



**BUSINESS OF THE CITY COUNCIL  
AGENDA STATEMENT**

Item No. 09  
For Meeting of 01.21.2016

**ITEM TITLES:** Consideration of the resolution approving the development agreement with United Properties Investment Company, LC.

**CONTACT PERSONS:** Wade R. Wagoner, AICP LEED GA, Planning & Economic Development  
Marketta Oliver, City Manager

**SUMMARY EXPLANATION**

The City of Norwalk has been working with United Properties Investment Company, LC on a development agreement for the area now known as the Marketplace, northeast of the intersection of Iowa Highway 28 and Beardsley Street. The development agreement describes the responsibility of the developer to promote development of commercial ground on the property, the construction of public infrastructure, acquisition of additional property near the proposed site, and an economic development grant for the public infrastructure and potential land acquisition.

Attached is a development agreement prepared by Attorney John Danos with assistance by Jim Dougherty.

<p><input checked="" type="checkbox"/> Resolution    <input type="checkbox"/> Ordinance    <input type="checkbox"/> Contract    <input type="checkbox"/> Other (Specify) _____</p> <p>Funding Source: <u>NA</u></p> <p>APPROVED FOR SUBMITTAL _____ <i>Marketta Oliver</i> City Manager</p>
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**STAFF RECOMMENDATION:** The resolution adopts the agreement, which has been negotiated with the Developer.

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH UNITED PROPERTIES INVESTMENT COMPANY,  
L.C.**

WHEREAS, the City of Norwalk, Iowa (the "City") has been presented a proposed Development Agreement for the Development of property situated within the City and owned by United Properties Investment Company, L.C.; and

WHEREAS, the Developer has requested that the City provide financial assistance in the form of certain economic development grants to the Developer in defraying the portion of the costs of carrying out the Public Improvements Project and acquiring real Property; and

WHEREAS, the completion of commercial development will benefit the City and entering into the Agreement is in the best interest of the City; 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; and

WHEREAS All necessary requirements for Public Notices and Hearings have been met by the City pursuant to Iowa Code ; and

NOW, THEREFORE, Be It Resolved by the City Council of the City of Norwalk, Iowa, as follows:

Section 1. The proposed Development Agreement with United Properties Investment Company, L.C. is hereby approved.

Section 5. All resolutions and orders or parts thereof in conflict with the provisions of this resolution, to the extent of such conflict, are hereby repealed.

PASSED AND APPROVED this 21<sup>st</sup> day of January, 2016.

\_\_\_\_\_  
Tom Phillips, Mayor

ATTEST:

\_\_\_\_\_  
Jodi Eddleman, City Clerk

<u>ROLL CALL VOTE:</u>	<u>Aye</u>	<u>Nay</u>	<u>Absent</u>
Isley	___	___	___
Kuhl	___	___	___
Lester	___	___	___
Livingston	___	___	___
Riva	___	___	___

## DEVELOPMENT AGREEMENT

This Agreement is entered into by and between the City of Norwalk, Iowa (the “City”) and United Properties Investment Company, L.C. (the “Developer”) as of the \_\_\_ day of \_\_\_\_\_, 2016 (the “Commencement Date”).

WHEREAS, the City has established the Norwalk 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 which is situated in the City and lies within the Urban Renewal Area and is more specifically described on Exhibit A hereto (the “Development Property”); and

WHEREAS, the Developer has proposed to undertake the development of the Development Property through the installation of certain public infrastructure improvements (the “Public Improvements Project”) and the development of new commercial facilities thereon (the “Commercial Development Project”); and

WHEREAS, the Developer has proposed to acquire certain real property (the “James Oil Property”) from James Oil Co. which is situated adjacent to the Development Property and is more particularly described on Exhibit A hereto, in order to more efficiently complete the Public Improvements Project; and

WHEREAS, the Developer has requested that the City provide financial assistance in the form of certain economic development grants to the Developer in defraying the portion of the costs of carrying out the Public Improvements Project and acquiring and clearing the James Oil Property; 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. Commercial Development Project.** The Developer agrees to use its best efforts to promote the development of commercial lots on the Development Property, such that the Development Property is put to its highest and best use. The Developer will submit a detailed Planned Unit Development (the “PUD”) or an amendment to the existing PUD for the development of the Commercial Development Project to the City for the City’s formal review and approval prior to commencement of the public improvements. . Upon approval by the City, the PUD will be attached hereto as Exhibit B. The Developer agrees to cause the completion of the Commercial Development Project in accordance with the PUD.

**2. Public Improvements Project Construction and Costs.** The Developer agrees to cause the construction of the Public Improvements Project in accordance with the timeline and specifications set forth on Exhibit C hereto. Exhibit C shall be created by the Developer and will be attached hereto upon approval by the City Council. After approval of Exhibit C and prior to commencing constructing of the Public Improvements Project, the Developer will submit copies of all engineering documents related to the proposed Public Improvements Project. The City may request reasonable changes in such documents, to ensure compliance with this Agreement and any applicable ordinances or regulations.

