

**JEFF MAXWELL'S RESPONSE TO REQUEST FOR  
FURTHER INFORMATION / MATERIALS**

<b>PDF Page</b>	<b>Communication</b>	<b>Date</b>
1	Pat Bauer's E-Mail to Jeff Maxwell & Kevin Monson	07/16/10
2	Jeff Maxwell's E-Mail Response to Pat Bauer	07/21/10
3	Attachment to Jeff Maxwell's E-Mail Response (estimated values and taxes)	07/21/10
4	First Attachment to Pat Bauer's E-Mail (Birkdale Development Agreement)	07/16/10
32	Second Attachment to Pat Bauer's E-Mail (redevelopment parcel buffer zones)	07/16/10

**From:** pbb338koser@aol.com

**To:** Kmonson@neumannmonson.com; jmaxwell@maxwellconstructioninc.com

**Cc:** wallacegay@mchsi.com; wallu@aol.com; cathlane07@gmail.com; wkrkar@aol.com; louisebob@mchsi.com; ballard@lefflaw.com; kent-ralston@icgov.org; John-Yapp@icgov.org

**Subject:** Further Information/Materials for Next Thursday's Zoning Commission Meeting

**Date:** Fri, Jul 16, 2010 10:07 am

**Attachments:** Birkdale\_Development\_Agreement.pdf (499K), Buffer\_Zones\_for\_SAPC\_Redevelopment\_Parcels.pdf (389K)

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Below are four matters mentioned last evening as subjects on which you'd be providing further information/materials in time for next Thursday's meeting. Please let me know if you've questions about their phrasing or feel they aren't substantially in keeping with what we discussed.

- (1) Projected Assessed and/or Taxable Valuations of Proposed One University Place Development (for taxable valuations, please specify percentage amount of any assumed rollback)
- (2) Percentage of Increment and Temporal Duration of Potentially Requested TIF Agreement
- (3) Likely Content of Condominium Covenant Use Restrictions (attached is the Birkdale Development Agreement referenced as an example last evening(see ¶ 3 at PDF page 1 and ¶ 18 at PDF pages 12-13).
- (4) 3D Computer Simulated Views (although not specified with particularity, concerns about impact on adjacent property owners seemingly would make appropriate views from the mid-point of the closest edge of all properties within 200 feet of any of the four project parcels (see indicated buffer zones in attached PDF).

Please submit such additional information/materials electronically in PDF format by 5:00 p.m. next Wednesday (July 21) to permit timely distribution to commissioners and posting on city web site.

**From:** Deborah Svatos-Clark [dclark@maxwellconstructioninc.com] on behalf of Jeff Maxwell [jmaxwell@maxwellconstructioninc.com]  
**Sent:** Wednesday, July 21, 2010 4:44 PM  
**To:** pbb338koser@aol.com  
**Subject:** FW: Further Information/Materials for Next Thursday's Zoning Commission Meeting  
**Attachments:** University Heights Commercial Residential Rollback.pptx

Pat:

In response to your questions, I respond as follows:

(1) Projected Assessed and/or Taxable Valuations of Proposed One University Place Development (for taxable valuations, please specify percentage amount of any assumed rollback)

ANSWER:

See revised Estimated Taxable Value of One University Place project attached hereto.

(2) Percentage of Increment and Temporal Duration of Potentially Requested TIF Agreement

ANSWER:

No formal proposal has been prepared at this time; this proposal will be subject to future City Council discussions.

(3) Likely Content of Condominium Covenant Use Restrictions (attached is the Birkdale Development Agreement referenced as an example last evening(see ¶ 3 at PDF page 1 and ¶ 18 at PDF pages 12-13).

ANSWER:

The content of Condominium Declaration use restrictions, or those that might be in other covenants, has not been developed at this time. We are open to discuss any use restrictions the Zoning Commission might recommend to be included in such covenants. We will at the appropriate time in the future submit covenants that are needed to implement any use restrictions imposed by the City Council as part of the PUD rezoning.

(4) 3D Computer Simulated Views (although not specified with particularity, concerns about impact on adjacent property owners seemingly would make appropriate views from the mid-point of the closest edge of all properties within 200 feet of any of the four project parcels (see indicated buffer zones in attached PDF).

ANSWER:

Images will be available for the Zoning Commission's review at the Thursday Zoning Commission meeting.

Jeff Maxwell

# Estimated Taxable Value of One University Place Project

- Estimated taxable value total \$47,480,705
- Estimated taxable value commercial \$8,328,116
- Estimated taxable value residential \$39,152,589
- Residential rollback 2009 = 46.9094%
- Commercial rollback = No Adjustment
- Estimated taxable value, net of 2009 rollback, is \$26,694,361
- Estimated property tax per year on taxable base is **\$918,595** based on 2009 mill levy of \$34.41156 per \$1000 of property value

57018

Prepared by: R. Bruce Hauptert, P.O. Box 2447, Iowa City, Iowa 52244-2447; Telephone: 319/338-7551  
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**DEVELOPMENT AGREEMENT**

THIS AGREEMENT is entered into by and between Hendrickson Enterprises, Inc., hereinafter referred to as "DEVELOPER" and the City of University Heights, Iowa, hereinafter referred to as "CITY".

**IT IS HEREBY AGREED BY THE PARTIES, AS FOLLOWS:**

1. This Development Agreement is prepared for the purpose of complying with Section 11, Planned Unit Development (PUD) Ordinance No. 79 of the City of University Heights.

2. The exterior elevations and floor plans of the condominiums proposed for this Planned Unit Development (hereinafter PUD) are attached hereto, marked Exhibit "A" and by this reference made a part hereof.

3. There are no protective covenants and restrictions applicable to this condominium regime. However, there are extensive Rules and Regulations which shall be incorporated as a part of the condominium declaration. Said Rules and Regulations are attached hereto, marked Exhibit "B" and by this reference made a part hereof.

4. All easements are shown on the site plan which is attached hereto, marked Exhibit "C" and by this reference made a part hereof.

5. DEVELOPER agrees that no lot shall be further subdivided.

6. The sanitary sewer lift station agreement between the DEVELOPER and the adjoining property owner and user is attached hereto, marked Exhibit "D" and by this reference made a part hereof.

