of the Code of Iowa is zero dollars \$0.00 (the “Base Valuation”); 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;

NOW THEREFORE, the parties hereto agree as follows:

**A. Developer’s Covenants**

**1. Project Construction.** The Developer intends to construct the Project on the Property. The Developer agrees to construct the Commercial Project as part of the Project. The Developer has submitted a detailed site plan (the “Site Plan”) for the development of the Project to the City which was approved on June 9, 2015 and is set forth as Exhibit B hereto. The Developer agrees to construct the Project in accordance with the Site Plan and the PUD Documents, subject to modifications with prior approval of the City.

**2. Property Taxes.** The Developer agrees to make and/or ensure timely payment of all property taxes due on property or units owned by the Developer as they come due with respect to the Property throughout the Term, as hereinafter defined, and to submit a receipt or cancelled check in evidence of each such payment for which the Developer is responsible.

**3. Developer's Certifications.** The Developer agrees to submit documentation (the "Developer's Certificate") to the satisfaction of the City by no later than each October 15 during the Term, as hereinafter defined, beginning October 15, 2016, demonstrating that the Developer is in compliance with the PUD Documents. Beginning on the first October 15 following the issuance of a certificate of occupancy with respect to the Commercial Project, such Developer's Certificate shall include documentation demonstrating that the completed Commercial Project is being occupied by viable commercial enterprises

**4. Property Tax Payment Certification.** Furthermore, the Developer agrees to certify to the City by no later than October 15 of each year, commencing October 15, 2016, an amount (the "Developer's Estimate") equal to the estimated Incremental Property Tax Revenues anticipated to be paid in the fiscal year immediately following such certification with respect to the taxable valuation of the Property. (As such, the Developer's Estimate submitted on or before October 15, 2016 shall project Incremental Property Tax Revenues anticipated for the City's fiscal year ending June 30, 2018.) In submitting each such Developer's estimate, the Developer will complete and submit the worksheet attached hereto as Exhibit C. The City reserves the right to review and request revisions to each such Developer's Estimate to ensure the accuracy of the figures submitted. For purposes of this Agreement, Incremental Property Tax Revenues are determined by: (1) determining the consolidated property tax levy (city, county, school, etc.) then in effect with respect to taxation of the Property; (2) subtracting (a) the debt service levies of all taxing jurisdictions, (b) the school district instructional support and physical plant and equipment levies and (c) any other levies which may be exempted from such calculation by action of the Iowa General Assembly; (3) multiplying the resulting modified consolidated levy rate times any incremental growth in the taxable valuation of the Property, as shown on the property tax rolls of Johnson County, above and beyond the Base Valuation; and (4) deducting any property tax credits which shall be available with respect to the Property.

**5. Community Center.** The Developer agrees, as part of the Commercial Project to build out and finish, but not furnish, a 2,200 square foot, more or less, commercial condominium unit comprising office/meeting space (the "Community Center Space") for lease by the City. The Developer shall enter into a lease-purchase agreement (the "Lease-Purchase Agreement") with the City, as described in Section B.6 below, with aggregate lease rental payments in an amount equal to \$390,000, plus a commercially reasonable rate of interest, plus any taxes, insurance, maintenance, repairs and replacements and a share of common area maintenance allocable to such rental property. Upon satisfaction of all payments and performance by the City under the Lease-Purchase Agreement, but subject to the City having appropriated and/or satisfied all Payments (as hereinafter defined) under this Development Agreement, the Developer shall convey fee simple title in the Community Space to the City.

**6. Intersection Improvements.** The Developer agrees to execute a voluntary special assessment petition, contract and waiver, as described in Section 384.41 of the Code of Iowa,

requesting that the City construct the Intersection Improvements (as defined in the PUD Documents) and agreeing that the costs thereof be specially assessed against the Property, the repayment of such assessments being subject to the City having then-currently appropriated and/or satisfied the Payments (as hereinafter defined) under this Development Agreement.

