

INSTRUMENT PREPARED BY:	Brian D. Torresi, 2605 Northridge Pkwy., Ames, IA 50010 (515) 288-2500
RETURN TO:	City of Ames, Iowa, Attn: City Clerk, 515 Clark Ave., Ames, IA 50010

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”), is made and entered into as of the Effective Date (as that term is defined herein) by and between the City of Ames, Iowa (the “City”), FHS Ames 1, L.P. (“FHS-1”), and FHS Ames 2, L.P. (“FHS-2”) (FHS-1, FHS-2, and their successors and assigns, are hereinafter collectively referred to as the “Developer”). City and Developer are hereinafter collectively referred to as the “Parties” or individually as a “Party”. This Agreement shall be effective as of the date the last of the Parties hereto executes same (the “Effective Date”).

RECITALS

WHEREAS, the Parties desire the improvement and development of the real properties in Story County, Iowa as legally described on the attached Exhibit A (collectively, the “Site”);

WHEREAS, Developer intends to develop the Site in phases, pursuant to an approved Integrated Site Plan (the “Plan”) approved with conditions November 13, 2018, by Resolution No. 18-618 (a true and accurate copy of the Plan is located at the office of the City Clerk of the City and is incorporated herein by reference as if fully set forth); and

WHEREAS, pursuant to Section 23.705 of the Ames Municipal Code (the “Code”), this Agreement is required with respect to the use and development of the Site, subject to the Plan, as the result of the proposed development of the Site in phases.

NOW, THEREFORE, in consideration of the Recitals and of the mutual covenants contained herein, and reliance on the same, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

I

INTENT AND PURPOSE

1. It is the intent of this Agreement to:
 - a. recognize that, as of the date hereof, Developer is the fee simple owner of the Site;
 - b. acknowledge that the Developer has granted NLA Duff, LLC, or an affiliate thereof (“NLA”), the right to acquire the Site;

- c. complete the City of Ames requirements for Integrated Site Plan Subdivisions as set forth in Section 23.700 through 23.707 of the Code;
- d. acknowledge that the City and Developer desire the development of the Site, in phases and in accordance with the Plan, but only if the Conditions Precedent (as that term is defined herein) are satisfied; and
- e. provide remedies to the City in the event Developer fails to fulfill its obligations under this Agreement.

II CONDITIONS PRECEDENT

1. The City and Developer agree that for the rights, duties and responsibilities of this Agreement to become effective as to either Party, all of the following must first occur (collectively, the “Conditions Precedent”):

- a. the subdivision of the Site into Fourth Addition to Southwood Subdivision, Ames, Story County, Iowa (the “Subdivision”); and
- b. NLA shall have acquired fee simple title to the Site within twelve (12) months of the approval by the Ames City Council of a resolution approving the Subdivision.

2. The Parties hereby understand, acknowledge, and agree that if the Site is not platted into the Subdivision, as evidenced by the recoding of the Final Plat of the Subdivision (the “Plat”), any and all of the terms of this Agreement shall be deemed null and void and of no force or effect whatsoever.

3. The Parties hereby understand, acknowledge, and agree that if the Conditions Precedent are not satisfied, use of the Site is restricted to the City’s zoning and subdivision standards without approval of phasing for Integrated Site Plan Subdivisions.

III PHASED DEVELOPMENT

1. The Developer shall develop the Site in phases (each, a “Phase”) in accordance with the Plan, this Agreement, and Section 23.705 of the Code, and specifically provides and agrees as follows:

- a. any and all development on the Site shall be in accordance with and pursuant to the Plan;
- b. any and all development on Lot-1 shall be, as applicable, in accordance with and pursuant to the Decision & Order dated November 14, 2018 in Case No. 18-13 granting a Special Use Permit (the “Permit”) (a true and accurate copy of the Permit is located at the office of the City Clerk of the City and is incorporated herein by this reference as if fully set forth) with respect to the Site;
- c. the improvements on the Site shall be phased such that the improvements required on Lot One (1) (“Lot-1”), Lot Two (2) (“Lot-2”), and Lot Three (3) (“Lot-3”) (Lot-1, Lot-2, and Lot-3 are hereinafter collectively referred to as the “Initial Phase Lots”) of the Subdivision shall be

completed as part of the initial Phase (the “Initial Phase”) and no other Phase may be developed until the completion of the Initial Phase;

d. the Developer shall, as part of the Initial Phase, provide sufficient parking, landscaping, and other improvements to the Site, all as set forth in the Plan and/or the Permit, with respect to the complete development of the Site and any proposed Phase of development thereof;

e. prior to occupancy of any building on the Initial Phase Lots, building façade improvements for Lot-2 and Lot-3, all site improvements for the Initial Phase Lots, and other associated parking, paving, and landscaping improvements located on other lots within the Subdivision, as depicted on the attached Exhibit B, must be completed;