7. The project will be well landscaped and will include sidewalks, all as more particularly shown on the site plan which is attached hereto, marked Exhibit "C" and by this reference made a part hereof.

8. The anticipated commencement date for construction of the buildings and improvements in this project is September 15, 2003. The anticipated completion date for construction of this condominium project and all improvements is March 15, 2005.

See File 166 G Drawer 47 (01/10/03)

9. DEVELOPER hereby agrees to pay all costs, including engineering and legal fees, incurred by CITY in considering this PUD project.

10. DEVELOPER agrees to construct not more than six single-family dwelling units as a part of this project.

11. DEVELOPER agrees that no building shall be more than one story.

12. DEVELOPER agrees that no more than one person, not a member of the family as defined in CITY'S ordinances, may occupy each dwelling unit as a part of the individual housekeeping unit.

13. DEVELOPER understands, and has made it a rule as a part of the condominium regime Rules and Regulations, that no parking shall be permitted on the public cul-de-sac which is in the center of this project and currently designated as Quarterback Court. It is hoped, by DEVELOPER, that the name of the street may be changed to Birkdale Court.

14. The sanitary sewer line, related lift station, force mains and gravity flow sanitary sewer serving the DEVELOPER'S condominium regime and this PUD Zone and located generally between Lots 2 and 3, University Athletic Club Subdivision, shall not be maintained nor repaired by CITY. This obligation is the subject of a separate lift station agreement between the current owner of said real estate and the DEVELOPER.

15. DEVELOPER shall provide to CITY an erosion control plan for this development. Said plan shall include, but shall not necessarily be limited to, the following:

- a. Silt fence locations.
- b. That slopes greater than 6:1 which are not sodded shall receive jute mesh or wood excelsior mat for slope stabilization when seeded. These plans and this work shall be accomplished with the approval of the city engineer for CITY.
- c. All disturbed areas shall be seeded and mulched within 10 working days following the last construction activity. Seeding and/or mulching shall be continuous on all disturbed areas.

16. DEVELOPER shall lower, and in all likelihood move, the existing fire hydrant. This shall be accomplished only with advance approval of the city engineer for CITY. This shall be accomplished at DEVELOPER'S expense.

DATED this 9<sup>th</sup> day of September, 2003.

CITY OF UNIVERSITY HEIGHTS, IOWA

HENDRICKSON ENTERPRISES, INC.

By: Gloria N. Jacobson  
Gloria N. Jacobson, Mayor

By: J. W. Hendrickson  
J. W. Hendrickson,  
President and Secretary

Attest: Jerry Musser  
Jerry Musser, Clerk

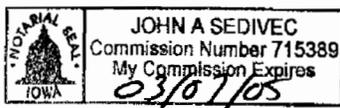
(SEAL)

**SEAL**

STATE OF IOWA )  
 ) SS:  
COUNTY OF JOHNSON )

On this 9 day of September, 2003, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Gloria N. Jacobson and Jerry Musser, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and the City Clerk, respectively, of the City of University Heights, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in ~~Ordinance No. xxxxxxxx passed by the~~ Resolution adopted by the City Council, under Resolution No. 03-13 of the City Council on the 19<sup>th</sup> day of August, 2003, and that Gloria N. Jacobson and Jerry Musser acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

John A. Sedivec  
Notary Public in and for  
State of Iowa



STATE OF IOWA            )  
                                  )        SS:  
COUNTY OF JOHNSON    )

On this 28 day of August, 2003, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared J. W. Hendrickson, to me personally known, who, being by me duly sworn, did say that he is the President and Secretary, respectively, of said corporation; that no seal has been procured by the said corporation; that said instrument was signed on behalf of said corporation by authority of its Board of Directors and that the said J. W. Hendrickson as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by him voluntarily executed.

Joanne Brady  
Notary Public in and for  
State of Iowa

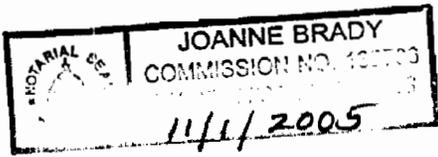


Exhibit "A"	Elevations and floor plans
Exhibit "B"	Rules and Regulations
Exhibit "C"	Site Plan showing easements
Exhibit "D"	Lift Station Agreement

jo/RBH/HendricksonEnterprises-DevelopmentAgmt:dml

## EXHIBIT "B"

### RULES AND REGULATIONS

1. **Purpose.** The purpose of these Rules and Regulations is to augment the provisions of the Condominium Declaration, the Bylaws, to provide comfortable surroundings, appreciating property values, and the orderly administration of the Association. These Rules and Regulations are incorporated as a part of the Condominium Declaration to which this exhibit is attached and made a part thereof. A violation of any provision contained in the Declaration, Articles of Incorporation of the Association, or the Bylaws of the Association, or any other condominium document relating to this Horizontal Property Regime shall be deemed to be a violation of these Rules and Regulations and subject to the enforcement provisions contained herein. These Rules and Regulations are binding on all unit owners, residents, their families and guests. All references in these Rules and Regulations to unit owners, residents, and guests or occupants are interchangeable, and each shall be jointly and severally liable and responsible for actions or violations. However, the unit owners are primarily responsible for compliance with these Rules and Regulations and with the Bylaws of this Regime.

2. **Monthly Maintenance Assessment Policy.** The monthly payments required of all unit owners are essential for the orderly and proper management of the buildings and common areas. The payments must be made on time, made payable to the Birkdale Condominiums Owners' Association and mailed or hand delivered to the designated depository on or before the first day of each month.

The Board determines the monthly maintenance assessments due based on the annual budget and the percentage of ownership of each unit. The budget covers the standard calendar year and is approved by the Board of Directors during the previous year. The budget includes current operating expenses as well as reserves for repair and replacement of common elements, snow removal, lawn care and maintenance, and common utilities. In addition to the foregoing costs of maintaining the common area, each unit owner shall pay 9 percent of the total cost of maintenance, upkeep, replacement and repair of sewer lines and a sewer lift station pursuant to the terms of an agreement by and between Hendrickson Enterprises, Inc. and University Athletic Club Investors, L.C., which Agreement has been recorded in the office of the Johnson County Recorder. Said Lift Station Agreement is also attached to the Condominium Declaration as Exhibit "G".

