

AGENDA

**City of University Heights, Iowa
Special City Council Meeting**

Tuesday, November 29, 2016

City Hall

1004 Melrose Avenue

6:30-7:15 pm

Meeting called by Mayor Wally Heitman

Time	Topic	Owner
6:30	Call to Order Regular Meeting Roll Call	Wally Heitman
6:35	Public Input	Public Comments
6:40	Consideration of Resolution No. 16-59 , Approving the Estimated Incremental Property Tax Revenues for the One University Place Development Anticipated for the City's Fiscal Year Ending June 30, 2018, and Appropriating Approximately \$51,986.00 to the Developer as Economic Development Tax Increment Payments from Revenues Received from the Johnson County Treasurer Attributable to the Taxable Valuation of the OUP Property.	Steve Ballard
	Recommendation of City Attorney to meet in closed session to discuss a personnel matter.	Steve Ballard
	Reconvene to open session	Ken Stanley
	-First consideration of Ordinance No. 195 amending the Traffic Ordinance (No. 120) to impose administrative fees or civil penalties before impounded vehicles involved in certain public offenses will be released.	
	Announcements	Anyone
7:15	Adjournment	Wally Heitman

Next Regular City Council Meeting is December 13, 2016: Horn School

RESOLUTION NO. 16-59

Resolution Obligating funds from the Urban Renewal Tax Revenue Fund for appropriation to the payment of annual appropriation tax increment financed obligations which shall come due in the next succeeding fiscal year

WHEREAS, the City of University Heights, Iowa (the "City"), pursuant to and in strict compliance with all laws applicable to the City, and in particular the provisions of Chapter 403 of the Code of Iowa, has adopted an Urban Renewal Plan for the University Heights One University Place Urban Renewal Area (the "Urban Renewal Area"); and

WHEREAS, this City Council has adopted an ordinance providing for the division of taxes levied on taxable property in the Urban Renewal Area pursuant to Section 403.19 of the Code of Iowa and establishing the fund referred to in Subsection 2 of Section 403.19 of the Code of Iowa (the "Urban Renewal Tax Revenue Fund"), which fund and the portion of taxes referred to in that subsection may be irrevocably pledged by the City for the payment of the principal and interest on indebtedness incurred under the authority of Section 403.9 of the Code of Iowa to finance or refinance in whole or in part projects in the Urban Renewal Area; and

WHEREAS, the City has a scheduled payment in the amount of \$51,986.00 (the "Annual Payment") which shall come due in the fiscal year beginning July 1, 2017 with respect to the City's Development Agreement (the "Agreement") with Jeffrey L. Maxwell which was finally approved by resolution of the City Council on August 11, 2015; and

WHEREAS, it is now necessary for the City Council to obligate for appropriation to the Annual Payment, funds anticipated to be received in Urban Renewal Tax Revenue Fund in the fiscal year beginning July 1, 2017;

NOW, THEREFORE, It Is Resolved by the City Council of the City of University Heights, Iowa, as follows:

Section 1. The City Council hereby obligates \$51,986.00 for appropriation from the Urban Renewal Tax Revenue Fund to the Annual Payment in the fiscal year beginning July 1, 2017.

Section 2. The City Clerk is hereby directed to certify to the Johnson County Auditor the amount obligated for appropriation in Section 1 above, on the City's December 1, 2016 certification of debt payable from the Urban Renewal Tax Revenue Fund and to reflect such amount in the City's budget for the next succeeding fiscal year.

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Upon motion by _____, and seconded by _____, the vote was as follows:

	AYE	NAY	ABSENT	ABSTAIN
Haverkamp	_____	_____	_____	_____
Lane	_____	_____	_____	_____
Maher	_____	_____	_____	_____
Quezada	_____	_____	_____	_____
Zimmermann	_____	_____	_____	_____

Upon Roll Call thus recorded, the Resolution is declared adopted, passed, and approved this 29th day of November, 2016.

Weldon E. Heitman (Wally), Mayor
City of University Heights

ATTEST:

Christine M. Anderson, City Clerk

DEVELOPMENT AGREEMENT

This Agreement is entered into between the City of University Heights, Iowa (the "City") and Jeffrey L. Maxwell, (the "Developer") as of the 11th day of August, 2015 (the "Commencement Date").

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

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

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

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

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

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

WHEREAS, Chapter 15A of the Code of Iowa authorizes cities to provide grants, loans, guarantees, tax incentives and other financial assistance to or for the benefit of private persons;

NOW THEREFORE, the parties hereto agree as follows:

A. Developer's Covenants

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

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WHEREAS, the City has a scheduled payment in the amount of \$51,986.00 (the "Annual Payment") which shall come due in the fiscal year beginning July 1, 2017 with respect to the City's Development Agreement (the "Agreement") with Jeffrey L. Maxwell which was finally approved by resolution of the City Council on August 11, 2015; and

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Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed.

Upon motion by _____, and seconded by _____, the vote was as follows:

	AYE	NAY	ABSENT	ABSTAIN
Haverkamp	_____	_____	_____	_____
Lane	_____	_____	_____	_____
Maher	_____	_____	_____	_____
Quezada	_____	_____	_____	_____
Zimmermann	_____	_____	_____	_____

Upon Roll Call thus recorded, the Resolution is declared adopted, passed, and approved this 29th day of November, 2016.

Weldon E. Heitman (Wally), Mayor
City of University Heights

ATTEST:

Christine M. Anderson, City Clerk

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

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

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

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

6. **Intersection and Project Turn Lane Improvements.** The Developer requests that the City cause the construction of the Intersection Improvements (as defined in the PUD Documents), and the Developer agrees to reimburse the City for the costs incurred in connection with such Intersection Improvements within fifteen days' of notification by the City that such costs have been incurred. .

The Developer also requests that the City cause the construction of the Project Turn Lane Improvements (as defined in the PUD Documents), and the Developer agrees to reimburse the City for the costs incurred in connection with such Project Turn Lane Improvements within fifteen days' of notification by the City that such costs have been incurred. To the extent this Paragraph A(6) and Paragraph B(5) below are inconsistent with the requirements of Section 6(b) of the PUD Development Agreement entered into between the City and the Developer (which has the Developer designing, installing and paying directly for the Project Turn Lane Improvements), this Agreement shall control.

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

8. **Insurance.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. LMI Determination. The City and the Developer hereby acknowledge and agree that, based on all applicable and available facts and circumstances related to the Commercial Project and the City’s provision of economic development support thereto, the provisions of Section 403.22 of the Code of Iowa do not apply in this situation, and no special set aside of funds for “low and moderate income” family housing assistance is required. Among other relevant facts, the parties are aware and rely upon the City Council having expressed its intent under Resolution No. 15-30 and in the Urban Renewal Plan for the Urban Renewal Area that its economic development participation is focused upon ensuring the completion of the Commercial Project and the Developer having requested financial assistance based upon its representations set forth in Section A.10(b) above. The Developer acknowledges that the Payments provided for under Section B below are requested and attributable only to costs allocable to the development, design, construction, operation and maintenance by the Developer of the Commercial Project. In the unanticipated circumstance that, through action of the legislature, an administrative body or court of law, it is ever determined that the provisions of Section 403.22 of the Code of Iowa apply to the

provision of Incremental Property Tax Revenues from the Project hereunder, the Developer agrees that the Payments provided for under Section B below shall be modified to (1) fund any low and moderate income set aside as may then be required; and (2) comply with any time limitations imposed by law on the collection of Incremental Property Tax Revenues. Furthermore, to the extent that modifications to said Payments are insufficient to cover the then-required low and moderate income set aside, the Developer shall reimburse to the City from Payments previously received an amount sufficient to cover the shortfall.