**7. Accessible Playground.** The Developer intends to construct a playground on the Property as part of the Project. The Developer agrees to construct the playground in a manner such that it is accessible to children with disabilities, and to allow for reasonable use thereof by the public (i) during the Term, so long as the City has then-currently appropriated and/or satisfied the Payments (as hereinafter defined) under this Development Agreement; and (ii) after the Term, so long as the City fully satisfies all Payments under this Development Agreement.

**8. Insurance.**

(a) The Developer, and any successor in interest to the Developer in its capacity as Property's developer, including, but not necessarily limited to the Condominium Owners' Association for the Project, shall obtain and continuously maintain insurance on the Property and the completed Project and, from time to time at the request of the City, furnish proof to the City that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that must be so obtained and continuously maintained, provided that the Developer shall obtain the insurance described in clause (i) below prior to the commencement of construction of the Project (excluding excavation and footings):

- (i) Builder's risk insurance, written on the so-called "Builder's Risk—Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Project at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy.
- (ii) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's/Contractor's Policy naming the City, as an additional insured, with limits against bodily injury and property damage of not less than \$2,500,000.00 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used), written on an occurrence basis.
- (iii) Workers compensation insurance, with statutory coverage.

(b) All insurance required in this Section shall be obtained and continuously maintained in responsible insurance companies selected by the Developer or its successors that are authorized under the laws of the State of Iowa to assume the risks covered by such policies. Unless otherwise provided in this Section, each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer, or its successors or assigns, must renew the existing policy or replace the policy with another policy conforming to the provisions of this Section. In

lieu of separate policies, the Developer or its successors or assigns, may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

(c) The Developer, its successors or assigns, agrees to notify the City promptly in the case of damage exceeding \$250,000.00 in amount to, or destruction of the Project resulting from fire or other casualty. Furthermore, the Developer further agrees to apply the proceeds from any and all casualty claims made against the insurance detailed in this Section to the restoration and/or improvement of the Property and/or the Project.

**9. Indemnification.** The Developer agrees to indemnify, defend and hold harmless the City, its officers, employees and departments, from and against any and all losses, liabilities, penalties, fines, damages, and claims (including taxes), and all related costs and expenses (including reasonable attorneys' fees and disbursements and costs of investigation, litigation, settlement, judgments, interest and penalties) arising from or in connection with, and limited to, any of the following:

(a) Any claim, demand, action, citation or legal proceeding arising out of or resulting from the Developer's or its agent's, contractor's or subcontractor's construction of the Project.

(b) Any claim, demand, action, citation or legal proceeding arising out of or related to occurrences that the Developer or successors in interest will insure against in connection with the Project and/or the Property.

(c) Any claim, demand, action, citation or legal proceeding arising out of or resulting from an act or omission of the Developer or any of its agents in its or their capacity as an employer of a person.

**10. Representations and Warranties.** The Developer represents and warrants that:

(a) The Developer has the legal capacity to enter into this Agreement and to perform its obligations hereunder.

(b) The construction of the Commercial Project would not be undertaken by the Developer, and, in the opinion of the Developer, would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit provided to the Developer by the City under this Agreement.

(c) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of, or compliance with, the terms and conditions of this Agreement is prevented, limited by, or conflicts with, or results in a breach of, the terms, conditions or provisions, or any other restriction, or any evidences of indebtedness, agreement, or instrument of whatever nature to which the Developer is a party, or by which it is bound or constitutes a default under any of the foregoing.

**11. Events of Default and Remedies.** The following shall be "Events of Default" under this Agreement, and the term "Event of Default" shall mean, whenever it is used in this Agreement (unless otherwise provided), any one or more of the following events:

(a) Failure by the Developer to commence and complete construction of the Project pursuant to the terms and conditions of this Agreement. Failure to complete the Project by the stated completion date due to unavoidable delays shall not constitute default of this Agreement.

(b) Failure by the Developer to fully and timely remit payment of property taxes when due and owing on property or units owned by the Developer, but excluding units sold to bona fide purchasers.

(c) Material failure to comply with the terms and covenants set forth in this Section A.