Other items which might be included in an owner's monthly assessment fee would include any fines assessed, attorney's fees, court costs, and interest, if any, in collecting delinquent assessments from that owner, and the charges incurred by the Association in repairing or replacing limited common elements.

Owners of record and their successors in interest are ultimately responsible for the payment of the assessment.

The Board has established the following rules and procedures to handle the collection of the monthly maintenance assessments:

A. All assessments are due on the first day of each month, without exception. The Board shall establish the monthly assessment effective at the beginning of each calendar year. No monthly statement shall thereafter be mailed unless a special assessment is made. It is the responsibility of each unit owner to pay the monthly assessment without further notice and without monthly reminders.

B. Assessments received after the 15th day of the month are deemed late. An administrative fee (late charge) of \$25 will be automatically assessed to the account of each unit owner whose assessment is not received by the 15th. This policy is implemented as a means of enforcing prompt payments in order to assist those responsible for the duties, chores, and burdens imposed upon them by virtue of their positions held in the Birkdale Condominiums Owners' Association.

C. Any payment of less than the full amount of the assessment and other charges due in any given month shall also be deemed late and subject to the \$25 administrative fee.

D. The administrative fee of \$25 will be cumulatively assessed for each succeeding month that the monthly assessment and fees remain unpaid.

E. Any payments received must be applied to the oldest outstanding charges first. All late fees, legal fees, and fines collected shall be credited to the operating fund.

F. The Board may waive administrative fees under appropriate circumstances as determined by the Board.

G. Unit owners are understanding of the necessity for a smooth financial operation for the Birkdale Condominiums Owners' Association and can, therefore, understand that sometimes enforcement procedures are necessary. Unit owners, therefore, who are delinquent in any assessment or other charge made by the Board of Directors shall be subject to legal action. Whether or not legal action is commenced, the unit owners shall be responsible

and liable for all costs involved in the collection process including reasonable attorney's fees, other reasonably required professional expenses, court costs, interest, and late penalties. In addition, the Board of Directors may prefer, in lieu of collection action, to record in the office of the Johnson County Recorder a Statement of Lien in favor of the Association for any delinquencies mentioned above. Upon recording of said Statement of Lien, the same shall become a lien against the real estate owned by the unit owner. All delinquent amounts, whether or not they are the subject of a lien or whether or not they are the subject of the collection process, shall accrue interest at the highest lawful legal rate from and after the date of delinquency. The date of delinquency shall, unless otherwise stated herein, be the 16th day following the date a required payment is due or the 16th day of any regular month for regular assessments. Whether or not legal action is taken against a delinquent owner is within the sole discretion of the Board of Directors.

H. Any lien arising under any of the documents relating to Birkdale Condominiums Owners' Association or the Birkdale Condominiums Regime may be foreclosed by the Association in the manner and with the consequences provided in Section 499B.17 of the Code of Iowa, as amended. In the event the Association forecloses on any lien pursuant to Section 499B.17 of the Code of Iowa, the owner of such unit, by virtue of that owner's membership in this association, specifically waives any rights to delay or prevent foreclosure which he, she, or it may have against the Association by reason of the homestead exemption.

I. The Association may also sue for a money judgment in either Small Claims Court or the Johnson County District Court for unpaid assessments without foreclosing and without proceeding with any other remedy mentioned above without waiving any lien which it holds. Legal action to be undertaken on behalf of the Association may also include, but is not limited to, obtaining a judgment for the monies due, obtaining a judgment for possession of the unit, evicting the owner from the unit, placing a lien against the unit and/or instituting a foreclosure action.

J. The Association's share of the cost of maintenance and repair expenses associated with the sanitary sewer lift station (shared with University Athletic Club Investors, L.C., and its successors and assigns), shall be a part of the Association's general assessment to all unit owners.

### 3. Appearance and Use of the Property.

A. Nothing may be attached, added, or altered to or on the common elements, including all building exteriors, lawns, (front side and rear), driveways, and sidewalks.

B. No doors or windows shall be replaced by the unit owner nor shall any changes of any kind be made on the exterior of any building by the unit owner. All such repairs, replacements, or alterations shall be made only with the approval of the Board of Directors.

C. In the event a window or door or any portion of the exterior of the building is damaged or made inoperable or is in need of repair resulting from the negligence of the unit owner, the unit owner shall be responsible for its repair at unit owner's expense. All ordinary wear and tear which necessitates replacement and/or repair of any door, window, or any other portion of the exterior of the building shall be an expense of the Association. No window air conditioners may be installed under any circumstances.

D. Garage doors shall be kept fully closed except when in use for entering or exiting the garage or for any other reasonable purpose.

E. Permanent interior window treatments must be installed no later than three months from the date the unit is acquired by its owner. Until permanent interior window treatments are installed, only white material may be used as a temporary means of providing privacy.

F. All maintenance regarding the exterior surfaces of the buildings and all lawn care, and exterior plantings, including all flowers and other landscaping, shall be the sole responsibility of the Board of Directors. No unit owner may mow or fertilize the lawn or apply any weed control measures.

G. No planter boxes nor hanging baskets shall be permitted.

H. No trailers, mobile homes, tents, boats, vehicles or the like may be stored for any period of time. At no time shall any vehicle be "parked" overnight on one's driveway unless the owner is a temporary guest. A temporary guest is one who is not scheduled to visit the unit owner for a period in excess of 14 days.

I. No bicycles, tricycles, buggies, toys, or outside play equipment shall be permitted to remain outside overnight. All such items must be gathered before the end of the day and stored in the garages or within the units.

J. The Association shall provide all landscape maintenance for all common areas including, but not necessarily limited to, regular and appropriate lawn mowing, tree and shrub trimming, lawn edging, spring and fall clean-ups, lawn

fertilization and weed control, and lawn watering. The Association will have difficulty watering trees, flowers and shrubs and would request the cooperation of the unit owners in this regard.

4. **Flowers.** No flowers nor other landscape or plant materials may be planted by a unit owner.

5. **Mail Boxes.** The Association shall be responsible for the installation of permanent and uniform mail boxes. No other mail box may be used.

