



Date: October 6, 2011
To: University Heights Mayor & City Council
From: Kent Ralston; Assistant Transportation Planner
Re: One University Place TIF – Public Comment

At your request, MPO staff has been collecting public input related to the One University Place Planned Unit Development (PUD) for 1300 Melrose Avenue. Staff received five emails (from one author) with written correspondence received between September 12th and September 26, 2011 which are attached for your review.

Attachments:

MEMORANDUM

TO: University Heights City Councilors

DATE: September 26, 2011

FROM: Pat Bauer

RE: Concerns About Sections B.5. and A.9. of Danos Draft of OUP TIF Agreement

This memorandum sets forth concerns about the operation and effect of two sections of the draft TIF development agreement John Danos presented to the City Council at its September 13 regular meeting (the Danos Draft). The first section concerns the distinction between “full recourse” and “annual appropriation” payments and is explainable without too much difficulty. The second section involves more complexities, and concerns the possible requirement of low and moderate income (LMI) housing assistance.

Accurately Reflecting the Distinction Between
“Full Recourse” and “Annual Appropriation” Payments

The distinction between “full recourse” payments that are subject to a city’s constitutional debt limitation and “annual appropriation” payments that are not was recognized and applied in Fults v. City of Coralville, 666 N.W.2d 548 (Iowa 2003). While the case involved TIF notes and bonds, its articulation of the circumstances placing payments outside the scope of constitutional debt limitations presumably is fully applicable to the rebate arrangement sought for OUP:

There is nothing in the agreements creating the notes and bonds that binds the city to any particular future course of action. Each year, it is the option of the city council to appropriate the necessary money for repayment. If the city council does not appropriate money for this purpose, the city is not bound to repay the remaining amount on the notes and bonds. These notes and bonds are debts only if each year the city council says they are debts. This is the very essence of debt that does not constitute constitutional debt.

666 N.W.2d at 557.

During the August 23 work session, John Danos seemed to reject Tom Gelman’s attempt to inject an inappropriately obligatory notion of “good faith” into the council’s discussion of annual appropriation payments. Such an inappropriate notion, however, has reappeared in the phrasing of Danos Draft § B.5.:

*5. **Payment Conversion.** Prior to December 1 of each year, commencing in the fall of 2016, the City Council shall consider in good faith the question of converting some or all of an amount equal to the Annual Appropriation Payments then-remaining to be made hereunder into Full Recourse Payments, provided, however, that at no time will the aggregate amount of Full Recourse Payments owing under this Agreement be adjusted to an amount in excess of 80% of the City's then-available constitutional debt limit. The Council shall make such determination*

by resolution amending this Agreement. It is the intent of the City and the Developer that as the City's constitutional debt limit increases as a result of the construction and valuation of the Project, that Annual Appropriation Payments will be converted in accordance with this Section.

(emphasis added).

Needless to say, it is hard to square the emphasized phrase and sentence with the pertinent legal requirement that “[t]here [be] nothing in the agreement[] that binds the city to any particular future course of action.” Unless and until it can be clearly established that they are fully compliant with Fults, the underlined phrase and sentence should be deleted from § B.5. of the Danos Draft.

Overview of LMI Housing Assistance Requirement

Iowa Code § 403.22(1) specifies a potentially applicable requirement for provision of assistance for low and moderate income family housing:

With respect to any urban renewal area established upon the determination that the area is an economic development area, a division of revenue as provided in section 403.19 shall not be allowed for the purpose of providing or aiding in the provision of public improvements related to housing and residential development, unless the municipality assures that the project will include assistance for low and moderate income family housing.

(emphasis added).

Understanding the purpose and effect of this provision requires recourse to statutory definitions provided by Iowa Code § 403.17(10) & (12):

10. “Economic development area” means an area of a municipality designated by the local governing body as appropriate for [i] commercial and industrial enterprises, [ii] public improvements related to housing and residential development, or [iii] construction of housing and residential development for low and moderate income families, including single or multifamily housing.

12. “Housing and residential development” means single or multifamily dwellings to be constructed in an area with respect to which the local governing body of the municipality determines that there is an inadequate supply of affordable, decent, safe, and sanitary housing and that providing such housing is important to meeting any or all of the following objectives: retaining existing industrial or commercial enterprises; attracting and encouraging the location of new industrial or commercial enterprises; meeting the needs of special elements of the population, such as the elderly or persons with disabilities; and providing housing for various income levels of the population which may not be adequately served.

Within the conceptual bookends provided by authorizations of TIF support for “commercial and industrial enterprises” and “construction of housing and residential development for low and

moderate income families,” authorization of TIF support for “public improvements relating to housing and residential development” means “public improvements relating to” non-low and moderate income [i.e., upper income] “housing and residential development.” Such phrasing, however, would seem to constitute an implicit prohibition of TIF support limited to the “construction of housing and residential development for” [non-]low and moderate income [i.e., upper income] “families.”

Applicability of LMI Assistance Requirement to OUP

In light of these provisions, the presence of a relatively small commercial component in OUP may reflect little more than a “fig leaf” for pursuing TIF support for an “upper income” housing and residential development that would otherwise be limited to the cost of related “public improvements” (which presumably would be fairly small in the context of infill development where considerable infrastructure already is in place). Indeed, while the developer’s more recent attempt to drop improvements to the Sunset-Melrose interchange was portrayed as intended to protect the ravine, it instead may have been an effort to reduce the amount of LMI housing assistance such improvements presumably would require.

Jeff Maxwell’s original TIF request included \$800,000 in LMI housing assistance in circumstances involving (i) offsite improvements totalling \$850,000, (ii) city space valued at \$920,000, and (iii) commercial space with an estimated sale price of \$3,000,000. Although the offsite improvements in his revised TIF request initially dropped to \$500,000, they subsequently were restored to \$850,000. The revised TIF request also reduced the value of the city space to \$675,000 and increased the sales price of the commercial space to \$3,200,000.

Tim Oswald’s initial draft analysis of the revised TIF request included a “Maximum LMI contribution” of \$2,401,507, but any provision for that factor subsequently was eliminated based on the developer’s representation that the project will not trigger any LMI housing assistance requirement. John Danos indicated he relied upon some similar representation in preparing a draft that anticipates no LMI housing assistance will be required, but Danos Draft § A.9 seems to be intended to shift the effect of that assumption being incorrect to the developer:

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

Section A.9. doesn’t clearly express its intended effect (i.e., will LMI payments be “subtracted from” or be “added to” the \$6.5M of payments being made to the developer), and the implications of resolving that ambiguity in either direction seem rather telling (i.e., “subtraction from” suggests the

developer actually needs less than \$6.5M and “addition to” necessarily would further defer the “break-even point” for local governments).

