

CONDITIONAL ZONING AGREEMENT

This agreement is made between the City of University Heights, Iowa, a municipal corporation ("the City"), Michal Flaum, University Lake Partners II, LLC, in its capacity of as owner of 905 Melrose Avenue, and Kinnick Yacht Club, LLC (collectively "Owners"); University Lake Partners II, LLC, in its capacity of proposed developer of a hotel (hereinafter referred to as "Developer"); and James Glasgow and Greg Stiltner, as members and managers of Developer, as of the 12th day of September, 2017.

WHEREAS, Michael Flaum is the owner of approximately 3.75 acres of property located at 901 Melrose Avenue in University Heights, Iowa; and

WHEREAS, University Lake Partners II, LLC is the owner of property located at 905 Melrose Avenue in University Heights, Iowa; and

WHEREAS, Kinnick Yacht Club, LLC is the owner of property located at 909 Melrose Avenue in University Heights, Iowa; and

WHEREAS, Developer has requested that the City rezone Owners' property, in whole or in part, from R-1 Single Family Residential to CH Commercial Hotel; and

WHEREAS, Owners have consented to Developer's rezoning request; and

WHEREAS, Iowa Code §414.5 (2017) provides that the City of University Heights may impose reasonable conditions on approving an applicant's rezoning request, over and above existing regulations, in order to satisfy public needs caused by the requested change; and

WHEREAS, the Developer acknowledges that certain conditions and restrictions are reasonable to insure that the development of the property is consistent with the City's comprehensive plan, and the Owners accept the development conditions as agreed by Developer and the City of University Heights; and

WHEREAS, the Developer acknowledges that the City has entertained and undertaken various efforts to stabilize City neighborhoods, encourage owner-occupied dwellings, and limit and regulate the spread

of commercial uses of property within the City, which is predominantly residential in character; and

WHEREAS, the Developer is committed to the City's vision to promote, create, and maintain an attractive community and to provide a residential-living environment for the neighbors of the proposed development, particularly those on Olive Court and Leamer Court; and

WHEREAS, the City has determined that, with appropriate conditions to ensure that neighborhood stabilization efforts are furthered and promoted, that development proceeds in an environmentally sensitive manner, and that measures to improve pedestrian, bicycle, and motor vehicle safety are observed, the requested zoning change is consistent with the City's Comprehensive Plan; and

WHEREAS, the Developer agrees, if the Developer ever acquires title to Owners' property, to develop this property in accordance with the terms and conditions of this Conditional Zoning Agreement, and the Owners agree that these conditions have been imposed upon their properties if the Developer purchases them and/or their properties are developed for CH Commercial Hotel Zone use,

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Michael Flaum ("Flaum") is the legal titleholder of the property known locally as 901 Melrose Avenue and legally described as follows:

All that part of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 16 in Twp. 79 N., R. 6 West of the 5th P.M., lying South and West of the present right of way of the Chicago, Rock Island & Pacific Railway Company, excepting therefrom a right of way 22 feet wide off the West side of the said NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ of said Sec. 16, extending from the southwest corner thereof to the Public Highway called "Snooks Grove Road", which right of way is reserved to be used in common for the present and future owners of the E $\frac{1}{2}$ NE $\frac{1}{4}$ of said Sec. 16, and subject to easements and restrictions of record.

2. University Lake Partners II, LLC ("ULP II") is the legal titleholder of the property known locally as 905 Melrose Avenue and legally described as follows:

Lot A of a subdivision of the east one acre of the NW ¼ of the NE ¼ of the NW ¼ of Section 16, Township 79 North, Range 6 West of the 5th P.M., as shown by plat recorded in Plat Book 4, Page 106, of the records in the office of the Johnson County Recorder; and Auditor's Parcel 2005054, according to the survey recorded in Book 50, Page 74, Plat Records of Johnson County, Iowa, located in the NW ¼ of the NE ¼ of the NW ¼ of Section 16, Township 79, Range 6 West of the 5th P.M.

ULP II is one and the same entity as Developer.

3. Kinnick Yacht Club, LLC ("Kinnick Yacht Club") is the legal titleholder of the property known locally as 909 Melrose Avenue and legally described as follows:

Lots 400 and 401, excepting the south 52 feet thereof, in University Heights Third Subdivision, Johnson County, Iowa, according to the plat thereof recorded in Book 3, Page 140, Plat Records of Johnson County, Iowa.