6. **Porch Lights.** No porch light fixtures or exterior lighting in the Association may be replaced by any unit owner. Said replacements are a proper function of the Association, and the cost shall be an appropriate Association expense.

7. **Pets.**

A. No animals, other than dogs, cats, or other animals or birds reasonably considered to be household pets, may be raised, bred, or kept anywhere on the property. No animal may be kept, bred, or maintained for any commercial purpose.

B. All pets must be licensed by Johnson County and vaccinations must be kept current. Documentation necessary to prove the vaccination record must be made available to the Board upon request. Pet owners must comply with all state, local, or federal rules, regulations, and ordinances pertaining to the pets and pertaining to their ownership.

C. Pets must be maintained in a clean, safe, and quiet manner.

D. All pets must be leashed while being walked outdoors, and pet walkers must use the street or sidewalks when walking said pets. All pet owners must clean up after the pets and shall carry a means to pick up pet litter whenever walking the pet on Association property.

E. No pet shall be allowed to create a threat, nuisance, or an unreasonable disturbance to any person or to cause any damage to any common property or the property of any other resident. Pets must be controlled at all times when outside of the unit. No pet shall be allowed outside to "wander" or to "run". All pets must either be on a leash when outside or within the total and unquestionable control of its owner.

F. Pets may not be tied to any stationary object on Association property except to the rear of the buildings and never

in such a manner which causes wear to the lawn. Dogs having a tendency to bark may not be left unattended at any time. No dog "run lines" are permitted.

G. In the event of a violation of any of these pet rules, the Board may fine the owner and, in addition thereto, may initiate legal action to enjoin the continued violation.

H. All unit owners are responsible for the actions of pets belonging to anyone residing in or visiting the unit owner. Thus, a pet violation by a guest shall be the responsibility of the unit owner in whose unit that person is a guest.

I. The cost of repairing any damage to the common elements caused by a pet shall be assessed to the unit owner responsible for the pet. In determining responsibility, it will be presumed that any pet damage immediately outside of a unit owned by a pet owner was caused by the pet belonging to that unit owner unless compelling evidence to the contrary is presented.

J. The conduct of all pets must be such as to not interfere with the rights, privileges, and peaceful possession of the neighbors of the pet owner.

K. No pet houses or dog runs shall be permitted outside of any unit.

L. No pet shall be allowed to create a nuisance or unreasonable disturbance.

M. The Association, upon written notification of any pet violation, shall notify the responsible unit owner of the violation. Such notification shall be made either by delivering the notice to the party and securing a written receipt of such delivery or by service of notice by the Civil Department of the Johnson County Sheriff's Office. In the event the pet owner and/or unit owner believes said notice is unjustified, the unit owner shall, within 10 days of the date of such notice, file a written protest to the Association. Upon receipt of a written protest, the Board shall set a hearing date no later than 30 days after receipt of the written notice. Said hearing shall be held in the presence of the Board of Directors and convened whether or not the alleged violator chooses to attend. At the hearing, the Board shall hear and consider arguments, evidence, or other statements regarding the pet violation and, upon full hearing, the Board shall make its binding decision regarding the findings, disposition and punishment, if any.

8. **Wild Animals.** Due to potential health and safety concerns, the feeding or watering of wild animals or unlicensed or unregistered pets is prohibited.

9. **Vegetable Garden.** No vegetable garden shall be permitted.

10. **Signs.** As a general rule, no signs shall be permitted. "For Sale" signs shall be permitted, however, with approval of the Board of Directors, and only one such sign shall be placed in a tasteful location as determined by the Board.

11. **Satellite Dishes.** At the request of any unit owner, the Board shall determine the location for and shall install, at Association expense, one satellite dish, which dish shall not be larger than 18 inches in diameter. Said dish shall serve all occupants who wish to have satellite television service. In the event a unit owner wishes to use the satellite service and amplification or additional power is necessary to accommodate said unit owner, any such additional expense shall be borne by the Association.

12. **TV Antennas.** No external TV antennas shall be permitted. Only TV antennas installed beneath the roof of a unit shall be permitted and shall be installed at the sole cost of the unit owner.

13. **Storage Buildings.** No storage buildings of any kind, shape, or size shall be permitted.

14. **Barbecue Grills.** Barbecue grills are permitted but only at the rear of the units and shall be maintained, at all times, on the patio or deck provided.

15. **Picnic Tables.** Picnic tables are permitted but only at the rear of the units and shall be maintained, at all times, on the patio provided.

16. **Vehicle Repairs.** No vehicle repairs, major or minor, may be made in any driveway. All such repairs must be made within the garage with the garage doors closed. Unit owners may wash, wax and otherwise clean their vehicles, however, in the driveway.

17. **Amateur Radio Antennas.** No amateur radio antennas shall be permitted.

18. **Rental of Units.** No unit shall be purchased for rental purposes. No unit may be rented under any circumstances except in the sole instance when the owner's profession demands the removal of the owner from Iowa City for a period of nine

consecutive months or longer. In these circumstances, only, the unit may be rented, and under said circumstances, the unit may be rented only to a responsible person or family approved by the Board of Directors. It is clearly the policy of the Association not to permit the rental of any unit except under extraordinary circumstances as set forth herein.

19. **Home Occupation.** No unit owner shall engage in any home occupation of any kind which requires the generation of any vehicular traffic. If the home occupation, for example, may be conducted by mail, internet, or some other unintrusive manner which is not likely to cause any disturbance or inconvenience to any unit owner, the same may be permitted. The Board must issue written approval of any home occupation of any kind, and such approval shall not be unreasonably withheld provided the requirements of this paragraph are followed.

20. **Play Swimming Pools.** No swimming pools designed for children's play shall be permitted unless at the rear of any unit; and, then, only under temporary circumstances. No such pools shall ever be left outside with or without water overnight.

21. **Parking.** No parking shall be permitted in the street unless permitted by the ordinances of the City of University Heights. The parking rules of the Association are designed to promote the safety and security of the residents and to maintain the appearance of the property.

A. No vehicle may be permitted outside of one's garage if the vehicle is not in working condition or not properly licensed or, if the vehicle is used for commercial purposes or for recreational purposes. A recreational vehicle would include a trailer, camper, mobile home, boat, ATV, motorcycle, tractor, snowmobile and the like. No vehicle shall be permitted which may not fit in the unit owner's garage.