With an estimated sale price of the commercial component of \$3,200,00, offsite improvements of \$850,000, and (if properly included) city space of \$675,000, it is difficult to see how TIF-authorized elements totaling only \$4,725,00 are sufficient to support TIF payments of \$6,500,000. John Danos contends that nothing stands in the way of University Heights agreeing to pay some “multiple” to obtain the supposed benefits of commercial space (e.g., it can choose to pay \$6.5M for commercial space that is worth only \$3.2M), but that contention seems at odds with the decidedly functional approach used to reject somewhat similarly formalistic contentions in Knudson v. City of Decorah, 622 N.W.2d 42 (Iowa 2000). The facts of that case are quite involved, but the opinion’s conclusion adopts a “reasonable nexus or logical connection” test that might readily empower a court to conclude that TIF payments for OUP in excess of the value of TIF-authorized elements necessarily involve prohibited support of upper-income housing and residential development:

We conclude that as a matter of law the Priority 1 public improvements are related to the housing and residential development in the Renewal Area because such improvements have a reasonable nexus or logical connection with the development.

622 N.W.2d at 51.

Notably, in that case the Iowa Supreme Court was rather dismissive of the City of Decorah’s argument that it appropriately had relied on the contrary opinion of bond counsel:

The City contends that ... it relied on [the Iowa Department of Economic Development’s] interpretation of the LMI requirements and the written opinion from the City’s bond counsel, with which IDED agreed. For reasons that follow, we conclude the City’s reliance was misplaced.

There is nothing in chapter 403 that gives IDED the power to determine whether the requirements of Iowa Code section 403.22(1) apply. ...

The City’s bond counsel’s opinion adds nothing to IDED’s authority. The opinion was simply that – just an opinion, which could be right or wrong.

622 N.W.2d at 51-52.

Adverse Consequences of Incorrectly Assuming LMI Housing Assistance is Not Required

If a court examining the circumstances of OUP were to conclude that it “pushes the envelope” of aggressive TIF usage too far, it conceivably might determine that an appropriate remedy for a deployment of public funds in support of upper income housing is treating such expenditures as falling within both the spirit and letter of Iowa Code § 403.22(1)’s low and moderate income housing assistance requirement. Any such judicial determination would entail obvious financial effects, but regardless of the initiation of litigation or its outcome, University Heights should carefully consider the “reputational” cost of an overly aggressive use of TIF financing.

Our community already must struggle against contentions that it was born as a tax island and has grown into a speed trap. Going forward, residents and councilors may face the additional contention that we increased our tax base by 50% through an artful ploy that circumvented a fairly obvious prohibition against using TIF payments to support the construction of upper-income housing and residential development. In such circumstances, councilors should not purposefully evade the requirement that the use of TIF payments for such purposes must include the provision of housing assistance to low and moderate income families.

MEMORANDUM

TO: University Heights City Councilors

DATE: September 25, 2011

FROM: Pat Bauer

RE: Impact of Birkdale/Grandview on Terry, Lockridge and Dunn UH Fiscal Projections

INTRODUCTION

Concerns were raised at the regular September council meeting about the effects of Birkdale and Grandview on Terry, Lockridge and Dunn's UH fiscal projections. Separating out those effects necessitates some simplifying assumptions, but doing so demonstrates that the impact is less than some have suggested and such impact presents no obstacle to the use of TLD's fiscal projections as a means of assessing the validity of asserted claims about the severity of the fiscal constraints University Heights may face in coming years.

The simplifying assumptions warranted by difficulties of ready access to and analysis of historical assessment information are (1) the extent of the impact of Birkdale and Grandview appropriately can be gauged through the use of current assessed values (presumably involving a modest risk of some overstatement of impact) and (2) the timing of Birkdale and Grandview's impacts appropriately can be assigned to a limited number of particular years (although in actuality such impacts may have stretched across a larger number of years).

To provide a larger context for the information that follows, I'm attaching updated versions of previously submitted historical series of UH municipal revenues and expenses (Attachment Pages B1-B2). One notable difference between those series and some of TLD's calculation is my use of "starting point indices" (rather than annual percentage changes) in an effort to more readily facilitate identification and evaluation of long-term effects.

TLD's ACCURATE DESCRIPTION OF HISTORICAL FACTS

Table A (Attachment Page A1) sets forth the numbers (along with computed indices) TLD used in calculating the average rate of growth in UH property tax revenues historically realized from 2001 through 2009.¹ The indices usefully reflect the direction and magnitude of the two separate factors (Assessed Valuation and Rollback) determining growth in Taxable Valuation, with a 66% growth in Assessed Valuation<'01-'09> being significantly reduced by a 20% decline in Rollback<'01-'09> to reduce the increase in Taxable Valuation<'01-'09> to only 33% (i.e., half the growth in Assessed Valuation<'01-'09>). As indicated by the last column of Table A, these historical figures result in an average annual growth in Taxable Valuation of 3.8%.

¹ While the use of different sources results in some minor variances between the numbers used by TLD and the corresponding entries in the updated versions of my previously submitted historical series, I don't think anyone seriously contends such variances are in any way material to the fiscal projections under consideration.

Before turning to an analysis eliminating the impact of Birkdale and Grandview, Table B (Attachment Page A2) brings Table A forward by three years using numbers from UH's March 2011 budget spreadsheet reflected in columns K-M of Attachment Page B1. Here an effect in the opposite direction is apparent, with a 9% growth in Assessed Valuation<'09-'12> being significantly compounded by a 10% increase in Rollback<'09-'12> to produce a 20% increase in Taxable Valuation<'09-'12> (more the twice the 9% growth in Assessed Valuation<'09-'12>). Notably, as the last column of Table B indicates, these extended historical figures result in an average annual growth in Taxable Valuation of 4.5%.