f. prior to the occupancy of any building on Lot-1 that contains interior, climate-controlled, mini-storage improvements, the required façade improvements to the building(s) on Lot-2 and Lot-3 must be completed;

g. no building permit for interior, climate-controlled, mini-storage improvements, other than permits described in subsection (h) below, will be issued for improvements on Lot-1 without the prior approval by the City of building permits for façade improvements to the building(s) on the Initial Phase Lots;

h. because the Initial Phase Lots have lot lines located within an existing building, no portion of the existing building may be occupied for any use without first obtaining a building permit from the City and completing the improvements required by Chapter 5 of the Code, including, but not limited to, fireblocking, firestopping, and draftstopping;

i. upon completion of improvements on the Initial Phase Lots, construction and improvements on Lot Four (4) through Lot Nine (9) of the Subdivision may occur in any order subject to approval by the Planning Director of the City of improvements necessary to serve any subsequent Phase(s), including but not limited to parking, paving, storm water, and landscaping;

j. development of Lot Eight (8) and Lot Nine (9) are to be developed with shared access to Buckeye Avenue and cross-access between said lots regardless of the timing of completion of improvements on said lots; and

k. any and every Phase shall be constructed, and the Plan shall be completed, within ten (10) years from and after the Effective Date.

2. All ordinances, regulations, and policies of the City now existing, or as may hereafter be enacted, shall apply to activity on the Site.

3. Notwithstanding anything in this Agreement to the contrary, upon the completion of improvements on any lot within the Subdivision in accordance with the terms hereof and/or the Plan, the terms of this Agreement shall terminate with respect to said lot.

IV MODIFICATION OF AGREEMENT

The Parties agree that this Agreement may be modified, amended or supplemented by written

agreement of the Parties. The Parties hereby understand, acknowledge, and agree, however, that the Plan and/or the Permit may be amended with respect to any individual lot within the Subdivision upon the agreement of the then titleholder of said lot and the City, and no further consent is needed from the then titleholders of other lots within the Subdivision, the Developer, or NLA.

V
COVENANTS RUN WITH THE LAND

This Agreement shall run with the Site and shall be binding upon Developer, its successors and assigns.

VI
INCORPORATION OF RECITALS AND EXHIBITS

The Recitals, together with any and all exhibits and/or other attachments hereto, are confirmed by the Parties as true and correct and incorporated herein by reference as if fully set forth verbatim. The Recitals, exhibits, and/or other attachments are a substantive, contractual part of this Agreement.

VII
MISCELLANEOUS

Time is of the essence in this Agreement. The failure to promptly assert any rights herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of the Parties hereto appear on each counterpart. All counterparts shall collectively constitute a single Agreement.

VIII
INTEGRATED SITE PLAN MATTERS

All use restrictions contained in this Agreement shall be covenants upon the Site running with the Site for a period of twenty-one (21) years from and after the date of the recording of the Plat, subject to extension pursuant to Iowa Code §§ 614.24 and 614.25.

Any and all circulation and parking areas and maintenance areas, as shown on the Plan and/or on the final plat of the Subdivision, shall be maintained by NLA Duff Owners Association, Inc., or the successors and assigns thereof (the "Association"), pursuant to Section 23.704(7) of the Code. Furthermore, pursuant to Section 23.704(8) of the Code, the Site shall be developed and shall continually function as a single site with respect to, among other things, lot access, interior circulation, common utilities, open space, landscaping and drainage, common facilities maintenance, and parking.

IX
GOVERNING LAW

The laws of the State of Iowa shall govern this Agreement. Any dispute relating to this Agreement shall be adjudicated in the Iowa District Court for Story County.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed as of

the Effective Date.

(SIGNATURE PAGES FOLLOW)

**SIGNATURE PAGE OF
DEVELOPMENT AGREEMENT**

FHS AMES 1, L.P.

By: FHS INVESTMENTS, LLC, General Partner

By: _____
Mark F. Simens, Manager

STATE OF _____, COUNTY OF _____, SS:

This record was acknowledged before me on this ____ day of July, 2019, by Mark F. Simens, a Manager of FHS Investments, LLC, the General Partner of FHS Ames 1, L.P.

Notary Public, State of _____
My commission expires _____

FHS AMES 2, L.P.

By: FHS INVESTMENTS, LLC, General Partner

By: _____
Mark F. Simens, Manager

STATE OF _____, COUNTY OF _____, SS:

This record was acknowledged before me on this ____ day of July, 2019, by Mark F. Simens, a Manager of FHS Investments, LLC, the General Partner of FHS Ames 2, L.P.