4. Developer has entered into one or more Purchase Agreements, under the terms of which Flaum and Kinnick Yacht Club have agreed to cooperate with the Developer's rezoning request in order to allow the Developer to meet one of the Developer's conditions requiring satisfactory rezoning of the property, and, if all conditions of sale are met, to sell 901 Melrose Avenue and 909 Melrose Avenue to the Developer.
5. Developer has submitted an application to rezone 901 Melrose Avenue, a portion of 905 Melrose Avenue, and 909 Melrose Avenue, as shown more particularly in the "Rezoning Exhibit" prepared by MMS Consultants, Inc., a copy of which is attached hereto as Exhibit "A" and made a part hereof by this reference. The property that is the subject of the rezoning request (and described and depicted in Exhibit "A" shall be referred to as "the Property").
6. Flaum, Kinnick Yacht Club, ULP II in its capacity as owner of 905 Melrose Avenue (collectively "Owners"), and Developer acknowledge that the City wishes to insure conformance to the principles of the City's Comprehensive Plan. Further, the parties acknowledge that Iowa Code §414.5 (2017) provides that the City may impose reasonable conditions on granting an applicant's rezoning request, over and above the

existing regulations, in order to satisfy public needs caused by the requested change.

7. In consideration of the City's approval of Developer's rezoning request, Developer agrees to, and Owners accept, the following conditions:

- a. That development of the Property will conform to all applicable requirements of the City's Zoning Ordinance, as amended.
- b. That development of the Property for CH Commercial Hotel Zone use will conform to all applicable requirements of all of the City's other Ordinances, as amended, including those that recently have been recommended for amendment or adoption by the City's Zoning Commission related to post-construction storm water runoff control; maximum building coverage; subdivision; development of property containing environmentally sensitive areas; and parkland dedication, except to the extent otherwise specified and agreed to by the City and Developer in a Commercial Hotel Planned Unit Development (PUD) Agreement, as provided in the City's Zoning Ordinance, as amended.
- c. That Owners and Developer shall not challenge the authority of the City Council of the City of University Heights to regulate further the development of the Property under a Commercial Hotel Planned Unit Development (PUD) Agreement, as provided in the City's Zoning Ordinance, as amended, including but not limited to regulation regarding erosion control and sensitive areas considerations; building size and location on the Property; site design and building elevations; vehicular access; landscaping and common open space; restrictions on types of commercial uses and hours of operation for outdoor seating areas, exterior sound/loudspeakers, and deliveries; restrictions on signage; and other restrictions, regulations, and requirements.
- d. Developer agrees to convey to one or more organizations or entities, to be specified by the City in the City's sole and absolute

discretion, two properties within the City for the purpose of facilitating the City's neighborhood stabilization efforts and goals as follows:

- i. Two properties on Olive Court; or
- ii. One property on Olive Court and 905 Melrose Avenue.

The conveyances shall occur no later than six months from the date the City gives conditional approval to the Developer's PUD Plan Application.

The Developer agrees that all such conveyances shall be subject to the restrictions set forth in Exhibit "B" attached hereto. The City in its sole and absolute discretion may direct and impose additional development requirements, regulations, and/or restrictions with respect to the properties conveyed, and Developer shall have no say in those matters; provided, however, that the Developer's obligations under this para. 7(d) shall be completed and fulfilled in total by conveying the properties. In no event shall the City give final approval to the Developer's PUD Plan Application or issue a building permit with respect to the Property until the requirements of this para. 7(d) have been met.

- e. The Developer, James Glasgow, and Greg Stiltner, agree that neither they nor their agents, employees, successors, heirs, or assigns, nor any business, organization, corporation, partnership, or other entity in which they have an ownership, equity, or creditor interest or relationship shall become the owner or mortgagee of or otherwise have any legal, equitable, or creditor interest of any type, kind, or nature in any real property in the City that abuts or has a street address on Melrose Avenue east of Sunset Street, on Olive Court, or on Leamer Court for ancillary hotel-stay related business operations, except insofar as is necessary to comply with this Conditional Zoning Agreement,

including para. 7(d), and to complete the proposed development.

Provided, however, that notwithstanding the provisions of the para. 7(e), the Developer shall be permitted to retain ownership of 905 Melrose Avenue for occupancy by hotel management employees and their families, subject to compliance with applicable City Ordinances and other local, state, and federal laws. No vehicles shall be parked on any yard at 905 Melrose Avenue on Hawkeye Football home game days or on any other days.

- f. The Developer shall convey ownership of the historical house situated at 901 Melrose Avenue (but not the real property on which the house sits) to the City within seven days of acquiring title to the Property. The Developer agrees to move the house to another location on the Property at the Developer's sole expense and to permit the house to remain on a temporary basis.
 - i. Specifically, the Developer will allow the house to remain at the location on the Property to which is it moved for six months after the City gives final approval to the Developer's PUD Plan Application.
 - ii. The house may remain for an additional six months only if the City provides the Developer assurances that a site for the house off the Property has been secured and that funding to relocate the house off the Property is available. Such assurances must be provided no later than six months after the City gives final approval to the Developer's PUD Plan Application.
 - iii. Within these time parameters (six months after the City gives final approval to the Developer's PUD Plan Application or an additional six months if the required assurances are given), the City may move the house off the Property permanently at the City's sole expense.