CALCULATING THE EFFECTS OF BIRKDALE & GRANDVIEW

Tables C and D (Attachment Pages A3-A4) set forth the approach used to eliminate the effects on historical Assessed Valuation and Taxable Valuation attributable to Birkdale and Grandview. For Birkdale, they use its entire January 1, 2011 assessed valuation of \$2,899,900 (Table C) and assume that all of it entered Assessed Valuation effective January 1, 2005, with that amount then subtracted in calculating Adjusted Assessed Valuation from FY 2007 forward (Table D).

The assumptions used in calculating Grandview's effect are a bit more involved. The starting point again are Grandview's January 1, 2011 unit valuations with the entire assessed value of new unit 6 and the *increased assessed values* of refurbished units 3, 4, & 5² (Table C) being assumed to enter Assessed Valuation on January 1, 2007 with those amounts thus being subtracted in the calculation of Adjusted Assessed Valuation from FY 2009 onward (Table D). In a similar manner, the increase in assessed values of refurbished units 1 and 2³ (Table C) were assumed to enter Assessed Valuation on January 1, 2009 and thus are subtracted from Adjusted Assessed Valuation from FY 2011 onward (Table D).

ASSESSING BIRKDALE & GRANDVIEW'S IMPACT ON ESTIMATIONS OF ANNUAL GROWTH IN TAXABLE VALUATIONS

Tables E and F (Attachment Pages A5-A6) substitute Adjusted Assessed Valuations from Table D for the Birkdale/Grandview inclusive Assessed Values previously used in Tables A and B. As indicated in the last column of Table E, removing the effects of Birkdale and Grandview drops the average annual growth in Taxable Valuation from 2001 through 2009 from 3.8% to 2.0%. Rather notably, however, when the removal of Birkdale and Grandview is carried forward through 2012 in Table F, the above-identified "multiplier" effect of increasing Rollback produces an average annual growth in Taxable Valuation<'09-'12> of 6.4% and when calculated across the entire period of 2001 through 2011 the annual average growth is 3.2%.

² The increase in assessed values were calculated by subtracting from the January 1, 2011 assessed values of refurbished units 3 and 4 an amount equal to the January 1, 2007 assessed value of then un-refurbished unit 2 and similarly by subtracting from the January 1, 2011 assessed value of refurbished unit 5 the January 1, 2007 assessed value of then un-refurbished unit 1).

³ The increase in assessed values of units 1 and 2 were calculated by subtracting from their January 1, 2011 assessed values their January 1, 2007 assessed values in their then un-refurbished condition.

Predicting the future is always risky, but Bill Greazel's assumption of 2% annual growth in Taxable Value is fully consistent with essentially flat Assessed Value because of the likelihood of continued increases in Rollback. Rollback currently is tied to a five-year moving average of the productive value of agricultural land, and recent significant increases in farm commodity prices will continue to push the current formula further upward for a few years following any subsequent stabilization of farm commodity prices. Moreover, the seemingly likely enactment of a commercial property tax rollback may create considerable pressure for an adjustment in the formula for residential Rollback to offset the loss of commercial property tax revenues. In University Heights, however, the relatively smaller amount of commercial property tax revenues could result in a relatively disproportionately greater increase in the amount of residential property tax revenues.

CONCLUSION

The difficulties of predicting the future certainly do not warrant an evaluation of fiscal constraints that is totally detached from indications of historical fact. Assessed property values in University Heights have risen over time at rates that have sometimes been considerable and sometimes negligible, but absent some transformation in employment geography and transportation costs, the advantages of close in living probably render rather unlikely any dramatic decline in assessed property values. On the other hand, factors explained above concerning probable future movements in the residential Rollback factor may result in a steady rise in taxable values notwithstanding a flattening of assessed values.

Although failing to exclude the effects of Birkdale and Grandview could have resulted in some unrealistically high estimates of future annual growth in assessed values, excluding those effects clearly demonstrates that indulging in assumptions of 1% or 0% growth in property tax revenues would in all likelihood be fear-driven and not fact-based. On the other side of the ledger, an assumption of continued increases in expenditures reflecting past budgeting decisions made without much regard to fiscal effects going forward may not hold true upon full utilization of the sort of long-term financial planning that is only now being brought into play.

Goldilocks may have had it right. An annual growth factor of 3.8% may be too much, but the facts set forth in this memorandum demonstrate that 1% or 0% would clearly be too little. Something falling between the Birkdale/Grandview-adjusted annual Taxable Value figures of 2.0% <'01-'09> and 3.2% <'01-'12> might be just right, however, and some such number thus ought to be used in utilizing the fiscal projection models TLD has developed for the City Council's guidance in assessing the fiscal conditions University Heights may experience in years to come.

TABLE A
FY01 - FY09

Year	Assessed Valuation	Index	Pct	Rollback	Index	Taxable Valuation	Index	Pct
2001	\$59,518,268	100		0.548525	100	\$32,647,258	100	
2002	\$59,224,218	100	-0.5%	0.562651	103	\$33,322,565	102	2.1%
2003	\$65,038,570	109	9.8%	0.516676	94	\$33,603,868	103	0.8%
2004	\$65,634,199	110	0.9%	0.513874	94	\$33,727,708	103	0.4%
2005	\$70,787,904	119	7.9%	0.484558	88	\$34,300,845	105	1.7%
2006	\$71,092,060	119	0.4%	0.479642	87	\$34,098,738	104	-0.6%
2007	\$85,586,484	144	20.4%	0.459960	84	\$39,366,359	121	15.4%
2008	\$86,088,654	145	0.6%	0.455596	83	\$39,221,646	120	-0.4%
2009	\$98,503,249	166	14.4%	0.440803	80	\$43,420,528	133	10.7%
Average			6.7%					3.8%

TABLE B
FY01 - FY12

Year	Assessed Valuation	Index	Pct	Rollback	Index	Taxable Valuation	Index	Pct
2001	\$59,518,268	100		0.548525	100	\$32,647,258	100	
2002	\$59,224,218	100	-0.5%	0.562651	103	\$33,322,565	102	2.1%
2003	\$65,038,570	109	9.8%	0.516676	94	\$33,603,868	103	0.8%
2004	\$65,634,199	110	0.9%	0.513874	94	\$33,727,708	103	0.4%
2005	\$70,787,904	119	7.9%	0.484558	88	\$34,300,845	105	1.7%
2006	\$71,092,060	119	0.4%	0.479642	87	\$34,098,738	104	-0.6%
2007	\$85,586,484	144	20.4%	0.459960	84	\$39,366,359	121	15.4%
2008	\$86,088,654	145	0.6%	0.455596	83	\$39,221,646	120	-0.4%
2009	\$98,503,249	166	14.4%	0.440803	80	\$43,420,528	133	10.7%
2010	\$106,206,184	178	7.8%	0.455893	83	\$48,418,656	148	11.5%
2011	\$105,708,898	178	-0.5%	0.469094	86	\$49,587,410	152	2.4%
2012	\$107,878,143	181	2.1%	0.485299	88	\$52,353,155	160	5.6%
Average			5.8%					4.5%