Notary Public, State of _____
My commission expires _____

**ADDITIONAL SIGNATURE PAGE OF
DEVELOPMENT AGREEMENT**

CITY OF AMES, IOWA

By: _____
John Haila, Mayor

Attest by: _____
Diane R. Voss, City Clerk

STATE OF IOWA, COUNTY OF STORY, ss:

On this _____ day of _____, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared John Haila, Mayor, and Diane R. Voss, City Clerk, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

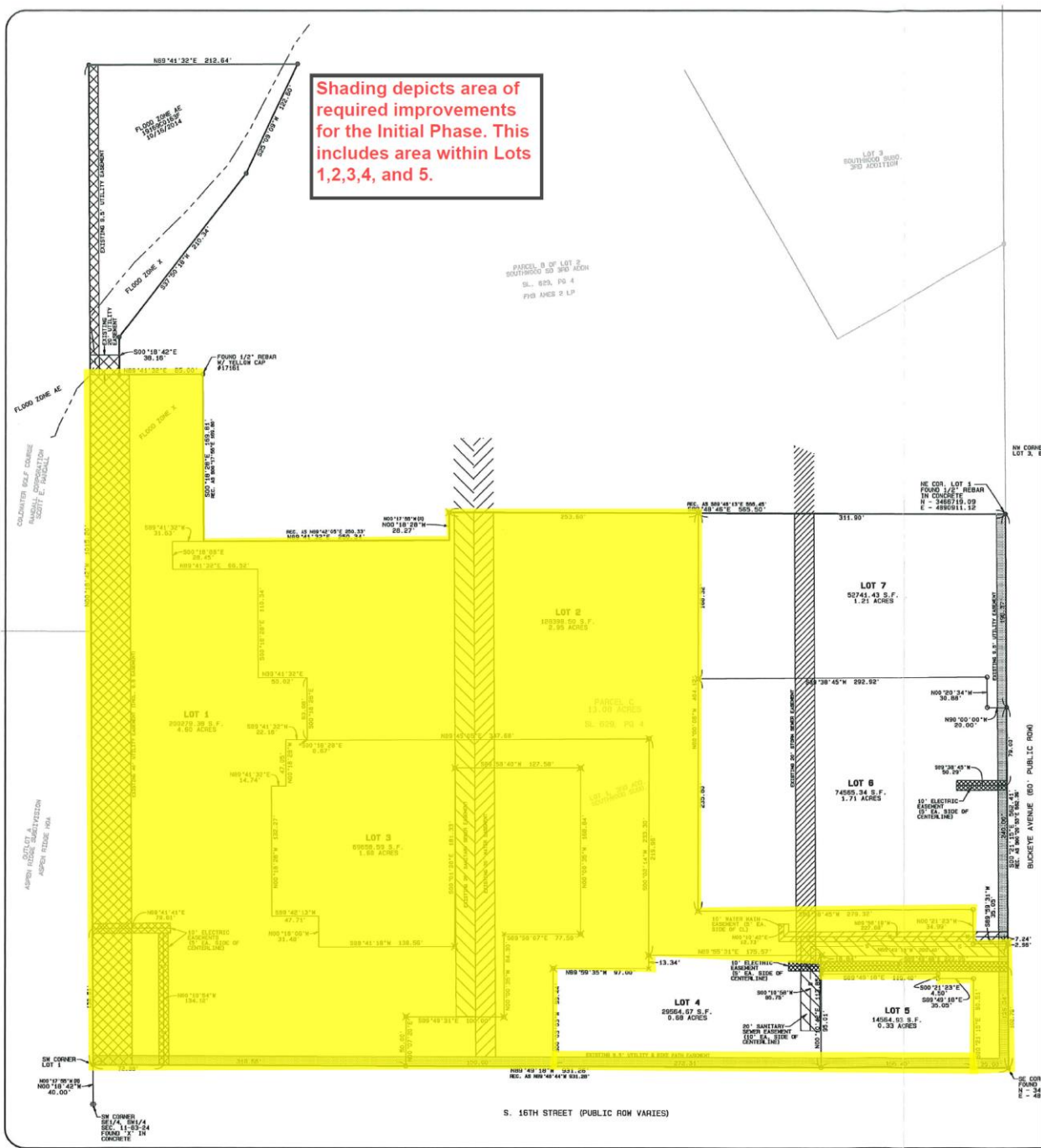
Notary Public, State of Iowa
My commission expires _____

EXHIBIT A

SITE

Lots Three (3) and Four (4) in Block One (1) of First Addition to Southwood Subdivision, Ames, Story County, Iowa **AND** Parcel "C" of Lots One (1) and Two (2) of Third Addition to Southwood Subdivision, Ames, Story County, Iowa, as shown on the "Plat of Survey" filed in the office of the Recorder of Story County, Iowa, on March 8, 2019, as Instrument No. 2019-01596

EXHIBIT B



S. 16TH STREET (PUBLIC ROW VARIES)