B. No unit owner shall routinely and regularly park outside of the garage. The unit owner's vehicles shall be housed within the garage and shall not be parked in the driveway overnight.

C. No vehicle may be parked so as to obstruct passage, ingress or egress of other vehicles or persons on the property.

D. No engine maintenance or body work shall be performed on any vehicle parked on a driveway or on any common area or on any limited common area.

E. Procedure in the Event of Violation of a Parking Rule.

- (1) In the event of a violation of a parking rule, the Board shall send notice of such violation to the unit owner containing specific information of the infraction and the requested solution. In the event the conduct which was the subject of the violation does not cease within 10 days from the giving of notice, another notice shall be given in the same manner, except that the second notice shall include a hearing date, time, and place at which time a hearing shall be conducted to ensure that the perception of the Board's violation is accurate. Upon hearing, in the event the unit owner who was notified of the alleged violation is found to be culpable, the Board may notify the local government authorities asking that they issue a citation and/or remove the vehicle, or the Board may contact a local towing agency to have the vehicle removed at the unit owner's expense. The Board shall have authority to tow vehicles parked in violation of these rules. In addition, the Board shall have authority to tow a vehicle, without notice, in the event said vehicle is parked in a manner which presents immediate danger to the health, safety, and welfare of any unit owner or any other person on Association property. Any time a vehicle is towed pursuant to these rules, all costs and expenses incurred with respect to said towing shall be assessed to the unit owner or to the vehicle owner, in the discretion of the Board.

22. **Firewood.** All firewood must be stored outside of the unit and outside of the garage and on the patio provided.

23. **Snow Removal.** The Association is responsible for all snow removal from the sidewalks and driveways. Unit owners are encouraged to assist the snow removal process by ensuring no vehicles are left on the driveway so as to interfere with the plow clean up.

24. **Trash Removal.** Trash collection shall be provided by the City of University Heights. No containers should be placed outside the unit for pick up earlier than 6:00 p.m. the night before pick up, and all containers shall be removed within 12 hours after they have been emptied by the trash collector.

25. **Exterior Lighting.** All exterior lighting shall be provided by the Association. Occasionally, residents would be helpful if they were to change burned-out light bulbs. Only white light bulbs of the same wattage should be used for replacement.

26. **Seasonal Decorations.** No decorations or evidence of celebrations (birthdays or weddings) shall be observable for a period in excess of 48 hours. All seasonal decorations, for Thanksgiving and the Christmas holidays, shall be permitted between the dates of November 15 and the following January 10 only. No decorations shall be displayed before or after these two dates. No nails, screws, or other devices that puncture the siding or other building material may be used to hang or secure any decorations.

27. **Front Door Decorations.** No front door decorations shall be permitted unless falling within the seasonal decoration requirements.

28. **Storage of Exterior Water Hose.** All water hoses used for exterior watering purposes shall be hidden from view unless in use at the time. No hose shall be left within public view by nightfall. All outside water hoses attached to an outside spigot must be removed from the spigot no later than October 1 of each year and shall not be attached to said spigot until April 1 of the following year. Any expenses incurred for the repair of a spigot due to freezing or any resulting damage therefrom shall be borne by the responsible unit owner unless it can be shown that the damage was not caused by an improper seasonal attachment.

29. **Smoke Detectors.** Electric smoke detectors are provided. Back-up batteries will be featured in these models. Unit owners are encouraged to change said batteries at least annually.

30. **Internal Alterations to Units.** A building permit shall be secured by the unit owner for every internal alteration of a unit which requires the issuance of such a permit.

31. **Water Usage.** Each unit will be individually metered for water usage. Thus, each individual unit owners shall be billed for the water consumption, and this function shall not be a part of the Association.

32. **Playground Equipment.** No playground equipment shall be permitted anywhere on Association property.

A. **Sandboxes.** No sandboxes shall be permitted anywhere on Association property.

34. **Lawn Sprinkling System.** A lawn sprinkling system shall be provided by the Association. All maintenance expenses and adjustments related to said system shall be Association expense.

35. **Canopies and Awnings.** No unit owner may install a canopy or awning on the exterior of a building.

36. **Clothes Hanging.** No unit owner shall hang any clothing out of doors. No clothes lines shall be permitted.

37. **Fences.** No fences shall be erected anywhere on Association property by a unit owner.

38. **Subdivision of Lots.** No lot in this Association shall be further subdivided without the written approval of the City of University Heights, Iowa.

39. **Enforcement Policy.**

A. Filing of a Complaint.

- (1) A complaint which alleges a violation of the Condominium Declaration, Bylaws, or these Rules and Regulations may be initiated and prepared by any unit owner or by the Association manager in the event the Condominium Regime is managed by that manager, provided that the unit owner or the manager bases the complaint upon a personal observation.
- (2) All complaints shall be in writing and shall be filed with the Board of Directors. No oral complaints shall be accepted.
- (3) A complaint shall include the following:
  - (a) The name, address, and telephone number of the complaining witness.
  - (b) The unit owner's name and the unit number or address of the person or resident against whom the complaint is being filed.
  - (c) The specific details or description of the violation, including the date, time, and location where the violation occurred.
  - (d) If possible, photographs showing the violation.
  - (e) The signature of the complaining witness.

- (f) The date of the complaint.
- (4) To the extent possible, complaints shall be kept confidential. This may not be possible. Complaints should be made as soon after the alleged violation as possible. In the event of a hearing, the complainant will probably be required to testify.
- (5) The willful filing of a false complaint or the repeated filing of frivolous complaints shall be deemed a violation of these Rules and Regulations and shall be subject to the enforcement provisions contained herein and shall also be subject to the enforcement provisions of the Bylaws. The use of these Rules and Regulations in a manner deemed to constitute harassment of another resident or unit owner shall be deemed a violation of these Rules and Regulations and subject to the enforcement provisions hereof and those of the Bylaws.
- (6) Harassment of or retaliation against any complainant by the alleged violator or any other person associated with the alleged violator shall be deemed in violation of these Rules and Regulations and subject to the enforcement provisions contained herein.