TABLE C
Birkdale - 2011 Assessed Value
Grandview - 2011 and 2007 Assessed Values

Assessment Date	Subdivision	Parcel Identification Numbers	Assessed Value	Increased Assessed Value
Jan. 1, 2011	Birkdale	1017118001 thru 1017118006	\$2,899,900	\$2,899,900
Jan. 1, 2011	Grandview (Unit 1)	1016254002 thru 1016254023 & 1016254136	\$1,424,900	\$581,100
Jan. 1, 2011	Grandview (Unit 2)	1016254024 thru 1016254039 & 1016254135	\$1,730,000	\$886,200
Jan. 1, 2011	Grandview (Unit 3)	1016254040 thru 1016254055 & 1016254134	\$1,744,900	\$901,100
Jan. 1, 2011	Grandview (Unit 4)	1016254056 thru 1016254071 & 1016254132	\$1,716,300	\$872,500
Jan. 1, 2011	Grandview (Unit 5)	1016254072 thru 1016254093 & 1016254131	\$2,218,300	\$1,117,100
Jan. 1, 2011	Grandview (Unit 6)	1016254094 thru 1016254130	\$6,313,700	\$6,313,700
Jan. 1, 2007	Grandview (Unit 1)	Same except for no 1016254136	\$1,101,200	
Jan. 1, 2007	Grandview (Unit 2)	Same except for no 1016254135	\$843,800	
Jan. 1, 2007	Grandview (Unit 3)	Same	\$1,744,900	
Jan. 1, 2007	Grandview (Unit 4)	Same	\$1,607,929	
Jan. 1, 2007	Grandview (Unit 5)	Same	\$2,218,300	
Jan. 1, 2007	Grandview (Unit 6)	Same	\$5,292,900	

TABLE D
Adjusted Assessed Valuations
(Birkdale-Grandview Removed)

Year	Adjusted Assessed Valuation	Birkdale	Grandview 3-6	Grandview 1-2	Adjusted Assessed Valuation
2001	\$59,518,268				\$59,518,268
2002	\$59,224,218				\$59,224,218
2003	\$65,038,570				\$65,038,570
2004	\$65,634,199				\$65,634,199
2005	\$70,787,904				\$70,787,904
2006	\$71,092,060				\$71,092,060
2007	\$85,586,484	\$2,899,900			\$82,686,584
2008	\$86,088,654	\$2,899,900			\$83,188,754
2009	\$98,503,249	\$2,899,900	\$9,204,400		\$86,398,949
2010	\$106,206,184	\$2,899,900	\$9,204,400		\$94,101,884
2011	\$105,708,898	\$2,899,900	\$9,204,400	\$1,467,300	\$92,137,298
2012	\$107,878,143	\$2,899,900	\$9,204,400	\$1,467,300	\$94,306,543

TABLE E
FY01-FY09
(Birkdale-Grandview Removed)

Year	Assessed Valuation	Index	Pct	Rollback	Index	Taxable Valuation	Index	Pct
2001	\$59,518,268	100		0.548525	100	\$32,647,258	100	
2002	\$59,224,218	100	-0.5%	0.562651	103	\$33,322,565	102	2.1%
2003	\$65,038,570	109	9.8%	0.516676	94	\$33,603,868	103	0.8%
2004	\$65,634,199	110	0.9%	0.513874	94	\$33,727,708	103	0.4%
2005	\$70,787,904	119	7.9%	0.484558	88	\$34,300,845	105	1.7%
2006	\$71,092,060	119	0.4%	0.479642	87	\$34,098,738	104	-0.6%
2007	\$82,686,584	139	16.3%	0.459960	84	\$38,032,521	116	11.5%
2008	\$83,188,754	140	0.6%	0.455596	83	\$37,900,464	116	-0.3%
2009	\$86,398,949	145	3.9%	0.440803	80	\$38,084,916	117	0.5%
Average			4.9%					2.0%

TABLE F
FY01-FY12
(Birkdale-Grandview Removed)

Year	Assessed Valuation	Index	Pct	Rollback	Index	Taxable Value	Index	Pct
2001	\$59,518,268	100		0.548525	100	\$32,647,258	100	
2002	\$59,224,218	100	-0.5%	0.562651	103	\$33,322,565	102	2.1%
2003	\$65,038,570	109	9.8%	0.516676	94	\$33,603,868	103	0.8%
2004	\$65,634,199	110	0.9%	0.513874	94	\$33,727,708	103	0.4%
2005	\$70,787,904	119	7.9%	0.484558	88	\$34,300,845	105	1.7%
2006	\$71,092,060	119	0.4%	0.479642	87	\$34,098,738	104	-0.6%
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2008	\$83,188,754	140	0.6%	0.455596	83	\$37,900,464	116	-0.3%
2009	\$86,398,949	145	3.9%	0.440803	80	\$38,084,916	117	0.5%
2010	\$94,101,884	158	8.9%	0.455893	83	\$42,900,390	131	12.6%
2011	\$92,137,298	155	-2.1%	0.469094	86	\$43,221,054	132	0.7%
2012	\$94,306,543	158	2.4%	0.485299	88	\$45,766,871	140	5.9%
Average			4.4%					3.2%