13. Legal and Administrative Costs. The Developer hereby agrees to cover the legal fees and administrative costs incurred by the City in retaining Dorsey & Whitney LLP in connection with the drafting, negotiation and authorization of this Agreement, including the prerequisite establishment of the urban renewal plan, up to an amount not in excess of \$20,000. The Developer agrees to remit payment to the City within 30-days of the submission of reasonable documentation by the City to the Developer evidencing such costs.

14. Sale or Lease of Space to Property Tax Exempt Entities. Unless approved in advance by Resolution of the City Council, until 25 years after the approval of the initial building permit for the Project, the Developer (including its successors and assigns) shall not sell or lease any commercial unit of the Project to a property-tax exempt entity if such sale or lease will result in such commercial unit becoming exempt from the payment of property tax. Until 30 years after the last payment of any TIF benefits to the Developer, the Developer (including its successors and assigns) shall not sell or lease any residential unit of the Project to a property tax exempt entity if such sale or lease will result in such residential unit becoming exempt from the payment of property tax.

B. City's Obligations

1. Payments. In recognition of the Developer's obligations set out above, the City agrees to make annual economic development tax increment payments (the "Payments") to the Developer during the Term, as hereinafter defined, pursuant to Chapters 15A and 403 of the Code of Iowa, provided however that (i) the number of Payments shall not exceed fifteen (15) once the Project has been fully assessed and the total amount of the Payments shall not exceed \$6,705,112 (the "Maximum Payment Total"), and (ii) all Payments under this Agreement shall be subject to annual appropriation by the City Council, as provided hereunder.

The Payments shall not constitute general obligations of the City, but shall be made solely and only from Incremental Property Tax Revenues received by the City from the Johnson County Treasurer attributable to the taxable valuation of the Property.

Each Payment shall not exceed an amount which represents 95% (the "Annual Percentage") of the Incremental Property Tax Revenues available to the City with respect to the Property during the Twelve (12) months immediately preceding each Payment date.

It is assumed that a portion of the new valuation from the Project will go on the property tax rolls as of January 1, 2016. Accordingly, the Payments will be made on June 1 of each fiscal year, beginning on June 1, 2018 and continuing until fifteen (15) Payments have been funded by the full incremental valuation of the completed Project, or until such earlier date upon which total

Payments equal to the Maximum Payment Total have been made, provided, however, that no Payments shall be made after June 1, 2037.

2. **Annual Appropriation.** The parties acknowledge that the Developer's feasibility analysis for the Commercial Project has relied materially on the municipal assistance to the Commercial Project provided by the Payments under this Agreement, and that the Developer would not proceed with the Project in its current configuration or with the Commercial Project at all without the assurances of such assistance, and that the Developer would much prefer a commitment from the City not subject to annual appropriation. However, as an accommodation to the City to help minimize the impact of the City's obligation to make the Payments on its bonding capacity, the parties agree that each Payment shall be subject to annual appropriation by the City Council. Prior to December 1 of each year during the Term of this Agreement, beginning December 1, 2016, the City Council of the City shall consider the question of obligating for appropriation to the funding of the Payments due in the following fiscal year, an amount (the "Appropriated Amount") of Incremental Property Tax Revenues to be collected in the following fiscal year equal to or less than the most recently submitted Developer's Estimate.

In any given fiscal year, if the City Council determines to not obligate the then-considered Appropriated Amount, then the City will be under no obligation to fund the Payments scheduled to become due in the following fiscal year, and the Developer will have no rights whatsoever to compel the City to make such Payments or to seek damages relative thereto or to compel the funding of such Payments in future fiscal years. A determination by the City Council to not obligate funds for any particular fiscal year's Payments shall not render this Agreement null and void, and the Developer shall make the next succeeding submission of the Developer's Estimate as called for in Section A.4 above, provided however that no Payment shall be made after June 1, 2037.

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

4. **Certification of Payment Obligation.** In any given fiscal year, if the City Council determines to obligate the then-considered Appropriated Amount, as set forth in Section B.2 above, then the City Clerk will certify by December 1 of each such year to the Johnson County Auditor an amount equal to the most recently obligated Appropriated Amount.

5. **Intersection and Project Turn Lane Improvements.** In accordance with the PUD Documents and in compliance with Chapter 26 of the Code of Iowa, the City shall cause the construction of the Intersection Improvements (as defined in the PUD Documents) and the Project Turn Lane Improvements (as defined in the PUD Documents).

6. **Community Center Lease-Purchase.** The City agrees to acquire the Community Center Space from the Developer by authorizing and entering into the Lease-Purchase Agreement. The Lease-Purchase Agreement shall be a financing lease with a principal component in the amount of \$390,000.00 and a commercially reasonable rate of interest to be mutually agreed to by the parties hereto. The Lease-Purchase Agreement shall be for a period of twenty (20) years at an interest rate of 3.5% per annum accruing on any unpaid principal balance, with monthly payments beginning the month after the Community Center Space is completed and ready for occupancy and continuing each month thereafter until paid in full. Upon full satisfaction of payments due and owing under the Lease-Purchase Agreement, the City shall take fee simple title in the Community Center Space from the Developer. The Lease-Purchase Agreement shall be authorized as a lease-purchase agreement payable from the City's general fund pursuant to Section 364.4(e)(1) of the Code of Iowa and shall not be payable from the debt service levy authority of the City.

C. **Administrative Provisions**

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

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

3. **Term.** The term (the "Term") of this Agreement shall commence on the Commencement Date and end on June 1, 2037 or on such earlier date upon which the aggregate sum of Payments made to the Developer equals the Maximum Payment Total.

4. **Choice of Law.** This Agreement shall be deemed to be a contract made under the laws of the State of Iowa and for all purposes shall be governed by and construed in accordance with laws of the State of Iowa.

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

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

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

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

The City and the Developer have caused this Agreement to be signed, in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

CITY OF UNIVERSITY HEIGHTS, IOWA

By: Loise A. From
Mayor

Attest:

Christie M. Anderson
City Clerk

JEFFREY L. MAXWELL

By: Jeffrey L. Maxwell

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

Certain real property situated in the City of University Heights, County of Johnson, State of Iowa legally described as follows:

St. Andrew Parcels

Beginning at the Northeast Corner of Section 17, Township 79 North, Range 6 West of the 5th P.M.; thence North 89 degrees West along the North line of said Section 17, 402.6 feet, thence South 16 degrees East 490 feet to the Northerly line of Snook's Grove Road as now established; thence North 73 degrees East along the Northerly line of said road 291.3 feet; thence North 1 degree 40' West to the point of beginning, as shown by Plat recorded in Plat Book 4, Page 383, and including all public rights-of-way and easement territory contained therein and adjacent thereto;

and

That part of the northeast quarter of the northeast quarter of Section 17, Township 79 North, Range 6 West of the 5th P.M., described as Auditor's Parcel 96091 on plat of survey recorded in Book 38, Page 125, Plat Records of Johnson County, Iowa, and including all public rights-of-way and easement territory contained therein and adjacent thereto.