B. Violations and Notices of Violations.

- (1) The unit owner is ultimately liable for any actions by the Board in relation to violations of the Declaration, Bylaws, or Rules and Regulations committed by a resident, guest, tenant, service person, or other person or animal associated with the unit.
- (2) Upon receipt of a complaint, the Board shall notify the unit owner of the violation in writing. Such notification shall be made by personal service or personal delivery. The notice of violation will provide specific details of the violation including the date, time, and location where the alleged violation occurred and any other pertinent information deemed appropriate by the Board. In addition, the notice shall include information concerning the sanctions which may be levied

or imposed and the date by which the sanction may be imposed if no hearing is requested.

- (3) The notice of violation shall include information concerning the procedure by which the alleged violator may request a hearing before the Board. The notice shall also contain the last date by which a hearing may be requested which date shall be no earlier than 20 days following the service of the notice of violation upon the alleged violator.

C. Hearing.

- (1) In the event the alleged violator requests a hearing, a hearing shall be held within 30 days following the receipt of the request for hearing by the Board. The alleged violator shall be notified, in writing, of the time, date, and place of the hearing.
- (2) The hearing shall be conducted by the Chairman of the Board, the President of the Association or by the Association manager, if any. Witnesses for the complainant and/or the complainant may testify or produce any evidence deemed relevant and appropriate by the presiding officer. The respondent, the alleged violator, shall be entitled to produce the same kinds of evidence in defense of the respondent's position. Relaxed rules of evidence shall apply. At the same time, however, the presiding officer shall not be required to listen to obviously irrelevant or repetitive evidence.
- (3) The hearing panel shall consist of at least three individuals from a group consisting of the board members, officers and the manager of the Association, if any..
- (4) The date for the hearing may be continued upon mutual agreement of the parties if good cause requires the continuance. All such decisions shall be made by the presiding officer.
- (5) Following the hearing and upon due consideration by the Board, the Board will issue its determination regarding the alleged violation. The Board's decision will be final

and binding on the alleged violator and on the complainant.

(6) In the event the Board determines, in its sole discretion, that additional information or evidence is required, the hearing may be continued or expanded for that purpose.

- D. Punishment. In the event the Board finds that a violation occurred, the Board may issue a written warning, the Board may fine the violator in an amount not to exceed \$500, the amount of which is totally within the discretion of the Board, the Board may seek injunctive relief and/or the Board may secure the services of its attorney and commence legal action against the violator. The Board shall be permitted to take advantage of all legal and equitable remedies available to it under Iowa law. If no request for hearing is made by the alleged violator within the prescribed period of time, the hearing phase is waived and allegations contained in the notice of violation shall be deemed to be admitted by the alleged violator, and the Board shall prescribe the punishment.
- E. Costs. Provided that the unit owner is found to have violated a provision of the Bylaws, Declaration, or these Rules and Regulations, the unit owner shall be responsible for all costs associated with the violation including, but not limited to, the repair of the damaged property, payment of any expert witnesses, reasonable attorney's fees, and court costs and all other fees and expenses incurred by the Board which expenses relate to the violation. Fines and assessments for damage must be assessed to the unit owner by adding the same to the unit owner's monthly maintenance assessment, and in this event, a separate, written and itemized monthly assessment shall be mailed to the unit owner.
- F. Savings Clause. In the event any provision or portion of the Bylaws, Declaration, or these Rules and Regulations shall be invalid or unenforceable or in the event the application of any of said provisions shall be invalid or unenforceable, such event shall not affect, impair, or render invalid or unenforceable the remainder of the provisions of the Declaration, Bylaws, or these Rules and Regulations.

- G. Applicable Law. All court action arising out of this Condominium Regime, including the enforcement of the Bylaws, Declaration, or provisions of these Rules and Regulations shall take place in the Johnson County District Court, Iowa City, Iowa, and Iowa law shall apply.

jan/rbh/condominiums/birkland/rules.regulations

Prepared by: R. Bruce Hauptert, 222 S. Linn, Iowa City; telephone 338-7551

EXHIBIT "D"

LIFT STATION AGREEMENT

This Agreement is entered into this 16 day of September, 2003, by and between Hendrickson Enterprises, Inc., 2601 Flagstone Court, Coralville, Iowa, hereinafter referred to as BUYER and University Athletic Club Investors, L.C., c/o Terry M. Giebelstein, 600 Norwest Bank Building, Davenport, Iowa 52801, hereinafter referred to as SELLER.

R E C I T A L S

A. SELLER and BUYER have entered into a written contract by which SELLER agrees to sell to BUYER and BUYER agrees to purchase from SELLER the following described real estate situated in University Heights, Iowa, to-wit:

Lots 2, 3, 4, 5, and 6, University Athletic Club Subdivision to University Heights, Iowa, according to the recorded plat thereof recorded in Book 2471 at Page 139, records of the Johnson County Recorder's Office.

B. There presently exists a sanitary sewer line commencing north of the above-described property and traveling in a southerly

direction along the westerly line of Lot 3, University Athletic Club Subdivision, until said sewer line reaches a lift station which is situated in the southwest corner of said Lot 3.

C. Said lift station will continue to service the needs of SELLER and, in addition thereto, shall, once construction is completed on said Lots 2, 3, 4, 5, and 6, service the sanitary sewer uses and needs of the owners of six condominium units situated on said Lots 2, 3, 4, 5, and 6.

D. The joint use of said lift station reasonably compels an agreement between SELLER and BUYER by which the maintenance, repair and upkeep expenses associated with said lift station are equitably borne by the parties.

E. The parties have agreed, therefore, to reduce the terms, conditions, and provisions of said Agreement to this writing.

NOW, THEREFORE, IN CONSIDERATION OF MUTUAL COVENANTS CONTAINED HEREIN, IT IS HEREBY UNDERSTOOD AND AGREED AS FOLLOWS:

1. **Incorporation of Recitals.** The parties agree that the Recitals stated above are true and correct and that the same are incorporated within the body of this Agreement as though they were fully set forth below.