CITY OF UNIVERSITY HEIGHTS - MUNICIPAL REVENUES, FY 2001 - FY 2012

	A	B	C	D	E	F	G	H	I	J	K	L	M
Pat Yeggy Spreadsheet (October 2010)													
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	
7	Assessed Valuation [PY3] [a]	59,519,268	59,224,218	65,038,570	65,634,199	70,787,904	71,092,060	85,586,484	86,088,654	98,503,249	\$106,206,184	105,708,898	107,878,143
8	Index (2001 = 100)	100	100	109	110	119	119	144	145	165	178	178	181
9	Rollback Factor [PY5] [a]	0.548525	0.562851	0.516676	0.513874	0.484558	0.479642	0.459960	0.455586	0.440803	0.455893	0.469094	0.485299
10	Index (2001 = 100)	100	103	94	94	88	87	84	83	80	83	86	88
11	Taxable Valuation [PY4]	32,647,806	34,412,939	34,497,912	34,705,086	35,343,438	35,246,894	40,504,313	40,349,810	44,825,554	48,418,656	49,587,410	52,353,155
12	Index (2001 = 100)	100	105	106	106	108	108	124	124	137	148	152	160
13	City Levy Rate [PY6]	9.11954	9.36835	9.89355	10.44133	10.46292	10.61560	10.39247	10.52988	11.08593	10.94654	11.04972	11.06390
14	Index (2001 = 100)	100	103	108	114	115	116	114	115	122	120	121	121
15	Total Property Tax Revenue [PY20]	300,040	323,982	341,307	375,823	370,841	374,168	420,940	432,914	496,628	530,697	547,928	579,229
16	Index (2001 = 100)	100	108	114	125	124	125	140	144	166	177	183	193
17	Intergovernmental [PY24]	103,046	92,916	96,006	83,407	84,738	84,847	92,491	114,056	96,804	156,641	530,800	90,000
18	Other City Revenue [PY25]	72,819	81,838	77,247	103,691	99,307	138,624	133,635	121,104	102,805	252,918	237,184	241,028
19	Total Non-Property Tax Revenue	175,865	174,754	173,253	187,098	184,045	223,471	226,126	235,160	199,609	409,559	767,984	331,028
20	Index (2001 = 100)	100	99	99	106	105	127	129	134	114	233	437	188
21	Total Municipal Revenue [PY29] [b]	496,023	509,613	525,368	565,060	568,247	604,460	656,481	668,512	703,316	940,256	1,267,412	910,257
22	Index (2001 = 100)	100	103	106	114	115	122	132	135	142	190	256	184

PROPERTY TAX REVENUES BY BASIS OF LEVY

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
27	Total Property Taxes [PY20]	300,040	323,982	341,307	375,823	370,841	374,168	420,940	432,914	496,628	530,697	547,928
28	General Levy (\$8.10/\$1000) [PY11]	253,884	280,085	279,433	293,817	286,282	285,500	328,085	326,833	363,087	392,669	401,658
29	Debt Service [PY37]	46,156	43,897	42,053	45,426	44,380	46,290	0	7,821	31,612	31,764	32,830
30	Total General Levy & Debt Service	300,040	323,982	321,486	339,243	330,662	331,790	328,085	334,654	394,699	424,433	434,488
31	Percentage of Total Property Taxes	100.0%	100.0%	94.2%	90.3%	89.2%	88.7%	77.9%	77.3%	79.5%	80.0%	79.3%
32	FICA & IPERS [PY16]			19,821	18,192	20,913	21,716	23,546	25,913	27,573	38,426	42,062
33	Employee Benefits [PY17]				6,714	7,226	8,214	6,837	8,843	8,843	15,370	17,829
34	Liability Insurance [PY13]				11,674	12,040	12,448	14,417	16,503	15,328	39,997	40,671
35	Transit [PY12]											
36	Library [PY14] [c]											
37	Total Non-Gen. Levy/Non-Debt Service	0	0	19,821	36,580	40,179	42,378	92,855	98,260	101,929	106,882	113,951
38	Percentage of Total Property Taxes	0.0%	0.0%	5.8%	9.7%	10.8%	11.3%	22.1%	22.7%	20.5%	20.1%	20.8%

[a] Because of differences in available sources, Assessed Valuation x Rollback Factor only approximates reported Taxable Valuation

Also Assessed Valuations entries for 2010-2102 derived from Rollback Factor and Taxable Valuation entries.

[b] Proceeds of debt (\$240,000) excluded from Total Municipal Revenue for FY 2008

[c] In 2012, lapsed library levy covered by proceeds of temporary emergency levy

A	B	C	D	E	F	G	H	I	J	K	L	M
CITY OF UNIVERSITY HEIGHTS - MUNICIPAL EXPENDITURES, FY 2001 - FY 2012												
Pat Yeggy Spreadsheet (October 2010)												
BEGINNING BALANCE - ANNUAL BUDGET SURPLUS/DEFICIT - ENDING BALANCE												
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
7	199,242	157,259	147,375	154,208	134,054	94,588	80,332	161,429	211,077	171,945	258,516	388,086
8	-41,983	-9,884	6,833	-20,154	-39,456	-14,256	81,097	49,648	-39,132	86,571	129,570	58,689
9	157,259	147,375	154,208	134,054	94,588	80,332	161,429	211,077	171,945	258,516	388,086	446,775
March 2011 Budget Spreadsheet												
MUNICIPAL EXPENDITURES												
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
14	236,898	215,474	230,844	262,212	297,927	330,741	315,901	355,290	376,765	396,438	378,588	383,186
15	100	91	97	111	126	140	133	150	159	167	160	162
16	44.0%	41.5%	44.5%	44.8%	49.0%	53.5%	55.5%	41.4%	50.7%	46.4%	33.3%	45.0%
17	168,214	146,300	144,896	160,706	153,304	143,072	150,377	175,710	173,140	278,081	594,652	292,506
18	5,389	5,663	5,952	6,037	6,358	3,670	15,833	20,320	25,437	30,577	30,992	38,118
19	86,172	107,337	93,607	109,043	104,569	93,893	84,842	121,431	133,842	114,644	95,800	99,928
20	259,775	259,300	244,613	276,622	265,406	240,635	252,845	319,691	334,071	425,802	726,444	435,552
21	100	94	94	106	102	93	97	123	129	164	280	168
22	48.3%	49.9%	47.2%	47.3%	43.7%	38.9%	44.5%	37.2%	45.0%	49.9%	63.8%	51.1%
23	496,673	474,774	475,457	538,834	563,333	571,376	568,746	674,981	710,836	822,240	1,105,032	618,738
24	100	96	96	108	113	115	115	136	143	166	222	165
25	41,333	44,723	43,078	46,380	44,380	47,340	0	7,821	31,612	31,764	32,810	32,830
26							176,062					
27	538,006	519,497	518,535	585,214	607,713	618,716	568,746	858,964	742,448	854,004	1,137,842	851,568
28	100	97	96	109	113	115	106	160	138	159	211	158
[a] Adjustments in entries for FY 2001 & FY 2002 to exclude amounts for debt service subsequently listed separately												
BREAKDOWN OF PUBLIC SAFETY EXPENDITURES												
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
35	157,075	156,205	171,307	200,077	254,274	268,302	250,699	301,786	311,125	357,104	343,014	336,012
36	100	99	109	127	162	171	160	192	198	227	218	214
37	29.2%	30.1%	33.0%	34.2%	41.8%	43.4%	44.1%	35.1%	41.9%	41.8%	30.1%	39.5%
38	31,168	31,318	31,318	29,718	32,918	30,518	31,318	32,118	32,118	30,718	31,318	31,718
39	100	100	100	95	106	98	100	103	103	99	100	102
40	5.8%	6.0%	6.0%	5.1%	5.4%	4.9%	5.5%	3.7%	4.3%	3.6%	2.8%	3.7%
41	48,655	27,951	28,219	32,417	10,735	31,921	33,884	21,386	33,522	8,616	4,256	15,446
42	100	57	58	67	22	66	70	44	108	28	14	50
43	9.0%	5.4%	5.4%	5.5%	1.8%	5.2%	6.0%	2.5%	4.5%	1.0%	0.4%	1.8%
Breakdown of Public Safety Expenditures Obtained from Form F-66 / Page 6:												
Line 2 / Column h (Police) & Line 13 / Column h (Fire) (2004-2009)												
Line 4 / Column h (Police) and Line 23 / Column h (Fire) (2001-2003)												