Furthermore, during construction of the Public Improvements Project, the Developer agrees to provide documentation (the “Public Improvement Costs Documentation”), in such form as may be requested by the City, of the costs incurred in the completion thereof (the “Public Improvements Costs”). For purposes of this Agreement, such Public Improvement Costs may include all cost of designing and constructing the street improvements including the construction of underlying storm water system, sanitary sewer system and waterworks system improvements; the installation of street lights and traffic signage, and other reasonably related costs of carrying out the Public Improvements Project. ~~The definition of what constitutes an infrastructure related expense and what is a private property improvement not related to the infrastructure shall be determined by the City’s engineer.~~

The Developer agrees to submit the Public Improvement Costs Documentation to the City during the construction of the Public Improvement Project. The Public Improvement Costs Documentation Shall be accompanied by invoices, and such other documentation as is reasonably requested by the City, confirming that the costs detailed in such documentation were in fact incurred in the installation of the Public Improvements Project and that such costs are of an amount reasonably to have been expected with respect to such installation.

The City shall retain all rights to inspect the Public Improvements Project for quality of work and full compliance with City Code. Nothing in this subsection shall be interpreted as limiting the City’s rights to not accept the work if the Public Improvements Project is not completed in compliance with the laws of the State of Iowa, City of Norwalk or the terms of this Agreement.

Upon completion of the Public Improvements Project, provided that (i) such improvements are of the type ordinarily dedicated to the City; (ii) the City confirms to the Developer in writing that such completed improvements meet City requirements; and (iii) the City accepts such Public Improvements Project in accordance with State law, the Developer will provide the City with either a deed or permanent easement to the improvements and related right-of-way comprising the Public Improvements Project, which shall thereafter be maintained by the City.

**3. Economic Development Grant Disbursement Request.** Upon completion of the Public Improvements Project, the Developer agrees to submit a grant disbursement request (the “Disbursement Request”), in such form as may be requested by the City. The Disbursement Request required under this Section will be accompanied by any remaining Public Improvement Costs Documentation not previously submitted to the City.

**4. James Oil Property Acquisition and Real Estate Closing Notice.** The Developer is purchasing the James Oil Property from James Oil Co and will cause the clearance of the storage tanks and related structures situated thereon. ~~and the remediation of all environmental contamination thereon, if any.~~ The Developer agrees to submit a notice (the “Real Estate Closing Notice”) to the City when the transaction has been completed. The Real Estate Closing Notice shall provide evidence of the purchase price (the “Purchase Price”) paid by the Developer to James Oil Co. for the James Oil Property ~~and proof of the removal of the tanks and the remediation of all environmental contamination thereon.~~ **The City will have the right to review and approve the Purchase and Sale Agreement prior to providing the James Oil Property Acquisition grant and closing shall occur, including satisfaction of all terms of the Purchase and Sale Agreement, before the City is obligated to make the grant payment to the Developer.**

**5. Granting of Right-of-Way for Beardsley Improvements.** The Developer agrees to provide to the City (the “Right-of-Way Dedication”) either a deed or permanent easement for the right-of-way necessary for the future widening and improvements of Beardsley Street and necessary utilities, not to exceed forty feet (40’) in depth, between Highway 28 and 80th Avenue and/or the construction of related intersection improvements at the intersection of Beardsley Street and Sunset Drive. **The City will endeavor to use as little of right-of-way as possible to improve Beardsley and will include the developer in the footprint layout of the street.** The Right of Way Dedication shall be upon undeveloped property as of the date of this agreement and shall apply to property currently owned by Developer or its related companies. Further, such property shall be located North of Beardsley Street within the area extending from the current Western Boundary of the Echo Valley Golf Course and extending West to Highway 28 and shall be on the South side of Beardsley Street from the East border of the City property to be known as Elizabeth Holland Park, extending East to 80th Avenue. The Right-of Way Dedication shall be made by the Developer at no cost to the City. The City and the Developer shall execute a separate contract to be drafted by the City Attorney in order to memorialize the Developer’s obligation to carry out the Right-of-Way Dedication, and such contract shall be recorded such that the obligation will run with the Development Property, the James Oil Property and all other real estate owned by the Developer or related entities abutting upon Beardsley Street.

**6. Remedy.** The Developer hereby acknowledges that failure to comply with the requirements of this Section A, will result in the City having the right to withhold the Economic Development Grant (as hereinafter defined) and/or the James Oil Grant (as hereinafter defined), until such time as the Developer has demonstrated, to the satisfaction of the City, that it has cured such non-compliance.