Maxwell Parcel

Auditor's Parcel 2005091 according to the Plat of Survey recorded in Book 49, Page 284, Plat Records of Johnson County, Iowa, being a portion of Outlot 1 and of Lot 238, University Heights, Second Subdivision, according to the plat thereof recorded in Book 2, Page 76, Plat Records of Johnson County, Iowa; EXCEPT beginning at the Southwest corner of Auditor's Parcel 2005091, thence North 0°00'00" East 19.48 feet along the West Line of said Auditor's Parcel (assumed bearing for this description only), thence North 74°40'39" East 8.58 feet to a point of intersection of the Westerly right-of-way line of Sunset Street, thence South 20°48'18" West 23.29 feet along said right-of-way to said point of beginning and containing 81 square feet more or less, and including all public rights-of-way and easement territory contained therein and adjacent thereto

EXHIBIT B

PUD DOCUMENTS AND SITE PLAN

The “PUD Plan Application” is that certain “Multiple-Family Commercial PUD Plan Application” dated April 7, 2015, as modified May 19, 2015, submitted by Jeffery L. Maxwell and approved by the University Heights City Council by Resolution No. 15-30 on June 9, 2015, and Resolution No. 15-56 on August 11, 2015.

The PUD Plan Application includes the Site Plan.

The PUD Development Agreement is reproduced beginning on the following page and is numbered independent of this document.

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

This Agreement is entered into by and between **Jeff Maxwell**, hereinafter referred to as "Developer" and the **City of University Heights, Iowa**, hereinafter referred to as "City", pursuant to University Heights Ordinance, No. 79.

RECITALS:

- A. Developer is the owner of the real estate described and referred to as the Maxwell Parcel on the attached Exhibit A.
- B. Under a written purchase agreement, St. Andrew Presbyterian Church is the Seller, and Developer is the purchaser, subject to certain contingencies, of the real estate described and referred to as the St. Andrew Parcels on the attached Exhibit A.
- C. The Maxwell Parcel and St. Andrew Parcels are located within the City's limits and together comprise land zoned Multiple-Family Commercial. When used for multi-family and commercial purposes, Ordinance No. 79 requires the submittal of a Planned Urban Development (PUD) application and compliance with Ordinance 79(13), which section requires the Developer and the City to enter into a Development Agreement establishing development requirements and addressing certain other items enumerated in the ordinance.
- D. The Developer has submitted a PUD Application for development of the Maxwell and St. Andrew Parcels under a single project known presently as "One University Place" and referred to herein as the "Project".

E. St. Andrew Presbyterian Church ("Church"), as owner of the St. Andrew Parcels, has previously delivered to the City its continuing express written consent for Developer to submit to the City a Multi-Family Commercial PUD Plan Application together with such other materials, applications and requests as may be related to such PUD Plan Application and the project described therein. The Church is not a developer of the Project.

F. Developer and City wish to comply with the requirements of Ordinance 79(13), by entering into this Development Agreement setting out their agreements.

IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. **Purpose.** This Development Agreement is prepared for the purpose of complying with the Ordinance 79(13(E)).
2. **Building Plans and Construction Drawings.** Before any building permit is issued for all or any part of the Project, Developer shall submit to the City for approval detailed building plans, construction drawings, and related plans and applications for the Project in accordance with City requirements and procedures. Such plans shall reflect the design features and details of the PUD Plan approved by the City ("approved PUD Plan") and provide explanation of any variances. To the extent that the submitted plans contain new or modified details not already shown in the approved PUD Plan, the Council may establish reasonable conditions for approval of such newly provided details in accordance with its ordinances and state law. The City shall not issue building permits until such time as the City Council has in the exercise of its reasonable discretion approved by resolution all of the plans, drawings, and applications set forth below in this paragraph. Once approved by the City, the Project shall be constructed in accordance with the approved plans, drawings, and applications, which shall not be amended, changed, or otherwise altered in any material way without further resolution adopted by the City Council. Minor adjustments may be approved administratively by the City Engineer or other authorized party in accordance with the City's standard policies, practices, and procedures. The required plans and drawings shall include the following:
 - a. Building plans consistent in all material respects with the approved PUD Plan showing final design features applicable to the proposed Project, including but not limited to these:
 - i. Design of exterior lighting so that all site and building-mounted luminaires produce a maximum initial illuminance value no greater than 0.10 horizontal and vertical footcandles at the site boundary and no greater than 0.01 horizontal footcandles 10 feet beyond the site boundary. Document that no more than 2% of the total initial designed fixture lumens (sum total of all fixtures on site) are emitted at an angle of 90 degrees or higher from nadir (straight down).

- ii. Site plan showing the location of all buildings and improvements for the Project, including but not limited to these: the placement of all refuse receptacles (including trash cans, dumpsters, and grease traps) and proposed screening for such receptacles; driveways and parking plans showing appropriate dimensions for vehicle turning movements on site for garbage trucks, delivery vehicles, buses, and fire trucks.
 - iii. Grading plan, including Sensitive Areas Development Plan to the extent required pursuant to Ordinance 128.
 - iv. Landscaping Plan showing species and size of plantings as well as amenities such as walkways, benches, bicycle racks, exterior light fixtures, library book drop, entrance amenities, trash receptacles and other public amenities.
 - v. Storm Water Management Plan sufficient for the City to issue a Construction Site Runoff Permit pursuant to Ordinance 169.
 - vi. Storm Water Pollution Prevention Plan and application sufficient for the City to issue a Construction Site Runoff Permit pursuant to Ordinance 155.
 - vii. The granting and recording of utility easements, with appropriate plats, as may be reasonably sufficient for all public and private utilities and services supplying the Project as shown on the approved PUD Plan, with such easements and plats being subject to (i) review by the City's engineering consultants for sufficiency, and (ii) such approvals as may be needed from the City of Iowa City in regard to water main and sanitary sewer.
- b. Final Construction drawings consistent in all material respects with the approved PUD Plan showing:
- i. All final dimensions of the buildings and improvements to be included in the Project.
 - ii. All exterior building materials.
 - iii. All exterior colors.
 - iv. Other matters generally required to be shown for building permit approval.
 - v. The Developer need not include construction drawings of interior improvements intended to be built-out or finished by the owners or tenants of commercial or residential units. Such improvements will be subject to separate building permits, to the extent applicable, in accordance with standard City practices.
 - vi. Containing the utility boring specifications for storm sewer, sanitary sewer, and water main as were called out for boring on the Approved PUD Plan.

- c. The Developer will comply with City ordinances and good practices regarding fill materials and will employ a qualified geotechnical consultant to perform appropriate analysis and testing and to provide recommendations. Developer's consultant will make periodic reports on such matters to the City Engineer and/or the City's engineering consultants, as directed by the City.
 - d. The Project will be designed and built using current sustainable principles and with the intent to obtain LEED Certification. At the Construction Document phase of the Project, Developer shall submit to the City the Project's LEED Score Card demonstrating the Developer's intent to obtain LEED Certification for the Project (or the applicable portion thereof) based upon the LEED criteria existing at the time the Project's LEED Score Card is submitted to the City.
 - e. Failure by the City to identify a building code deficiency during plan review does not relieve the Developer from any obligation to comply with all applicable code provisions. Approval of building plans and/or construction drawings by the City shall not relieve any obligation to comply with the terms and provisions of this Agreement, or the provisions of applicable federal, State and local laws, ordinances and regulations. Approval of plans and/or construction drawings hereunder is solely for purposes of this Agreement, and shall not constitute approval for any other City purpose nor subject the City to any liability for the Project as constructed.
 - f. Walls separating units with bedrooms on each side of such party wall shall be designed to have a Sound Transmission Class (STC) of no less than 60 according to the ASTM E90 Standard Test Method for Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions and Elements.
3. **Restrictions on Use.** Developer and the City understand that the property constituting this Project will be submitted to a horizontal property regime pursuant to Iowa Code Chapter 499B; that is, the project will be a multi-use condominium comprising commercial and residential units configured in compliance with the zoning classification. At such time as Developer prepares a condominium declaration for the Project ("Declaration"), Developer will record such Declaration in accordance with applicable laws, and it shall contain restrictions as to use; rules and regulations; owners' association ("Association") matters (including, but not limited to, articles of incorporation and bylaws); and other governing provisions required by law and typical of condominium projects of this type; all to be appurtenant to the land (the "Project Condominium Documents"). As a condition for the approval of the first occupancy permit for the Project it shall be established by the Developer that the Project Condominium Documents shall have been recorded and shall include the following restrictions on the Project, which specific restrictions shall be enforceable by the City (in addition to the Association and/or unit owners) and shall not be permitted to be amended, deleted or otherwise modified without approval of the City by appropriate resolution of the City Council:

- a. Commercial uses may use outdoor sales areas within the Project only in compliance with local ordinances. This restriction applies at all times, including, but not limited to any day on which The University of Iowa plays football games in Kinnick Stadium ("Game Day"). All Game Day activities on both the commercial and residential portions of the Project shall be in compliance with City ordinances and any additional rules that may be imposed by the Association.
- b. Unless with the prior approval by Resolution of the City Council, no commercial use shall employ or have as an amenity or feature any sort of drive-through service area or walk up service window to pedestrians or to motor vehicles.
- c. Any proposed sign (whether lighted or not) associated with the advertising of any commercial use must either 1) be approved by the City Council, or 2) be in full compliance with sign covenants and restrictions applicable to the Project as may be incorporated into the Project Condominium Documents and expressly approved by Resolution of the City Council.
- d. No temporary signs on or visible from the exterior of a commercial establishment will be permitted except when located in a window of the establishment filling not more than 25% of the window space and for no more than 20 business days during any calendar year. Signs indicating that a business is open or closed or hours of operation, or containing governmentally required disclosures, shall not be deemed temporary signs.
- e. To the extent that a unit is for rent, one "For Rent" sign no larger than three feet by three feet (excluding stand) may be placed in or on the leased unit, or near the leased unit at a location approved by the Association. Additionally, if such sign is not reasonably visible to the general public from Melrose Avenue, one additional such sign may be placed within the Project at another location approved by the Association that is reasonably visible to the general public from Melrose Avenue. In connection with the initial leasing of the Developer's units, the Developer may either abide by the foregoing requirement or in lieu thereof place one leasing sign no larger than ten feet by ten feet (excluding stand) within the Project at a location reasonable visible to the general public from Melrose Avenue.
- f. To the extent that a unit is for sale, one "For Sale" sign no larger than three feet by three feet (excluding stand) may be placed in or on the unit for sale, or near the leased unit at a location approved by the Association. Additionally, if such sign is not reasonably visible to the general public from Melrose Avenue, an additional such sign may be placed within the Project at another location approved by the Association that is reasonably visible to the general public from Melrose Avenue. In connection with the initial sale of the Developer's units, the Developer may either abide by the foregoing requirement or in lieu thereof place one for sale sign no larger than ten feet by ten feet (excluding stand) within the

Project at a location reasonable visible to the general public from Melrose Avenue.

- g. All Project unit owners, occupants and guests shall comply with the noise ordinances of the City and otherwise not create any noise nuisances. Additionally, no music shall be permitted to be played through exterior speakers within any outdoor commercial service areas after 9:00 p.m. on Sundays through Thursdays, or after 10:00 p.m. on Fridays and Saturdays. Any music played through exterior speakers within outdoor commercial service areas shall otherwise be in compliance with City ordinances and any additional rules that may be imposed by the Association.
- h. Unless additional extended hours are approved by Resolution of the City Council, Commercial uses, other than fitness centers, may operate and remain open to the public between the hours of 6:00 a.m. and 10:00 p.m. on Sundays through Thursdays, and between the hours of 6:00 a.m. and 12:00 a.m. (midnight) on Fridays and Saturdays; provided, however, that all outdoor service areas shall close no later than 11:00 p.m. on Fridays and Saturdays. Owners, tenants and Employees may enter upon and remain in the commercial space at other times for business purposes that do not involve the coming and going of customers or clients. Fitness centers may operate twenty-four (24) hours per day seven (7) days per week, provided all such fitness activities are conducted inside the establishment.
- i. Commercial uses shall be limited to those uses specifically permitted by City ordinance, now or in the future, in the Multiple-Family Commercial zone. In the event such uses are modified by zoning amendment, previously existing permitted uses will be subject to the then applicable non-conforming use regulations of the zoning ordinance.
- j. Residential units may be occupied by a single "family" and no more than one person not a member of the family occupying the premises as part of an individual housekeeping unit. "Family" is defined for purposes of this Agreement in the same manner as it is defined by the City Ordinance 79 (3)(32), as now existing or hereafter amended, modified, renumbered, or substituted: "Family" is defined as one person or two or more persons related by blood, marriage, or adoption occupying a dwelling as an individual housekeeping unit.
- k. The Developer's obligations to remove snow and ice from City sidewalks as set forth in this Agreement shall be made part of the obligations of the Association in the Project Condominium Documents.
- l. The total number of multi-family residential dwelling units (residential condominium units) within the Project will initially be established by the Project Condominium Documents at or below the 104 maximum dwelling units

permitted for the Project by City Ordinances #79, #180 and #188. In accordance with any additional requirements of the Project Condominium Documents, (i) a residential condominium unit may be combined horizontally or vertically with one or more other residential condominium units to allow such combined units to be used as a larger single family dwelling unit under applicable City ordinances, or (ii) a larger residential condominium unit (or combined condominium units) may be divided into two or more smaller residential condominium sub-units (or units) to allow such smaller sub-units (or units) to be used as separate single family dwelling units under applicable City ordinances; provided the total number of residential dwelling units does not exceed the 104 residential dwelling units permitted for the Project by City ordinance. Similarly, in accordance with any additional requirements of the Project Condominium Documents, (i) a commercial condominium unit may be combined horizontally with one or more other commercial condominium units to allow such combined units to be used as a larger commercial space under applicable City ordinances, or (ii) a larger commercial condominium unit (or combined condominium units) may be divided into two or more smaller commercial condominium sub-units (or units) to allow such smaller sub-units (or units) to be used as separate commercial spaces under applicable City ordinances.

- m. No left turns shall be permitted from the Project directly onto Sunset Street.
- n. The Developer or Developer's successor (the Association) shall be responsible in perpetuity for the removal of snow and ice on City sidewalks on the north side of Melrose Avenue from the intersection of Melrose Avenue and Sunset Street west to the Project boundary. Snow removed shall not be deposited upon City streets but may be deposited adjacent to the sidewalk upon the area within the City right-of-way. All snow removed from other areas of the Project shall be deposited on the Project's property or elsewhere but not upon City streets, City right-of-way, or any other property owned or controlled by the City or upon private property (other than the Project) except with the permission of the property owner.
- o. Developer and City acknowledge and agree that the residential portion of the Project is being built to standards consistent with owner occupied residential units, but that rental of such units by the Developer and/or subsequent owners is permissible. The residential units will be subject to the same rental requirements, restrictions, and definitions for family as other residential properties in the City. Additionally, the Condominium Declaration shall contain provisions giving the Association reasonable authority to adopt and implement rules to address any issues that may arise from rented units in order to protect owner occupants' peaceful use, enjoyment and unit values.