Kent Ralston

From: pbb338koser@aol.com
Sent: Monday, September 12, 2011 8:42 PM
To: ballard@lefflaw.com; brennan-mcgrath@university-heights.org; uhclerk@yahoo.com; jbilskemper@shive-hattery.com; lkimura@keystoneproperty.net; louise-from@university-heights.org; mike-haverkamp@university-heights.org; pat-yeggy@university-heights.org; ron.fort@uhpolice.org; rosanne-hopson@university-heights.org; stan-laverman@university-heights.org
Cc: gelman@ptmlaw.com; kmonson@neumannmonson.com; John Yapp; Kent Ralston; Danos.John@dorsey.com
Subject: Public Hearing Required Before Any Council Approval of Either PUD Plan Application or Development Agreement

Dear Steve,

I feel obligated to object to your assertions (in bold red below, and repeated in the text of your legal report) that no public hearing is required for council approval of the PUD Plan Application and an implementing Development Agreement.

University Heights Ordinance No. 79, sec. 13 proscribes the following procedure for council consideration and approval of a Multi-Family Commercial PUD:

C. Procedure.

1. Any person or entity proposing development as a Multiple-Family Commercial PUD shall submit fifteen (15) copies of a Multiple-Family Commercial PUD Plan Application setting forth all the information specified in Section 13(D) of this Ordinance.

2. The University Heights City Council shall hold a public hearing regarding such Plan Application. The public hearing may occur as part of any regularly scheduled or special Council meeting.

The PUD Plan Application presently before the council was not submitted in its present form until the middle of last week, and both the developer and individual councilors have asserted that the present application involves design elements that differ materially from the contents of the previously submitted application.

Ordinance No. 79, sec. (13)(C)(2) plainly requires that the council "shall hold a public hearing regarding such Plan Application" (emphasis added). Clearly a public hearing held nine weeks ago (on Tuesday, July 12, 2011) cannot be considered to be a public hearing "regarding" a materially revised Plan Application submitted less than a week ago (Wednesday, September 7).

Because non-compliance with the provisions of the applicable city ordinance presumably would provide ample grounds for challenging the legality of the city council's approval of a materially revised PUD Plan Application, and because the approval of a PUD Plan Application obviously is itself a condition precedent to the city council's approval of a Development Agreement, I urge you to advise the city council that neither action properly can be taken until such time as the public hearing required by Ordinance No. 79, sec. 13(c)(2) has been held.

As always, please get back to me if you have questions about any of the points made herein.

Best regards,

Pat

From: Steve Ballard [<mailto:ballard@lefflaw.com>]
Sent: Friday, September 09, 2011 4:08 PM
To: Tom Gelman
Subject: OUP Development Agreement

Tom,

Here's my redline version. The City, too, reserves the opportunity to review this document and make additional changes. I will send this redline version to the Council so they have something to chew on over the weekend. If you and I discuss and make further changes, etc., before Tuesday, I will supplement.

I believe the following additional steps remain in the PUD Application process:

- Council must vote on the PUD Plan Application. **No public hearing is required.** Only one affirmative vote is required for passage.
- Council must vote on the PUD Development Agreement. **No public hearing is required.** Only one affirmative vote is required for passage.
- Council must complete the TIF process. I defer to John Danos on those particulars. John has said before that, at a 'bare minimum', the process requires 3 council meetings, 2 public hearings, and 1 consultation meeting with other taxing authorities (community college, etc.). John said the council meetings may be 'special' meetings, but the process requires (or he needs?) one month 'start to finish' between the first and second meetings.

MEMORANDUM

TO: Steve Ballard

DATE: September 13, 2011

FROM: Pat Bauer

COPY: University Heights City Councilors

RE: Failure To Address Circumstances of Interdependency Between PUD Application-Development Agreement and TIF Request

In reviewing John McClure's videorecording of the August 23 work session, the first half of Item 20 seemed to receive particularly little attention that was matched by the very conclusory report of its resolution.

20. TIF. Does the Council desire to condition approval of the PUD Plan Application on establishing the requested TIF? ...

CONSENSUS: Leave draft as is; address TIF issues in TIF agreement.

In the context of the present rush to get something through before the November election, portions of your September legal report would in turn seem to present a very substantial risk of council action approving the PUD Plan Application and a Development Agreement in advance of any meaningful action on the TIF request:

1. One University Place - Remaining Steps.

- *Jeff Maxwell's lawyer, Tom Gelman, inquired about what items and procedures remained to be completed for the project to be approved.*
- *here is what I outlined for Mr. Gelman:*
 1. *Council must vote on the PUD Plan Application. No further public hearing is required. Only one affirmative majority vote is required for passage.*
 2. *Council must vote on the PUD Development Agreement. No public hearing is required. Only one affirmative majority vote is required for passage.*
 3. *Council must complete the TIF process. I defer to John Danos on those particulars. My notes reflect that John has said before that, at a minimum, the process requires 3 Council meetings, 2 public hearings, and 1 consultation meeting with other taxing authorities (community college, etc.). John said the council meetings may be*

'special' meetings, but the process requires one month 'start to finish' between the first and second meetings.