**B. City’s Obligations**

**1. Review of Public Improvements Cost Documentation.** The City public works and engineering personnel will review the Public Improvements Cost Documentation upon receipt from the Developer. If the City determines the costs set forth in the Public Improvements Costs Documentation are costs reasonably incurred in the construction of the Public Improvements Project, the City shall record a summary of the date, amount and nature of the costs on the Summary of Accepted Public Improvements Costs attached hereto as Exhibit D, and such summary shall be the official record of the Public Improvement Costs for purposes of

tallying the maximum amount of the Economic Development Grant (as hereinafter defined) allowed to the Developer under this Agreement. If the City determines the costs set forth in the Public Improvements Costs Documentation are not costs reasonably incurred in the construction of the Public Improvements Project, the City shall notify the Developer of such determination within thirty days of receipt of the Public Improvements Costs Documentation covering such costs.

**2. Economic Development Grant.** The City hereby agrees to make an economic development grant (the “Economic Development Grant”) to the Developer in an amount equal to the lesser of (i) the Public Improvement Costs, or (ii) \$1,300,000 within thirty (30) days of the receipt of a satisfactory Disbursement Request from the Developer.

**3. James Oil Property Acquisition Grant.** The City hereby agrees to make a grant (the “James Oil Grant”) to the Developer in an amount equal to the lesser of (i) the difference between the Purchase Price less \$300,000, or (ii) \$200,000, within thirty (30) days of the receipt of a Real Estate Closing Notice from the Developer, provided, however, that the City shall be under no obligation to fund the James Oil Grant unless and until the storage tanks and related structures have been cleared from the James Oil Property.

**4. Economic Development Grant For Excess Public Improvements Project Costs.** In the event the Public Improvements Project Construction and Costs exceed \$1,300,000.00 (“excess amount”). The City agrees to make economic development grants/ tax increment payments from incremental taxes, pursuant to Chapters 15A and 403 of the Code of Iowa, generated from the Commercial Development Project and not from any residential development, to the Developer for the Excess Amount, not to exceed \$200,000.00. Such amounts shall not be payable to the Developer until the City is reimbursed in full for its Economic Development Grant and James Oil Grant. The foregoing payments will be made on December 1 and June 1 of each fiscal year, beginning on the first December 1 for which incremental tax revenues become available after the City is reimbursed in full. 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 Warren County Treasurer which are attributable to the Project. **Each payment shall be subject to annual appropriation by the City Council.**

**5. Traffic Signal Wakonda/ Masteller and Highway 28.** The City hereby agrees to pursue approval of traffic signalization from the Iowa Department of Transportation at the intersection of Highway 28 and Wakonda/ Masteller. Upon receiving such approval, the City shall construct such signalization at no cost to the Developer. The estimated cost of such signalization is \$500,000.00. The City and the Developer understand the importance of the signal being installed prior to the completion of the public infrastructure of the development and will work diligently to install. The signalization will not be a part of any TIF rebates or up front TIF payments to the Developer.

**D. 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.

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, 2028 or on such earlier date upon which the aggregate sum of Payments made to the Developer equals the Maximum Payments 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 the Developer, is addressed to or delivered personally to Michael Coppola, \_\_\_\_\_.
- b) In the case of City, is addressed to or delivered personally to the City Manager, City Hall, 705 North Avenue, Norwalk, Iowa 50211.
- 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 NORWALK, IOWA

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

UNITED PROPERTIES INVESTMENT  
COMPANY, L.C.

By: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

Certain property situated in the City of Norwalk, County of Warren, State of Iowa legally described as follows:

**TRACT 'A'**

A PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST FRACTIONAL QUARTER OF SECTION 6, TOWNSHIP 77 NORTH, RANGE 24 WEST OF THE FIFTH PRINCIPAL MERIDIAN IN THE CITY OF NORWALK, WARREN COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 6; THENCE NORTH 86°27'27" EAST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST FRACTIONAL QUARTER, 47.70 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF IOWA HIGHWAY NO. 28, SAID POINT ALSO BEING ON THE WESTERLY LINE OF AN EXISTING ROADWAY EASEMENT RECORDED IN BOOK 218, PAGES 85-86; THENCE NORTH 0°11'04" WEST ALONG SAID WESTERLY LINE, 27.20 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 0°11'04" WEST ALONG SAID EAST RIGHT-OF-WAY LINE OF IOWA HIGHWAY NO. 28, A DISTANCE OF 495.68 FEET; THENCE NORTH 0°05'52" WEST CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, 232.00 FEET; THENCE NORTH 0°07'01" EAST CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, 435.51 FEET TO SAID WESTERLY LINE OF AN EXISTING ROADWAY EASEMENT RECORDED IN BOOK 218, PAGES 85-86; THENCE NORTH 89°44'48" EAST ALONG SAID WESTERLY LINE, 147.80 FEET; THENCE SOUTH 0°10'35" EAST CONTINUING ALONG SAID WESTERLY LINE, 352.50 FEET; THENCE SOUTH 1°07'22" EAST CONTINUING ALONG SAID WESTERLY LINE, 75.24 FEET; THENCE SOUTH 86°37'29" WEST CONTINUING ALONG SAID WESTERLY LINE, 19.64 FEET; THENCE SOUTH 0°27'28" EAST CONTINUING ALONG SAID WESTERLY LINE, 99.57 FEET; THENCE SOUTH 0°05'48" EAST CONTINUING ALONG SAID WESTERLY LINE, 627.34 FEET; THENCE SOUTH 86°30'01" WEST CONTINUING ALONG SAID WESTERLY LINE, 131.75 FEET TO THE POINT OF BEGINNING AND CONTAINING 3.68 ACRES (160,315 SQUARE FEET).