- p. The Developer and/or the Project's owners' association shall under the Project Condominium Documents have the responsibility to maintain any exterior public space that is shown on the PUD plan or otherwise incorporated into the Project.
- q. The Developer and/or the Project's owners' association will report to the City Council any intention to install more surface parking within the Project than is shown on the approved PUD Plan. The maximum amount of surface parking is 108 spaces pursuant to Ordinance 79(13)(B)(6).
- r. In the event the City becomes the owner of the easterly most commercial unit on the ground level of the south building of the Project, the condominium Declaration shall provide that the exterior fenced green-space area adjacent to and east of such unit (as shown on the attached Exhibit B) and the area on the south plaza adjacent to the entry door to such unit (also shown on Exhibit B) shall be a limited common element of the condominium associated exclusively with such City-owned unit, to be insured (general liability, not casualty) by the City and to be subject to the City's rules and regulations for use by the City and its invitees, guests and the general public. This limited common element shall be maintained by the Association. The limited common element will exclude the sidewalk at the east end of the South building that will be reserved as a general common element for all unit owners, and the City agrees that it will not impede the other unit owners and their invitees, customers, clients and guests from traversing upon the sidewalk (general common element) adjacent to the City-owned unit and associated limited common elements, for reasonable access to and from other condominium units in the Project. The condominium Association shall be responsible for the care, upkeep, maintenance, and repair of the sidewalk as a general common element.
- s. In the event the City becomes the owner of a commercial unit of the Project, and so long as the City is such an owner, then in addition to being a voting member of the Association with all rights of membership afforded to unit owners by the Declaration, one (1) representative of the City, as appointed from time to time by the City Council, shall be a member of the Association's Board of Directors (its governing board).
- t. The Developer agrees for itself and for its successors and assigns that each deed or other conveyance shall contain the following covenants on the part of the Developer for itself and all such successors and assigns:
 - i. That the real property comprising the Project shall be devoted only to and in accordance with the uses specified in this Agreement subject to any modification of such uses that might be contained in the Urban Renewal Plan that will be adopted as part of a separate economic incentives agreement between the Developer and the City upon which this Agreement is Conditioned (see paragraph 16 below).

- ii. That any owner of the real property comprising the Project shall not discriminate upon the basis of age, race, creed, color, disability, gender identity, marital status, sex, sexual orientation, religion, national origin, or the presence or absence of dependents or public assistance source of income in the sale, lease, or rental or in the use or occupancy of the property or any improvements erected or constructed or to be erected or constructed on that property or any part thereof.
 - u. It is intended that the City and its successors and assigns shall be deemed beneficiaries of the agreements and covenants provided in paragraph 3(t)(ii) above, both for and in its own right and also for purposes of protecting the interests of the community and other parties, public and/or private, in whose or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the City. The City shall have the right in the event of any breach of any such agreement or covenant to exercise all the rights and remedies and to maintain any actions or suits at law and/or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled, and shall be entitled to recover, in addition to its court costs, reasonable lawyer fees and litigation expenses.
4. **Easements.** Before the issuance of any occupancy permit for the Project, the Developer shall have granted to the City the following easements to be in a form approved by the City Attorney:
- a. An easement for the erection, maintenance, replacement and use of a bus shelter along Melrose Avenue, as shown on the PUD Plan, to the extent not within City right-of-way. The bus shelter shall be installed, maintained, repaired and replaced by the City or, in accordance with a 28E agreement, by the municipal provider of the bus service.
 - b. An easement for any portion of the sidewalk adjacent to the Project along Melrose Avenue not within City right-of-way, which sidewalk shall be installed and maintained by the Developer or Developer's successors (Association and/or unit owners).

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

5. **Dedication of Right-of-way.** Before the issuance of any occupancy permit for the Project, the Developer shall have dedicated to the City the portions of Melrose Avenue shown on the approved PUD Plan for dedication, with such dedication documentation to be in a form approved by the City Attorney.

6. **Public Street Improvements/Project Turn Lane Improvements.**

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

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

7. **Timing of Construction.**

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

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

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

d. In any event, construction on the Project shall commence within five (5) years after the date the City approves Developer's PUD Plan Application, and if construction does not commence within that period, then the City's approval of that PUD Plan Application and this Agreement are revoked automatically without requirement of further action by City; provided, however, the City shall give the Developer (or Developer's successor, as may be then applicable) not less than twenty-four months nor more than thirty-six months advance written notice of the automatic expiration of such five (5) year development period.

8. **Neighborhood Businesses.** Developer will use commercially reasonable efforts to secure tenants or owners for the commercial units within the Project to operate businesses from among the business uses permitted by applicable City ordinances.
9. **Sale or Lease of Space to Property Tax Exempt Entities.** Unless approved in advance by Resolution of the City Council, until 25 years after the approval of the initial building permit for the Project, the Developer (including its successors and assigns) shall not sell or lease any commercial unit of the Project to a property-tax exempt entity if such sale or lease will result in such commercial unit becoming property exempt from the payment of property tax. Until 30 years after the last payment of any TIF benefits to the Developer, the Developer (including its successors and assigns) shall not sell or lease any residential unit of the Project to a property tax exempt entity if such sale or lease will result in such residential unit becoming exempt from the payment of property tax.
10. **Payment by the Developer of Costs and Fees.** The Developer has in writing already agreed to reimburse, and has already commenced reimbursing, the City for certain costs and fees associated with Developer's PUD Application. The Developer affirms its obligations to reimburse the City as specified in the previously executed agreement.
11. **Conflicts of Interest.** Developer agrees that, to the best of his knowledge and belief, no member, officer or employee of the City, or its designees or agents, nor any consultant or member of the governing body of the City, and no public official of the City who exercises or has exercised or will exercise any functions or responsibilities with respect to the Project during his or her tenure, or who was or is in a position to participate in a decision-making process or gain insider information with regard to the Project, has had or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or in any activity, or benefit therefrom, which is part of the Project at any time during or after such person's tenure.
12. **Lease Clause.** Any lease that the Developer (or its successors or assigns) may enter into for a commercial Unit in the Project shall provide that the tenant shall not approach the City Council for, or receive, any direct or indirect lease subsidy.
13. **Representations and Warranties of Developer.**
 - a. The Developer is a person of legal age and is competent and otherwise has the power to enter into and perform this Agreement. The Developer is contemplating assigning this Agreement and the Developer's obligations hereunder to a development entity in which the Developer will be one of the principal owners ("Development Entity"). The Development Entity will have the power and authority to assume and fully perform this Agreement. The Development Entity will have the power to perform all of the obligations hereunder without violating any provisions of its organizational documents, any other agreement or the laws of the State of Iowa. Developer shall promptly notify the City of any and all changes whatsoever with respect to the identity of

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Remainder of Page left Blank - Signature Page Follows]

DATED this 9th day of June, 2015.

CITY OF UNIVERSITY HEIGHTS, IOWA

DEVELOPER

By: Louise From
Louise From, Mayor

Jeffrey L. Maxwell
Jeffrey L. Maxwell

ATTEST: Christine M. Anderson
Christine Anderson, City Clerk

STATE OF IOWA)
) SS:
COUNTY OF JOHNSON)

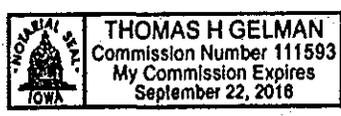
On the 9th day of June, 2015, before me, a notary public in and for the state of Iowa, personally appeared Louise From, Mayor, and Christine Anderson, Clerk of the City of University Heights, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of University Heights, Iowa; that the seal affixed to this instrument is the corporate seal of the City; and that said instrument was acknowledged and sealed on behalf of the City, and that Louise From and Christine Anderson acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of the City, by it and by them voluntarily executed.



[Signature]
Notary Public in and for the State of Iowa
My Commission expires 7-16-15

STATE OF IOWA)
) SS:
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me on December 1, 2015, by Jeffrey L. Maxwell.