Whenever any event of default described in this Agreement occurs, the City shall provide written notice to the Developer describing the cause of the default and the steps that must be taken by the Developer in order to cure the default. The Developer shall have thirty (30) days after receipt of the notice to cure the default or to provide assurances satisfactory to City that the default will be cured as soon as reasonably possible. If the Developer fails to cure the default or provide assurances, City shall then have the right to:

(a) Pursue any action available to it, at law or in equity, in order to enforce the terms of this Agreement.

(b) Withhold Payments provided for under Section B below.

**12. LMI Determination.** The City and the Developer hereby acknowledge and agree that, based on all applicable and available facts and circumstances related to the Commercial Project and the City's provision of economic development support thereto, the provisions of Section 403.22 of the Code of Iowa do not apply in this situation, and no special set aside of funds for "low and moderate income" family housing assistance is required. Among other relevant facts, the parties are aware and rely upon the City Council having expressed its intent under Resolution No. 15-30 and in the Urban Renewal Plan for the Urban Renewal Area that its economic development participation is focused upon ensuring the completion of the Commercial Project and the Developer having requested financial assistance based upon its representations set forth in Section A.10(b) above. The Developer acknowledges that the Payments provided for under Section B below are requested and attributable only to costs allocable to the development, design, construction, operation and maintenance by the Developer of the Commercial Project. In the unanticipated circumstance 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 from the Project hereunder, the Developer agrees that the Payments provided for under Section B below shall be modified to (1) fund any low and moderate income set aside as may then be required; and (2) comply with any time limitations imposed by law on the collection of Incremental Property Tax Revenues. Furthermore, to the extent that modifications to said Payments are insufficient to cover the then-required low and moderate income set aside, the Developer shall reimburse to the City from Payments previously received an amount sufficient to cover the shortfall.

**13. Legal and Administrative Costs.** The Developer hereby agrees to cover the legal fees and administrative costs incurred by the City in retaining Dorsey & Whitney LLP in connection with the drafting, negotiation and authorization of this Agreement, including the

prerequisite establishment of the urban renewal plan, up to an amount not in excess of \$20,000. The Developer agrees to remit payment to the City within 30-days of the submission of reasonable documentation by the City to the Developer evidencing such costs.

**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, as hereinafter defined, pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that (i) the number of Payments shall not exceed fifteen (15) once the Project has been fully assessed and the total amount of the Payments shall not exceed \$6,705,112 (the "Maximum Payment Total"), and all Payments under this Agreement shall be subject to annual appropriation by the City Council, as provided hereunder.

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 attributable to the taxable valuation of the Property.

It is assumed that a portion of the new valuation from the Project will go on the property tax rolls as of January 1, 2016. Accordingly, the Payments will be made on June 1 of each fiscal year, beginning on June 1, 2018 and continuing until fifteen (15) Payments have been funded by the full incremental valuation of the completed Project, or until such earlier date upon which total Payments equal to the Maximum Payment Total have been made, provided, however, that no Payments shall be made after June 1, 2035.

**2. Annual Appropriation.** The parties acknowledge that the Developer's feasibility analysis for the Commercial Project has relied materially on the municipal assistance to the Commercial Project provided by the Payments under this Agreement, and that the Developer would not proceed with the Project in its current configuration or with the Commercial Project at all without the assurances of such assistance, and that the Developer would much prefer a commitment from the City not subject to annual appropriation. However, as an accommodation to the City to help minimize the impact of the City's obligation to make the Payments on its bonding capacity, the parties agree that each Payment shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the Term of this Agreement, beginning December 1, 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 (the "Appropriated Amount") of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the most recently submitted Developer's Estimate.

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 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 Payments or to seek damages relative thereto or to compel the funding of such Payments in future fiscal years. 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.4 above, provided however that no Payment shall be made after June 1, 2035.

**3. Payment Amounts.** Each Payment shall be in an amount equal to the corresponding Appropriated Amount (for example, for the Payment due on June 1, 2018, the amount of such Payment would be determined by the Appropriated Amount determined for certification by December 1, 2016), provided, however, that each Payments shall not exceed the amount of Incremental Property Tax Revenues (excluding allocations of “back-fill” or “make-up” payments from the State of Iowa for property tax credits or roll-back) received by the City from the Johnson County Treasurer attributable to the taxable valuation of the Property.