**PART OF TRACT 'B'**

A PART OF THE SOUTH 2 ACRES OF THE NORTHWEST QUARTER OF THE SOUTHWEST FRACTIONAL QUARTER AND A PART OF THE SOUTHWEST QUARTER OF THE SOUTHWEST FRACTIONAL QUARTER, ALL IN SECTION 6, TOWNSHIP 77 NORTH, RANGE 24 WEST OF THE FIFTH PRINCIPAL MERIDIAN IN THE CITY OF NORWALK, WARREN COUNTY, IOWA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 6; THENCE NORTH 86°27'27" EAST ALONG THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST FRACTIONAL QUARTER, 47.70 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF IOWA HIGHWAY NO. 28, SAID POINT ALSO BEING ON THE WESTERLY LINE OF AN EXISTING ROADWAY EASEMENT RECORDED IN BOOK 218, PAGES 85-86 AND THE POINT OF BEGINNING; THENCE NORTH 0°11'04" WEST ALONG SAID WESTERLY LINE, 27.20 FEET; THENCE NORTH 86°30'01" EAST CONTINUING ALONG SAID WESTERLY LINE, 131.75 FEET; THENCE NORTH 0°05'48" WEST CONTINUING ALONG SAID WESTERLY LINE, 627.34 FEET; THENCE NORTH 0°27'28" WEST CONTINUING ALONG SAID WESTERLY LINE, 99.57 FEET; THENCE NORTH 86°37'29" EAST CONTINUING ALONG SAID WESTERLY LINE, 19.64 FEET; THENCE NORTH 1°07'22" WEST CONTINUING ALONG SAID WESTERLY LINE, 75.24 FEET; THENCE NORTH 0°10'35" WEST CONTINUING ALONG SAID WESTERLY LINE, 352.50 FEET; THENCE SOUTH 89°44'48" WEST CONTINUING ALONG SAID WESTERLY LINE, 147.80 FEET TO SAID EAST RIGHT-OF-WAY LINE OF IOWA HIGHWAY NO. 28; THENCE NORTH 0°27'19" EAST ALONG SAID EAST RIGHT-OF-WAY LINE, 80.00 FEET; THENCE NORTH 0°05'45" EAST CONTINUING ALONG SAID EAST RIGHT-OF-WAY LINE, 121.40 FEET TO A POINT ON THE NORTH LINE OF SAID SOUTH 2 ACRES OF THE NORTHWEST QUARTER OF THE SOUTHWEST FRACTIONAL QUARTER, SAID POINT BEING THE SOUTHWEST CORNER OF LOT 1, ECHO VALLEY ESTATES, AN OFFICIAL PLAT IN SAID CITY OF NORWALK; THENCE NORTH 87°39'43" EAST ALONG SAID NORTH LINE AND THE SOUTH LINE OF SAID ECHO VALLEY ESTATES AND THE EASTERLY EXTENSION THEREOF, 1062.67 FEET; THENCE SOUTH 23°08'41" WEST, 493.65 FEET; THENCE SOUTH 15°57'41" WEST, 469.98 FEET; THENCE SOUTH 22°57'40" WEST, 307.87 FEET; THENCE SOUTH 0°02'19" EAST, 207.61 FEET TO SAID SOUTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST FRACTIONAL QUARTER; THENCE SOUTH 86°27'27" WEST ALONG SAID SOUTH LINE, 619.38 FEET TO THE POINT OF BEGINNING AND CONTAINING 21.84 ACRES (951,292 SQUARE FEET)

**EXHIBIT B**  
**PLANNED UNIT DEVELOPMENT**  
(TO BE ATTACHED UPON APPROVAL BY CITY)

**EXHIBIT C**  
**PLANS AND SPECIFICATIONS FOR THE PUBLIC IMPROVEMENTS PROJECT**  
**(TO BE ATTACHED UPON APPROVAL BY CITY)**