[Signature]
Notary Public in and for the State of Iowa
My Commission expires Sept. 22, 2016

Exhibit A – Legal Description of Site for
One University Place Project

St. Andrew Parcels

Beginning at the Northeast Corner of Section 17, Township 79 North, Range 6 West of the 5th P.M.; thence North 89 degrees West along the North line of said Section 17, 402.6 feet, thence South 16 degrees East 490 feet to the Northerly line of Snook's Grove Road as now established; thence North 73 degrees East along the Northerly line of said road 291.3 feet; thence North 1 degree 40' West to the point of beginning, as shown by Plat recorded in Plat Book 4, Page 383.

and

That part of the northeast quarter of the northeast quarter of Section 17, Township 79 North, Range 6 West of the 5th P.M., described as Auditor's Parcel 96091 on plat of survey recorded in Book 38, Page 125, Plat Records of Johnson County, Iowa.

Maxwell Parcel

Auditor's Parcel 2005091 according to the Plat of Survey recorded in Book 49, Page 284, Plat Records of Johnson County, Iowa, being a portion of Outlot 1 and of Lot 238, University Heights, Second Subdivision, according to the plat thereof recorded in Book 2, Page 76, Plat Records of Johnson County, Iowa; EXCEPT beginning at the Southwest corner of Auditor's Parcel 2005091, thence North 0°00'00" East 19.48 feet along the West Line of said Auditor's Parcel (assumed bearing for this description only), thence North 74°40'39" East 8.58 feet to a point of intersection of the Westerly right-of-way line of Sunset Street, thence South 20°48'18" West 23.29 feet along said right-of-way to said point of beginning and containing 81 square feet more or less.

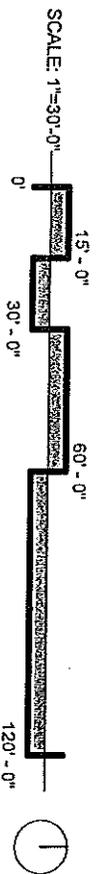
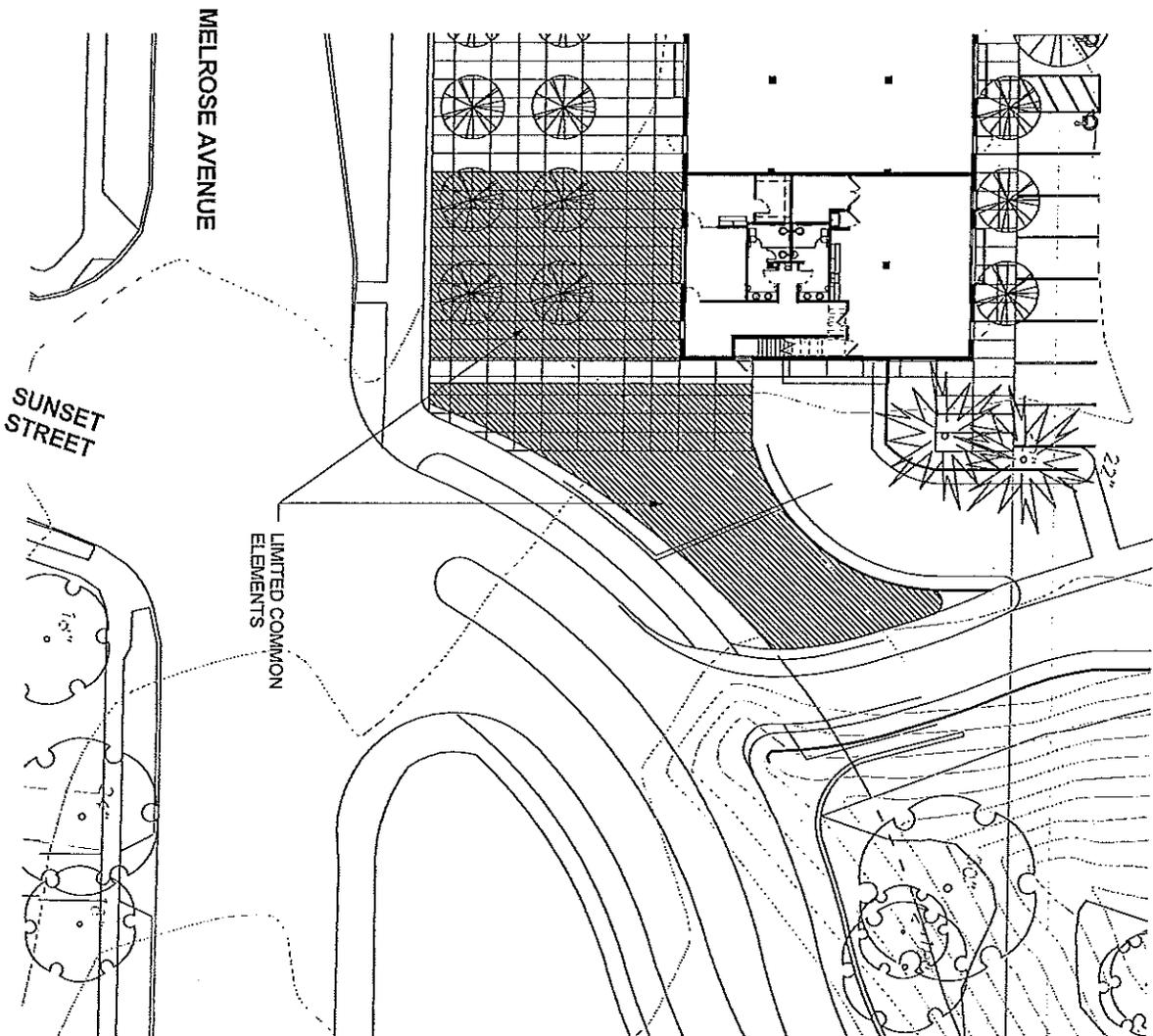


EXHIBIT C

DEVELOPER'S ESTIMATE WORKSHEET

- (1) Date of Preparation: October _____, 20____.
- (2) Assessed Valuation of Property as of January 1, 20____:
\$_____.
- (3) Base Valuation of Property (as of January 1, 2015):
\$0.
- (4) Incremental Valuation of Property (2 minus 3):
\$_____ (the "TIF Value").
- (5) Current City fiscal year consolidated property tax levy rate for purposes of calculating Incremental Property Tax Revenues (the "Adjusted Levy Rate"):
\$_____ per thousand of value.
- (6) The TIF Value (4) factored by the Adjusted Levy Rate (5).
\$_____ x \$_____ /1000
- (7) Developer's Estimate = \$_____ x .95 = _____

DEVELOPER'S CERTIFICATE

In accordance with Section 3, Part A, of the Development Agreement ("Development Agreement") entered into as of August 11, 2015 between the City of University Heights, Iowa, (the "City") and Jeffery L. Maxwell ("Maxwell"), the undersigned representative of One University Place, LLC (the successor to Maxwell and referred to herein as the "Developer"), does hereby certify that to the best of his knowledge and belief the Developer is in full compliance with all of the obligations imposed upon the Developer to date under the PUD Documents (the PUD Plan Application and the PUD Development Agreement, as amended, entered into between the City and Maxwell).

Also affixed hereto is the *Developer's Estimate Worksheet* submitted in accordance with Section 4, Part A, of the Development Agreement.

DEVELOPER
One University Place, LLC

By: 
Jeffrey Maxwell, Manager

EXHIBIT C

DEVELOPER'S ESTIMATE WORKSHEET

- (1) Date of Preparation: October 14, 2016.
- (2) Assessed Valuation of Property as of January 1, 2016.
\$2,742,300.00 (see attached table)
- (3) Base Valuation of Property (as of January 1, 2015):
\$0.
- (4) Incremental Valuation of Property (2 minus 3):
\$2,742,300.00 (the "TIF Value").
- (5) Current City fiscal year (for taxes accrued in 2015-2016, payable 2016-2018) consolidated property tax levy rate for purposes of calculating Incremental Property Tax Revenues (the "Adjusted Levy Rate"):
\$33.30439 per thousand of value.