**4. Certification of Payment Obligation.** In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, as set forth in Section B.2 above, 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.

**5. Intersection Improvements.** In accordance with the PUD Documents, the City shall undertake the construction of the Intersection Improvements (as defined in the PUD Documents).

**6. Community Center Lease-Purchase.** The City agrees to acquire the Community Center Space from the Developer by authorizing and entering into the Lease-Purchase Agreement. The Lease-Purchase Agreement shall be a financing lease with a principal component in the amount of \$390,000.00 and a commercially reasonable rate of interest to be mutually agreed to by the parties hereto. The Lease-Purchase Agreement shall be for a period of twenty (20) years at an interest rate of 5.0% per annum accruing on any unpaid principal balance, with monthly payments beginning the month after the Community Center Space is completed and ready for occupancy and continuing each month thereafter until paid in full. Upon full satisfaction of payments due and owing under the Lease-Purchase Agreement, the City shall take fee simple title in the Community Center Space from the Developer. The Lease-Purchase Agreement shall be authorized as a lease-purchase agreement payable form the City’s general fund pursuant to Section 364.4(e)(1) of the Code of Iowa and shall not be payable form the debt service levy authority of the City.

### **C. Administrative Provisions**

**1. Amendment and Assignment.** This Agreement may not be amended or assigned by either party without the written consent 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 taken with respect to the Project, without further action on the part of the City. The City also hereby gives its consent to the anticipated Assignment of all of the Developer’s obligations, rights, benefits, right to Payments and all other interests on this Agreement to ONE UNIVERSITY PLACE, LLC, a development entity to be formed in the near future by the Developer with other parties.

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

3. **Term.** The term (the "Term") of this Agreement shall commence on the Commencement Date and end on June 1, 2035 or on such earlier date upon which the aggregate sum of Payments made to the Developer equals the Maximum Payment Total.

4. **Choice of Law.** 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.

5. **Notices.** Except as otherwise expressly provided in this Agreement, a notice or other communication under the Agreement, by either the City or the Developer to the other, shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and:

a) In the case of Developer, is addressed to or delivered personally to

\_\_\_\_\_

b) In the case of City, is addressed to or delivered personally to City Clerk, City Hall, 1004 Melrose Avenue, University Heights, Iowa, 52246, with a copy to the City Attorney, Steven E. Ballard, Leff Law Firm L.L.P., 222 South Linn Street, Iowa City, Iowa 52240.

c) Either party may upon written notice to the other party, change the address to which such notices and demands are made.

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

JEFFREY L. 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:

**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 including all public rights-of-way and easement territory contained therein and adjacent thereto;

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, and including all public rights-of-way and easement territory contained therein and adjacent thereto.

**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, and including all public rights-of-way and easement territory contained therein and adjacent thereto

**EXHIBIT B**

**PUD DOCUMENTS AND SITE PLAN**

DRAFT

**EXHIBIT C**

**DEVELOPER'S ESTIMATE WORKSHEET**

- (1) Date of Preparation: October \_\_\_\_\_, 20\_\_\_\_.
- (2) Assessed Valuation of Property as of January 1, 20\_\_\_\_:  
\$\_\_\_\_\_.
- (3) Base Valuation of Property (as of January 1, 2015):  
\$0.
- (4) Incremental Valuation of Property (2 minus 3):  
\$\_\_\_\_\_ (the "TIF Value").
- (5) Current City fiscal year consolidated property tax levy rate for purposes of calculating Incremental Property Tax Revenues (the "Adjusted Levy Rate"):  
\$\_\_\_\_\_ per thousand of value.
- (6) The TIF Value (4) factored by the Adjusted Levy Rate (5).  
\$\_\_\_\_\_ x \$\_\_\_\_\_/1000
- (7) Developer's Estimate = \$\_\_\_\_\_