The shortsightedness of ignoring the interdependencies between these parts, however, is readily apparent from simple “thought experiments” about some of the factual permutations in which the separate functioning of such parts might play out.

Separate functioning might not a problem if council approval of the PUD Plan Application and a Development Agreement were to be followed a freely embraced approval of the TIF request that has been presented as essential in order for the project to proceed in the form in which it has been proposed. With the potential for a change in the composition council and mounting evidence of the financial unsoundness of Jeff Maxwell’s TIF request, however, there is some considerably possibility that the TIF request may not receive as warm a reception as the PUD Plan Application and Development Agreement presently are receiving from the current three-person council majority.

In that latter circumstance, it takes little imagination to see how an approved development agreement could readily be used as a negotiating club. “We’ve got this “golden” development agreement that’s good for ten years and can be assigned to anyone we want, and unless you give us the TIF we want, we’re going to “flip” this and sell it to the University of Iowa.” (As explained in an accompanying memo, as presently drafted the development agreement’s limitation on transfers to tax-exempt entities is quite illusory.)

In between the two extremes of a later council enthusiastically supporting or a later council vociferously opposing Jeff Maxwell’s TIF request are a considerable range of intermediate positions where an approved PUD Application and Development Agreement will significantly restrain the freedom of action the later council might otherwise have. Any move to reduce the amount of TIF support (perhaps in light of some demonstrated lack of financial need) could easily be countered by the developer’s right to reduce the quality of building materials or eliminate amenities to the extent that any such things haven’t been fully “nailed down” in completely “air tight” ways (things always hard to achieve, but especially unlikely to be realized in a rush to get things approved by the November election).

With the potential for great mischief of the sort suggested above so readily apparent (and comparable difficulties presumably discoverable upon considered reflection about other possibilities), approval of a PUD Plan Application and Development Agreement in advance of the TIF request would clearly involve the placement of short term and parochial political considerations far ahead of the broader and more lasting interests of the citizens of University Heights. Further proceeding on the TIF component of this matter should remain free from of the sorts of coercive effects of the substantial leverage the developer clearly will be obtaining from prior separate approval of a PUD Plan Application and Development Agreement.

MEMORANDUM

TO: Steve Ballard

DATE: September 13, 2011

FROM: Pat Bauer

COPY: University Heights City Councilors

RE: Illusory Nature of Draft Development Agreement's Limitation on Transfers Resulting in Real Estate Tax Exemption

Section 2. g. of the draft Development Agreement imposes a limitation on transfers triggering an exemption from real estate taxes that seems quite illusory:

Excluding any space in the Project occupied by the City, Developer shall not sell or lease more than 2,000 square feet of the commercial portion of the project and none of the residential portion of the project to an owner or tenant whose use will exempt the applicable unit from real estate taxes.

As an initial matter, the limitation ends with a sale or lease by the Developer and thus does not extend beyond that to include any subsequent sales or leases. Any transactional lawyer quickly appreciates the potential for almost effortless evasion through rudimentary manipulation of organizational formalities (e.g., Jeff Maxwell sells to investor consortium who in turn sells to the University of Iowa).

The addition of language making the limitation on such transfers fully applicable to any and all subsequent owners and tenants, however, might itself be insufficient to render the limitation meaningful in the absence of explicit and well-considered provisions concerning the consequences and remedies for any violation of the limitation. With time being short, I'll append the remedial provisions from the Plaza Towers development agreement as but an example of the sort of things that need to be provided if a "requirement" is to actually be meaningful. To list only the most obvious, a violation of the limitation should be an event of default possibly culminating in a termination of the development agreement, and such termination should be without prejudice to the City's ability to seek enforcement of the limitation through injunctive relief and/or recovery of liquidated damages in an appropriately reckoned amount.

From the outset this project has been touted as providing revenues necessary to enable University Heights to maintain its existence as a separate municipality, and at almost every turn some of its most vociferous supporters have recited the litany of harms that would follow if the property were instead to be purchased by the University of Iowa. With the development agreement being fully assignable and effective for a period of ten years, and with requested TIF assistance stretching out over twenty years, careful thought needs to be given to the acceptable effects of prohibited transfers occurring at different points in time. While it does not cover all possibilities, the following table is suggestive of the sorts of effects such transfers might easily produce.

Timing of Transfer to Tax Exempt Entity	Potential Consequences	Adverse Effects
Prior to Issuance of Building Permit	(1) Presumably Loss of Right to Any TIF Support (2) Absent Termination of Development Agreement, Tax Exempt Assignee Conceivably Could Proceed to Develop Project Within Specifications of PUD Application/Development Agreement	City Never Receives Tax Revenue Windfall Most Often Cited as Reason for Proceeding in this Direction
After Issuance of Building Permit, But Prior to Completion of Construction	(1) Presumably Loss of Right to Any TIF Support (2) Presumably Tax Exempt Assignee Allowed to Complete the Project	City Never Receives Tax Revenue Windfall Most Often Cited as Reason for Proceeding in this Direction
After Completion of Construction, Prior to Completion of TIF Payments	(1) Presumably Results in Prospective Loss of TIF Support Going Forward (2) Absent Effective "Claw Back" Provisions, Developer May Be Able to Walk Away with TIF Payments Received to Date	City Never Receives Tax Revenue Windfall Most Often Cited as Reason for Proceeding in this Direction
After Completion of TIF Payments	(1) Absent Effective "Claw Back" Provisions, Developer May Be Able to Walk Away with TIF Payments Received to Date	City Receives Only Part of Tax Revenue Windfall Most Often Cited as Reason for Proceeding in this Direction

The complexities of how things may work out differently through a range of different possibilities is exactly what appropriately prepared contracts are supposed to address. Under the needless (and thus illegitimate) imperative to get something done before the November election, however, such careful consideration of all possible eventualities is unlikely to occur. Haste makes waste is truism demonstrated clearly both here and in other parts of the present proceeding.

with respect to other holders, and to agree to such modifications if the City deems such modification(s) necessary and reasonable.