[Note: This figure, if not others, will need to be adjusted by the additional factors specified at Paragraph 4 in the TIF Development Agreement]

- (6) The TIF Value (4) factored by the Adjusted Levy Rate (5).
\$2,742,300 x \$33.30439/1000 = \$91,330.63

[With residential and commercial rollbacks roll back applied (see attached table)]

$$\underline{\$1,643,092} \times \underline{\$33.30439/1000} = \underline{\$54,722.18}$$

- (7) Developer's Estimate = \$91,331 x .95 = \$86,764

[With residential and commercial rollbacks applied (see attached table)]

$$\underline{\$54,722} \times .95 = \underline{\$51,986}$$

	Unit	Assessed Value January 2016	Commercial Roll Back for 2015-2016 (Payable 2016-2017)	Residential Rollback for 2015-2016 (Payable 2016-2017)
			90.0000%	55.6259%
North Condominium				
		-		
South Condominium				
1	101	214,600	193,140.00	
2	102	65,700	59,130.00	
3	103	62,000	55,800.00	
4	201	100,000		55,625.90
5	202	100,000		55,625.90
6	203	100,000		55,625.90
7	204	100,000		55,625.90
8	205	100,000		55,625.90
9	206	100,000		55,625.90
10	207	100,000		55,625.90
11	208	100,000		55,625.90
12	209	100,000		55,625.90
13	210	100,000		55,625.90
14	211	100,000		55,625.90
15	212	100,000		55,625.90
16	301	100,000		55,625.90
17	302	100,000		55,625.90
18	303	100,000		55,625.90
19	304	100,000		55,625.90
20	305	100,000		55,625.90
21	306	100,000		55,625.90
22	307	100,000		55,625.90
23	308	100,000		55,625.90
24	309	100,000		55,625.90
25	310	100,000		55,625.90
26	311	100,000		55,625.90
27	312	100,000		55,625.90
		\$ 2,742,300	308,070.00	1,335,022
				1,643,092

ORDINANCE NO. 195 (amending Ordinance No. 120)

AN ORDINANCE AMENDING THE CITY'S TRAFFIC ORDINANCE (No. 120) TO ESTABLISH AN ADMINISTRATIVE FEE TO BE PAID BEFORE VEHICLES IMPOUNDED FOR CERTAIN OFFENSES WILL BE RELEASED TO THEIR OWNERS

Part I: DECLARATION OF POLICY:

IT IS THE DECLARED POLICY OF THE CITY COUNCIL OF THE CITY OF UNIVERSITY HEIGHTS, IOWA TO DETER THE USE OF MOTOR VEHICLES IN CONNECTION WITH CERTAIN ILLEGAL CONDUCT BY IMPOSING AN ADMINISTRATIVE FEE BEFORE VEHICLES IMPOUNDED IN CONNECTION WITH CERTAIN ILLEGAL CONDUCT WILL BE RELEASED TO THEIR OWNERS.

Part II: AMENDMENTS:

University Heights Ordinance No. 120 is amended as follows (with additions indicated by underline; deletions indicated by ~~strike-through~~; omissions by "*****"):

Section 9 - TOWING AND IMPOUNDMENT PROCEDURES.

1. Towing and Impoundment of Abandoned Vehicles; Notices.

A. Towing and Impoundment Authorized: The University Heights Police Department may tow and impound or have towed and impounded any vehicle abandoned, provided the Department has notified the owner or person entitled to possession that the vehicle will be towed and impounded if the vehicle is not removed within seventy two (72) hours of the time a towing notice is posted. Notice shall be deemed posted by securely attaching the notice to the driver's side window of the vehicle. The notice shall state the date and time the notice is attached to the vehicle, the intent to tow the vehicle seventy two (72) hours after the posting, the reason for the notice to tow and that all costs of removal, notification and storage must be paid before the vehicle may be reclaimed. This notice provision shall not be required in the case of a vehicle parked on or in a public street or alley determined by the Department to create an immediate hazard to vehicle or pedestrian traffic.

B. Notice After Impoundment and Prior to Sale:

1. When a vehicle has been impounded under the provisions of this Ordinance or seized under any provision of the laws of the State, the Department shall follow the procedures determined by State law for giving notice to the owner, lienholders and other persons entitled to possession of the proposed sale of the vehicle as an "abandoned vehicle."
2. If the vehicle was found and impounded under this Ordinance, the notice shall state that an objection may be made and a hearing held pursuant to Section 9(~~10~~11) of this Ordinance.

2. **Towing and Impoundment of Certain Illegally Parked Vehicles.**

Notwithstanding Section 9(1)(A) of this Ordinance, any vehicle illegally parked and left unattended as described herein is hereby declared a public nuisance, per se, and may be towed and impounded by or under direction of the Department without prior notice:

- A. Any vehicle which substantially blocks a public or private driveway without the consent of the owner or person in control of the property.
- B. Any vehicle which obstructs the movement of an emergency vehicle.
- C. Any vehicle which obstructs or interferes with the use of a fire hydrant.
- D. Any vehicle parked in violation of a posted parking regulation, where a temporary or permanent traffic ~~sign~~sign indicates "Towaway Zone" or language similar in content.
- E. Any vehicle parked on a street or alley in a manner which obstructs pedestrian or vehicular traffic.
- F. Any vehicle parked in violation of this Ordinance.

3. **Vehicles Towed and Impounded Pursuant to Arrest of the Driver.**

A vehicle may be towed and impounded by or under the direction of the Department when the driver is arrested if:

- A. The arrested person consents to the impoundment; or

- B. The vehicle is not legally parked or will constitute a traffic hazard if left at its location at the time of arrest, and the arrested person is ~~either unable or unwilling to move it or~~ make arrangements to have it moved immediately; or
- C. The vehicle may be towed and impounded pursuant to a provision of this Ordinance.

4. Vehicles Towed and Impounded for Failure to Provide Valid License or Proof of Financial Liability Coverage.

A vehicle may be towed and impounded by or under the direction of the Department when the driver's license is barred, revoked, or suspended; the driver has no license; the driver is disobeying license restrictions; and/or the driver is unable to provide proof of financial liability coverage as required by Iowa Code 321.20B, as presently existing or hereafter renumbered, and if:

- A. The person consents to the impoundment; or
- B. The vehicle is not legally parked or will constitute a traffic hazard if left at its location at the time of violation, and the person is ~~either unable or unwilling to make arrangements to move it or~~ have it moved immediately; or
- C. The vehicle may be towed and impounded pursuant to a provision of this Ordinance.

54. Impoundment for Accumulated Parking Violations.

- A. Determination of Towing and Impoundment: If any vehicle has accumulated five (5) or more parking tickets ~~of or~~ fifty dollars (\$50.00) or more worth of accumulated parking violations as defined in this Ordinance, such vehicle may be towed and impounded or may be impounded by use of "Denver boot" or similar device, as hereafter provided.
- B. Notice of Towing and Impoundment; Hearing:
 - 1. Towing and impoundment shall occur only after notice and opportunity for an administrative hearing is offered to the last known owner or person entitled to possession of such motor vehicle. No vehicle shall be towed and impounded unless such vehicle is on a public street and is

in violation of a parking regulation of this Ordinance.