2. **Allocation of Maintenance Responsibilities.** All maintenance responsibilities concerning the lift station, its pump and all other equipment related to said lift station, including the replacement thereof, shall be shared and paid in the following

proportion:

SELLER - 46 percent

BUYER - 54 percent

3. **Standard of Maintenance.** Both parties agree that said lift station and related equipment shall be maintained in very good and working condition and in full compliance with the requirements of the City of University Heights, Iowa. This shall include the sewer line traveling from SELLER'S newest addition to the Athletic Club traveling to the lift station and shall include the sewer line from the lift station to the south to Melrose Avenue and then to the west along Melrose Avenue until gravity eliminates the need for the lift station. Neither party shall assume any responsibilities for the maintenance and repair of the sewer line which is currently assumed by the City of University Heights, Iowa.

4. **Condominium Regime Responsibility for Lift Station Maintenance.** The parties understand that BUYER will establish a condominium regime on the above-described property consisting of six units and that each unit owner shall have the responsibility of paying 9 percent of the maintenance and repair expenses anticipated by this Agreement. The parties further agree that BUYER may assign its responsibility to the resulting condominium homeowners association which shall be known as Birkdale Condominiums Owners' Association.

5. Determination of Maintenance Responsibilities.

BUYER, or its successors and assigns, in conjunction with the City Engineer for University Heights, shall determine, in their sole discretion, whether or not maintenance and repair expenses are required to the sewer line or lift station, the maintenance responsibilities of which are assumed by the parties pursuant to the terms of this Agreement. In the event of any question as to whether or not maintenance or repair is necessary to said system, the question shall be resolved, as a final proposition, by the City Engineer for the City of University Heights, Iowa.

6. Payment of Maintenance and Repair Expenses. After

maintenance and repair expenses are incurred pursuant to the terms of this Agreement, both parties, or their successors and assigns, shall pay their proportionate share of the total maintenance and expenses within 30 days after receiving the billing therefor. Any payments not received within said 30-day period shall commence to accrue interest at the rate of 18 percent per year from and after the 30th day following the billing of said maintenance and repair expenses.

7. Usage Ceases. In the event either party ceases to use

the lift station or the sewer line leading to or from the lift station, that party's responsibility for the sharing of maintenance and replacement expenses pursuant to this Agreement shall cease.

8. Successors and Assigns. This agreement shall bind and inure to the benefit of the respective heirs, devisees, personal representatives, successors, and assigns of the parties.

9. No Waiver. The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

10. Governing Law. It is agreed that this agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Iowa.

11. Attorney Fees. In the event that any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees.

12. Entire Agreement. This agreement shall constitute the entire agreement between the parties and any prior understanding

or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

13. **Modification of Agreement.** Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

14. **Notices** Any notice provided for or concerning this agreement shall be in writing and be deemed sufficiently given when sent by regular mail to the respective address of each party as set forth at the beginning of this agreement.

15. **Multiple Counterparts.** This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

16. **Good Faith.** The parties hereto agree to act in good faith in connection with consummation of this transaction.

HENDRICKSON ENTERPRISES, INC.

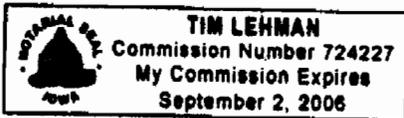
UNIVERSITY ATHLETIC CLUB  
INVESTORS, L.C.

By: [Signature]  
J. W. Hendrickson  
President and Secretary

By: [Signature]  
Robert C. Fick, President  
Mel Foster Co. Properties,  
Inc. of Iowa, its Managing  
Member

STATE OF IOWA )  
 ) ss:  
COUNTY OF JOHNSON )

On this 16 day of September, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared J. W. Hendrickson, to me personally known, who being by me duly sworn, did say that he is the President and Secretary of the corporation executing the within and foregoing instrument, that no seal has been procured by the corporation; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that J. W. Hendrickson as said officers acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by him voluntarily executed.



[Signature]  
Notary Public in and for said State

STATE OF IOWA )  
 ) ss:  
COUNTY OF JOHNSON )

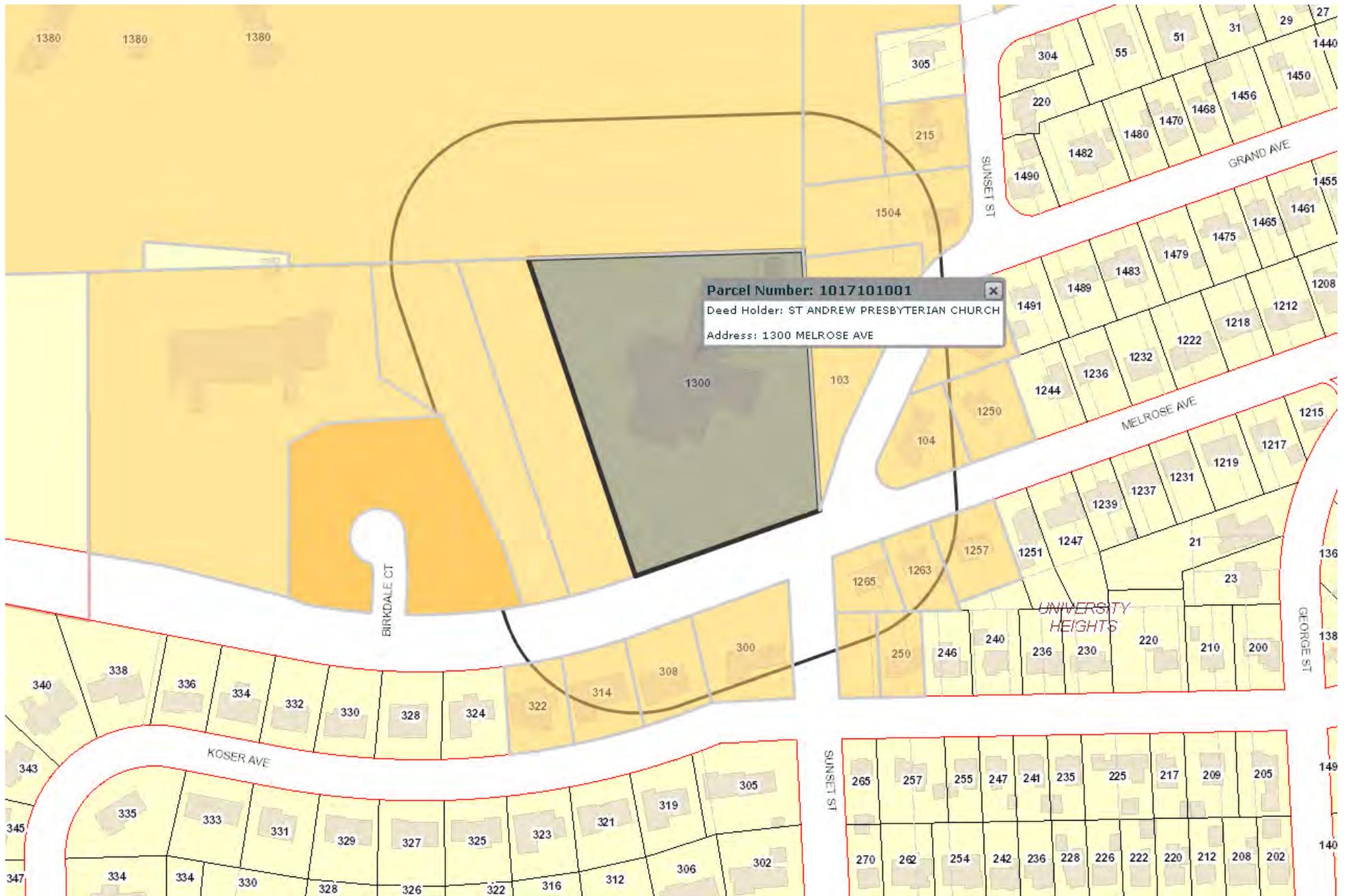
On this 24<sup>th</sup> day of September, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert C. Fick, to me personally known, who being by me duly sworn, did say that he is the President of Mel Foster Co.