ARTICLE VII. REMEDIES

Section 701. In General. Except as otherwise provided in this Agreement, in the event of any default or breach of this Agreement, or any of its terms or conditions, by either party herein, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to commence to cure or remedy such default or breach and shall complete such cure or remedy, within ninety (90) days after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach and shall complete such cure or remedy shall not be cured or remedied within a reasonable time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

Section 702. Termination by Redeveloper Prior to Conveyance. In the event that Redeveloper is in compliance with all of the terms of this Agreement and the City does not tender conveyance of the Property, or possession thereof, in the manner and condition, and by the date, provided in this Agreement, and any such failure shall not be cured within thirty (30) days after the date of written demand by the Redeveloper then this Agreement shall, at the option of the Redeveloper, be terminated by written notice thereof to the City, and in the event Redeveloper elects to exercise its option to terminate neither the City nor the Redeveloper shall have any further rights against or liability to the other under this Agreement.

Section 703. Termination by City Prior to Conveyance. In the event that:

- (a) prior to conveyance of the Property to the Redeveloper, the presence of hazardous waste or substances (as defined under federal law) on the Property becomes known to the parties hereto, and the City has informed the Redeveloper in writing on or before the Closing Date that the condition of the Property is, as a result of such environmental factors, not satisfactory for construction of the "Minimum Improvements"; or
- (b) prior to conveyance of the Property to the Redeveloper and in violation of this Agreement
 - (i) the Redeveloper (or any successor in interest) assigns or attempts to assign this Agreement or any rights therein, or in the Property in violation of Article V hereof, or

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- (ii) there is any material change with respect to the identity of the parties in control of the Redeveloper or the degree thereof in violation of Article V hereof; or
- (c) the Redeveloper does not submit Construction Plans, as required by this Agreement, or (except as excused under Section 702 hereof) evidence that it has the necessary financial ability and commitments for construction and mortgage financing, in satisfactory form and in the manner and by the dates respectively provided in this Agreement therefore, or otherwise fails to satisfy any of the conditions precedent to conveyance of the Property set forth in Section 7; or
- (d) the Redeveloper does not pay the Purchase Price and take title to the Property upon tender of conveyance by the City pursuant to this Agreement, and if any default or failure referred to in subdivisions (b) and (c) of this Section 703 shall not be cured within thirty (30) days after the date of written demand by the City;

then this Agreement, and any rights of the Redeveloper, or any assignee or transferee, in this Agreement, or arising therefrom with respect to the City or the Property, shall, at the option of the City, be terminated by the City, in which event, neither the Redeveloper (or assignee or transferee) nor the City shall have any further rights against or liability to the other under this Agreement.

Section 704. Other Rights and Remedies of City; No Waiver by Delay. The City shall have the right to institute such actions or proceedings as may be necessary to enforce the Redeveloper's covenants and obligations under this Agreement and to seek damages caused by a breach or default by the Redeveloper, including but not limited to the cost of site acquisition survey, environmental testing and improvement costs and any bonding costs associated with these expenses. The City may also institute such actions or proceedings it may deem desirable for effectuating the purposes of this Article VII, provided that any delay by the City in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article VII shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the City should not be constrained (so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches, or otherwise) to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by the City with respect to any specific default by the Redeveloper under this Section be considered or treated as a waiver of the rights of the City with respect to any other defaults by the Redeveloper under this Section or with respect to the particular default except to the extent specifically waived in writing.

Section 705. Liquidated Damages. The grant to the Redeveloper under Section 102(a) hereof is expressly conditional upon the Property being built for the purposes set forth in Exhibit C - Redeveloper's Proposal and Exhibit D - Minimum Improvements and Uses. Redeveloper agrees to use best efforts to establish a viable grocery store. Best efforts requires that the space be built out as a functioning grocery store pursuant to Exhibit C and the Construction Plans. If Redeveloper fails to use best efforts, the Redeveloper agrees to refund to the City Five Hundred Thousand Dollars (\$500,000) as liquidated damages. Additionally, Redeveloper agrees to use best efforts to establish a viable hotel. Best efforts requires that the space be built out as a functioning hotel pursuant to Exhibit C and the Construction Plans. If Redeveloper fails to use best efforts, the Redeveloper agrees to refund to the City Five Hundred Thousand Dollars (\$500,000) as liquidated damages. The total potential liability to the Redeveloper for non-compliance with such agreement to use best efforts is, therefore, One Million Dollars (\$1,000,000). The City and Redeveloper agree that the foregoing provisions for liquidated damages are bona fide provisions for such and are not a penalty. The parties agree that by reason of the City selling the Property in reliance upon the Redeveloper using the Property for the agreed upon purposes, the City gave up the opportunity to sell the Property to a different developer at a higher price. If the Redeveloper does not use best efforts to establish these purposes, the parties agree that the City will have sustained damages which will be substantial but will not be capable of determination with mathematical precision. This provision for liquidated and agreed-upon damages has, therefore, been incorporated in the Agreement as a provision beneficial to both parties.

Section 706. Enforced Delay in Performance for Causes Beyond Control of Party. Performance by any party under this Agreement may be subject to unavoidable delays, outside the control of the party claiming its occurrence, which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the "Minimum Improvements", litigation commenced by third parties, or acts of any federal, State or local governmental unit (other than the City) which directly result in such delays. Such delays shall constitute sufficient legal excuse for delayed performance under the terms of this Agreement.

Section 707. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its obligations under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof,

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or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

ARTICLE VIII. MISCELLANEOUS

Section 801. Conflict of Interest. Redeveloper agrees that, to its best 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 other public official of the City who exercises or has exercised any functions or responsibilities with respect to the Project during his or her tenure, or who is in a position to participate in a decision-making process or gain insider information with regard to the Project, 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 this Project at any time during or after such persons tenure.

Section 802. Non-Discrimination. In carrying out the Project, the Redeveloper shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, gender identity, marital status, sexual orientation, religion, age or disability. The Redeveloper shall insure that applicants for employment are granted employment, and the employees are treated during employment, without regard to their age, race, creed, color, disability, gender identity, marital status, sex, sexual orientation, religion or national origin.

Section 803. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to the Property or any part thereof from the City to the Redeveloper or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 804. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 805. Memorandum of Agreement. The parties agree to execute and record a Memorandum of Agreement for Private Redevelopment, in substantially the form attached as Exhibit I, to serve as notice to the public of the existence and provisions of this Agreement, and the rights and interests held by the City by virtue hereof. The Redeveloper shall pay all costs of recording.

Section 806. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Iowa.

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