- iv. If the City has not relocated the house off the Property within these time parameters (six months after the City gives final approval to the Developer's PUD Plan Application or an additional six months if the required assurances are given), then ownership of the house shall revert to the Developer for disposition at its discretion.
 - v. While the house remains on the Property after the initial move, the City shall maintain the house at its sole expense, and the Developer hereby grants the City and its agents permission and authority to come upon the Property at reasonable times for that purpose.
 - g. The Developer shall not seek Tax Increment Financing or other financial assistance from the City in connection with the proposed development of the Property.
 - h. The brand or flag of the hotel to be operated on the Property, approved by the City as part of the Developer's PUD Plan Application, may not be changed except by written instrument approved by a four-fifths vote of the City Council.
8. Developer shall, within seven days of execution of this Conditional Zoning Agreement provide to City all projections of income and expenses from development of the Property that Developer has provided to any lender, creditor, hotel franchisor, or investor. Developer shall thereafter provide to the City all additional projections of income and expenses from development of the Property that Developer provides to any lender or investor within seven days of providing them to any such lender, creditor, hotel franchisor, or investor.
9. Owners, Developer, James Glasgow, Greg Stiltner, and the City acknowledge that the conditions contained herein are reasonable conditions to impose on the Property and on them under Iowa Code §414.5, and that the conditions satisfy public needs that are caused by the requested zoning change.
10. Owners, Developer, James Glasgow, Greg Stiltner, and the City acknowledge that, in the event the Property is

transferred, sold, conveyed, redeveloped, or subdivided, all development or redevelopment for CH Commercial Hotel use will conform strictly to the terms of this Conditional Zoning Agreement.

11. Owners, Developer, James Glasgow, Greg Stiltner, and the City acknowledge that this Conditional Zoning Agreement shall be deemed to be a covenant running with the Property, and with title to the Property, and shall remain in full force and effect as a covenant with title to the Property, unless or until released of record by the City. Owners, Developer, James Glasgow, Greg Stiltner, and the City further acknowledge that this Conditional Zoning Agreement shall inure to the benefit of, and bind all successors, representatives, and assigns of all parties hereto.
12. Owners, Developer, James Glasgow, and Greg Stiltner acknowledge that nothing in this Conditional Zoning Agreement shall be construed to relieve the Owners and Developer from complying with all other applicable local, state, and federal laws, ordinances, rules and regulations.
13. Owners, Developer, James Glasgow, Greg Stiltner, and the City acknowledge and agree that this Conditional Zoning Agreement is hereby incorporated by reference into the ordinance rezoning the Property (Ordinance No. 208), and that upon adoption and publication of Ordinance No. 208, this Conditional Zoning Agreement shall be filed in Johnson County Recorder's office at the Developer's expense.
14. This Conditional Zoning Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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CITY OF UNIVERSITY HEIGHTS, IOWA

Louise From, Mayor

ATTEST:
(SEAL)

Christine M. Anderson, City Clerk

STATE OF IOWA)
) SS:
COUNTY OF JOHNSON)

On the ____ day of September, 2017, before me, a notary public in and for the State of Iowa, personally appeared Louise From, 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 Louise From and Christine Anderson acknowledged the execution of said instrument to be their voluntary act and deed and the voluntary act and deed of the City, by it and by them voluntarily executed.

Notary Public in and for the
State of Iowa

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Michael Flaum

STATE OF IOWA)
) SS:
COUNTY OF JOHNSON)

This instrument was acknowledged before me on the _____ day of
September, 2017, by Michael Flaum.

Notary Public in and for the
State of Iowa

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UNIVERSITY LAKE PARTNERS II, LLC
(in its capacity as owner of 905 Melrose Avenue
and in its capacity as Developer)

James Glasgow, Member and Manager

Greg Stiltner, Member and Manager

STATE OF IOWA)
) SS:
COUNTY OF JOHNSON)

This instrument was acknowledged before me on the _____ day of
September, 2017, by James Glasgow and Greg Stiltner as the members and
managers of University Lake Partners II, LLC.

Notary Public in and for the
State of Iowa

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KINNICK YACHT CLUB, LLC

Scott Kading, Member and Manager

STATE OF IOWA)
) SS:
COUNTY OF JOHNSON)

This instrument was acknowledged before me on the _____ day of September, 2017, by Scott Kading as a member and manager of Kinnick Yacht Club, LLC.

Notary Public in and for the
State of Iowa

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