2. Notice shall be in writing and shall state the license number of the vehicle at issue, the name and address of the owner or the person entitled to possession of the vehicle, a brief description of the parking tickets issued to such vehicle, that there is a right to request an administrative hearing before towing and impoundment if such request is made within ten (10) calendar days of the mailing date of the notice, that failure to request a hearing within ten (10) calendar days or failure to appear at a requested hearing waives the opportunity for hearing, and that the owner or other person entitled to possession shall be responsible for all charges and costs incurred for towing and impoundment of the vehicle, in addition to charges for unpaid parking tickets.
3. A hearing held pursuant to a request shall be conducted before the City Council or designee and shall be limited to whether a violation of Section 9(45)(A) of this Ordinance exists, and whether the vehicle shall be towed and impounded for unpaid parking tickets. The owner or person entitled to possession may, at that time, pay for any outstanding tickets.
4. If the City Council or designee determines that the vehicle shall be towed and impounded, the City Council or designee shall notify the owner or person entitled to possession, either orally at the conclusion of the hearing or by letter of such decision. However, such notice need not be given if the owner or person entitled to possession fails to appear at such hearing.

C. Impoundment by Use of the Denver Boot: Impoundment by use of the Denver boot is subject to the following:

1. Impoundment shall not exceed twenty four (24) hours, except a peace officer may extend or reduce such time period for safety or traffic reasons.
2. No vehicle shall be impounded within the traveled portion of any street or on any portion of a street or sidewalk when the impoundment at such place would create a hazard to the public or traffic.

3. On expiration of the time period contained in Section 9(C)(1) above, the vehicle shall be towed and impounded.

65. Emergency Towing and Impoundment.

If an emergency requires the immediate removal of a vehicle lawfully parked, the Police Department may authorize the vehicle to be towed and, if necessary, impounded. The owner or person entitled to possession of the vehicle may reclaim the vehicle at any time without charge, and the party requesting emergency removal shall pay all costs and expenses resulting from the towing and impoundment.

76. Entry Into Vehicles To Be Towed Or Impounded Restricted.

If it is necessary to enter a locked or unlocked vehicle in order to tow or impound the vehicle, the entry must be made in the presence of a peace officer.

87. Impoundment Location.

All vehicles towed pursuant to this Ordinance shall be impounded in the area or places designated by the City Council.

98. Records Kept.

When a vehicle is towed or impounded under the provisions of this Ordinance, the Department shall maintain a record of the vehicle, including sufficient identifying information, the date and hour of towing, location towed from, impoundment or towing destination, person performing the towing, reason for towing or impoundment and the name of the peace officer authorizing the tow or impoundment.

109. Nonapplicability to Vehicles as Evidence in Criminal Cases.

This Ordinance shall not affect the established procedures for seizing a vehicle as evidence in a criminal case.

110. Hearing for Objection to Towing and Impoundment.

- A. The owner, lienholder of record, a person entitled to possession or their duly authorized agent may object and request a hearing to a towing or impoundment or payment of an administrative fee if a vehicle is towed

and/or impounded with or without prior notice. Requests for hearings must be in writing filed with the Department. All requests for hearings after an impoundment must be made within twenty one (21) calendar days after impoundment or shall be deemed waived.

- B. The person challenging the impoundment shall be informed of the reason for the towing and/or impoundment and/or imposition of an administrative fee, and a hearing shall be held without unnecessary delay before the City Council or designee.
- C. The City Council or designee shall consider all relevant information offered by witnesses, including the person challenging the towing and/or impoundment and/or imposition of an administrative fee, and shall set forth findings as to the objection and grounds for challenge. The City Council or designee shall notify the person challenging the towing and/or impoundment and/or imposition of an administrative fee of the decision, and the decision shall indicate whether the towing and/or impoundment and/or imposition of an administrative fee was appropriate.
- D. If the City Council or designee finds the vehicle was improperly towed or impounded or that good cause otherwise exists to waive the imposition of an administrative fee, the vehicle shall be released to the person challenging the impoundment upon compliance with Section 9(~~11~~12)(A) of this Ordinance. All costs of towing, preservation, storage and notification accruing through the fourth calendar day after the City Council's or designee's decision shall be paid by the City. All costs thereafter shall be paid by the person challenging the impoundment prior to the vehicle's release from impoundment.

12±. Redemption of Towed and Impounded Vehicle - Administrative fee for Certain Offenses.

- A. Owner to Present Evidence of Identity and Pay Costs Prior to Reclaiming: Before a person may recover a vehicle which has been towed and impounded under the provisions of this Ordinance, the person shall present evidence to the Department of the person's identity and right to possession of the vehicle, sign a receipt for the return of the vehicle, and pay the costs of towing, preservation, storage, outstanding parking tickets, notification and preliminary costs of sale unless some or all of these costs have been waived after hearing under Section 9-~~10~~(11) of this

Ordinance. In addition, before a person may recover a vehicle which has been towed and impounded in connection with the following offenses, the person must also pay an additional administrative fee in the amount of \$200.00:

1. Controlled substance violations.
2. Possession of drug paraphernalia.
3. Driving while license suspended, revoked or barred.
4. Driving under the influence of alcohol or drugs.
5. Eluding or attempting to elude a police officer.
6. Leaving the scene of a personal injury or property damage accident.
7. Failure to provide proof of insurance.
8. Weapons offenses and intimidation with a dangerous weapon.

B. Right to Reclaim and Forfeiture:

1. The owner, lienholder of record or person entitled to possession of an impounded vehicle shall reclaim the vehicle within twenty one (21) calendar days after:
 - a. The effective date of the notice provided in Section 9(1)(B) of this Ordinance.
 - b. Receipt of a vehicle release from the City;
or
 - c. Receipt of a decision from a hearing held pursuant to Section 9(~~10~~11) of this Ordinance.
2. If the owner, lienholder or person entitled to possession does not exercise the right to reclaim an impounded vehicle within the twenty-one (21) calendar day reclaiming period, such person shall be deemed to have waived any right, title, claim or interest in or to the vehicle.
3. The owner, lienholder of record or person entitled to possession may, upon written request and payment of additional storage charges,

delivered to the Department prior to the expiration of the twenty-one (21) calendar day reclaiming period, obtain an addition period of up to fourteen (14) calendar days within which the vehicle may be reclaimed.

PART III: EFFECTIVE DATE:

This Ordinance shall become effective upon its passage and publication as provided by law.

PART IV: REPEALER:

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

PART V: SAVING CLAUSE:

If any section, provision, or part of this ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

Adopted by the University Heights City Council on this ____ day of _____, 2017, and approved this ____ day of _____, 2017.

Weldon E. Heitman ("Wally"), Mayor

ATTEST:
(SEAL)

Christine M. Anderson, City Clerk

STATE OF IOWA)
) SS:
COUNTY OF JOHNSON)

On the ___ day of _____, 2017, before me, a notary public in and for the state of Iowa, personally appeared Weldon E. Heitman

("Wally"), Mayor, and Christine M. Anderson, Clerk of the City of University Heights, to me personally known, and who, being by me duly sworn, did say that they are the Mayor and City Clerk of the City of University Heights, Iowa; that the seal affixed to this instrument is the corporate seal of the City; and that said instrument was acknowledged and sealed on behalf of the City, and that Weldon E. Heitman ("Wally") and Christine M. Anderson acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of the City, by it and by them voluntarily executed.

Notary Public in and for the
State of Iowa

STATE OF IOWA)
) SS:
COUNTY OF JOHNSON)

I, Christine M. Anderson, being first duly sworn, certify that the above ordinance was published in the Iowa City Press-Citizen the ____ day of _____, 2016.

Christine M. Anderson

Signed and sworn to before me on the ____ day of _____, 2017, by Christine M. Anderson, Clerk of the City of University Heights.

Notary Public in and for the
State of Iowa

UH - Ordinance No. 195 amending No. 120 re towing 11 15 16