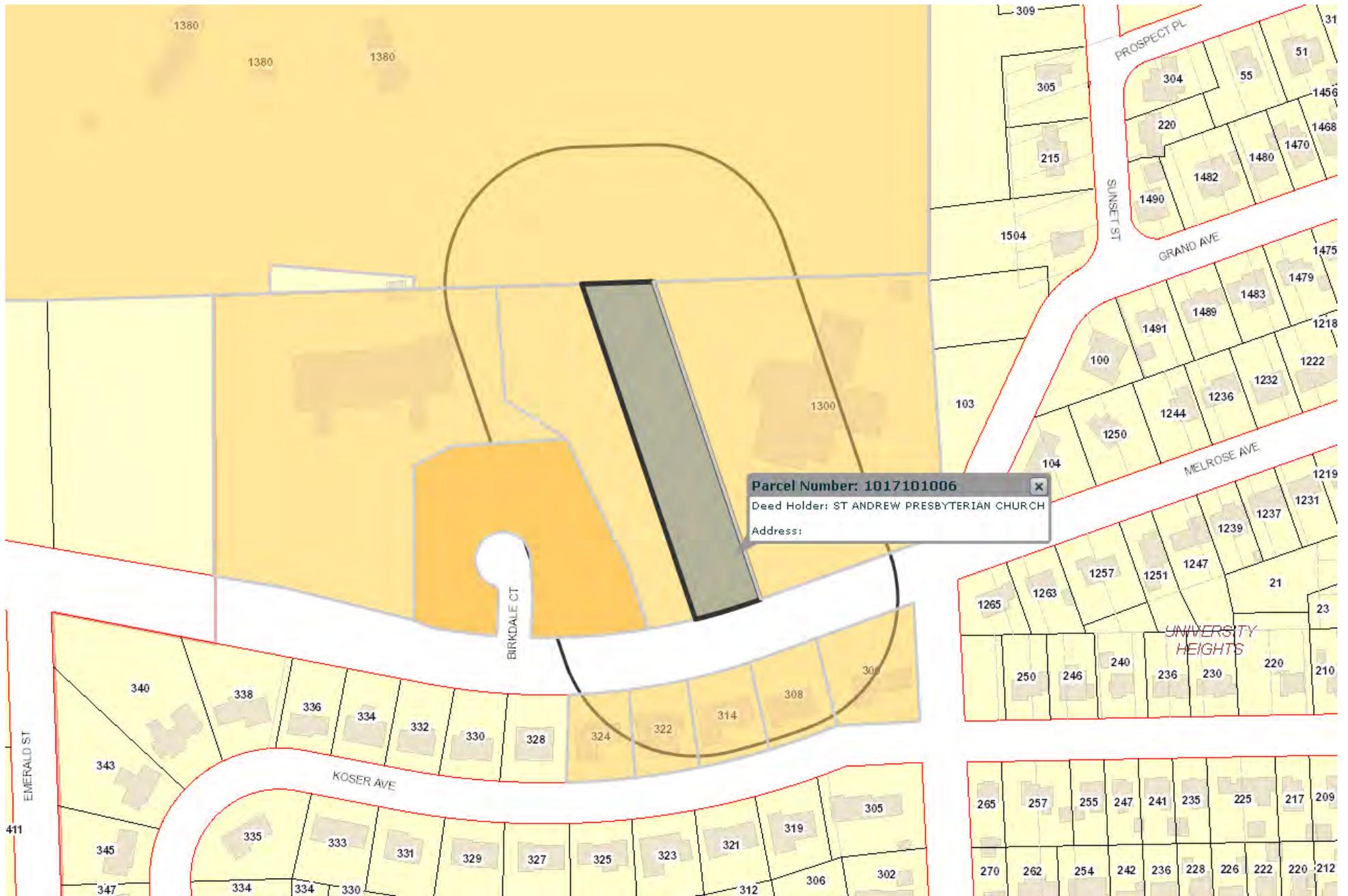
Properties, Inc. of Iowa, the Managing Member of University Athletic Club Investors, L.C.; that he, as managing member, has the authority to execute this document on behalf of said limited liability company; that he, as President of said corporation, has been authorized by the Board of Directors to execute this instrument on behalf of said corporation; that no seal has been procured by the corporation; that the foregoing instrument was signed on behalf of the corporation by authority of its Board of Directors; and that Robert C. Fick acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation and of the limited liability company, by them and by him voluntarily executed.



*Lori Levetzow*  
\_\_\_\_\_  
Notary Public in and for said State

jan/rbh/condominiums/birkdale/lift.station.agrmt







Parcel Number: 1016228002  
Deed Holder: HARGRAVE, CLAYTON P  
Address: 103 SUNSET ST

