

This agreement prepared by:

**Kyle Shephard**  
Chief Assistant City Attorney  
Orlando City Hall  
400 S. Orange Ave.  
Orlando, Florida 32801

Orange County Parcel Identification Number:  
26-22-29-1853-04-000

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## **Development Agreement for Creative Village Parcel J**

**This Development Agreement for Creative Village Parcel J** (the “Development Agreement”) is made and entered into in the City of Orlando, County of Orange, State of Florida, this 9<sup>th</sup> day of October, 2017 (the “Effective Date”), by and between the **City of Orlando, Florida**, a Florida municipal corporation having its principal place of business at Orlando City Hall, 400 S. Orange Ave., Orlando, Florida 32801 (the “City”), **Creative Village Development, LLC**, a Florida limited liability company having its principal place of business at 800 N. Orange Ave., Suite 200, Orlando, Florida 32801 (“CVD”), and **Creative Village SHP Owner, LLC**, a Florida limited liability company having its principal place of business at 800 N. Orange Ave., Suite 200, Orlando, Florida 32801 (“SHP”).

### **WITNESSETH**

**WHEREAS**, as of the Effective Date, the City is the owner and contract seller of approximately 1.41 acres of real property generally located north of W. Livingston Street, east of N. Parramore Avenue, south of Federal Street, and west of N. Terry Avenue, and being more precisely described by the legal description and sketch of description attached hereto as **Exhibit A** (“Parcel J”); and

**WHEREAS**, Parcel J is in the Creative Village development in Downtown Orlando and is being sold for the development of a high-rise purpose-built student housing, public education, and retail building consistent with land development orders issued by the City of Orlando including the Creative Village Planned Development zoning ordinance (City of Orlando Ordinance No. 2012-19, adopted August 20, 2012, as amended), Specific Parcel Master Plan approval of Case No. MPL2017-00018 (City of Orlando Documentary No. 170605C08, issued by the Orlando City Council on June 5, 2017), and the Certificate of Appearance Approval for Case No. ARB2017-00018 (City of Orlando Documentary No. 170605C08, issued by the Orlando City Council on June 5, 2017), which building will contain 126 residential units, with 453 total bedrooms (and approximately 600 beds) and 115,000 square feet of commercial and educational space (the “Student Housing Project”); and

**WHEREAS**, CVD entered into that certain *Purchase Agreement* for the acquisition of Parcel J by and between the City and CVD and dated as of June 1, 2017, which was assigned by CVD to Ustler Development, Inc., (“UDI”) on or about June 1, 2017, with closing expected to occur pursuant to the Purchase Agreement on or about October 10, 2017; and

**WHEREAS**, CVD is also the “Master Developer” of the Creative Village pursuant to that certain *Master Development Agreement for Creative Village Orlando between City of Orlando, Florida, and Creative Village Development, LLC*, dated as of February 25, 2011, and corresponding *Purchase Option Agreement*, as amended (the “Master Development Agreement” and the “Purchase Option Agreement”); and

**WHEREAS**, on the closing date under the Purchase Agreement, UDI will acquire Parcel J and the rights related thereto as set forth in and pursuant to the Purchase Agreement, and will immediately thereafter convey, for no consideration, Parcel J and such rights to SHP, as the ultimate prospective owner of Parcel J and developer of the Student Housing Project; and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City, CVD, and SHP (the “parties”) hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are hereby incorporated into this Development Agreement.
2. **Authority.** The City enters into this Development Agreement pursuant to its governmental, corporate, and proprietary powers. This Development Agreement is not a “development agreement” for purposes of the Florida Local Government Development Agreement Act (sections 163.3220 – 163.3242, Florida Statutes).
3. **Tennis Center Work.** The City is the owner and operator of a public tennis center located adjacent to Parcel J (currently addressed as and located at 363 N. Parramore Avenue in Orlando). The tennis center is part of the City’s public parks and recreational system and, as of the Effective Date, is generally comprised of 5 lighted, outdoor hard-surface tennis courts, 11 lighted, outdoor clay-surface tennis courts, and an accessory office and locker room facility (the “Tennis Center”; with the accessory office and locker room facility being referred to as the “Tennis Center Building”). Development of the Student Housing Project will impact the Tennis Center by eliminating 2 tennis courts and will require compensating work to the Tennis Center Building and certain outdoor parts of the Tennis Center. SHP shall, or shall cause its agents and/or assigns to undertake, at its or their sole time and expense, the following work to the Tennis Center:
  - a. **Tennis Center Building.** All planning, design, permitting, and construction necessary to modify the Tennis Center Building to accommodate the neighboring development of the Student Housing Project. The Student Housing Project will be constructed to within approximately 1’ – 2’ of the east façade of the Tennis Center Building and will require that the Tennis Center Building be reconfigured to continue operations. The work to the Tennis Center Building may include, without limitation, adding and removing doors and windows, adding or relocating utility service outlets, and moving furniture. Moving equipment and personal items will be the responsibility of the City. The scope of the required work is more specifically described in the application to the City of Orlando for a building permit under Case No. BLD2017-08403. All work must be completed in a workmanlike manner and in accordance with applicable

codes, and must be coordinated with the Tennis Center management so as to not interfere with the regular operations of the Tennis Center Building despite construction of the Student Housing Project. The scope of work has been deemed acceptable to the City.

- b. **Outdoor Tennis Center Work.** All planning, design, permitting, and construction necessary to modify the outdoor parts of the Tennis Center to accommodate the neighboring development of the Student Housing Project. The work to the outdoor parts of the Tennis Center may include, without limitation, the relocation of existing fencing and the addition of new fencing, the addition of emergency exits to the existing fencing on the west-side of the Tennis Center, the addition of signage at new points of entry and exit, the relocation of electric panels and a transformer, the relocation of sanitary sewer lines to connect the Tennis Center Building to the adjacent stub-out in the W. Livingston Street right-of-way, and the construction of temporary and/or permanent potable water lines in the Federal Street right-of-way to serve the Tennis Center Building. The scope of the required work for the relocation of the electric panels and transformer is more specifically described in the application to the City of Orlando for permit under Case No. ROW2017-00836. The scope of the required work for the relocation of potable water lines is more specifically described in the application to the City of Orlando for permit under Case No. ENG2017-01801. The scope of the required work for the relocation of sanitary sewer lines is more specifically described in the application to the City of Orlando for permit under Case No. BLD2017-07319. The final scope of work for the relocation and/or construction of fencing around and within the Tennis Center and related work to signage and new entryways and exits is more specifically described in the application to the City of Orlando for permit under Case No. BLD2017-08403. Any additional work as mutually agreed upon between the parties shall be subject to the reasonable review and approval of the City with the intent that Tennis Center operations be held functionally harmless (except for the elimination of 2 courts) from the development work associated with the Student Housing Project. All work associated with the outdoor parts of the Tennis Center must be completed in a workmanlike manner and in accordance with applicable codes, and must be coordinated with the Tennis Center management so as not to interfere with the regular operations of the Tennis Center Building despite construction of the Student Housing Project.
4. **Federal Street Construction.** SHP, at its expense, shall design, permit, and construct a new segment of Federal Street running from N. Terry Avenue on the east to approximately 194' to the west, such segment running the entire length of the northern boundary of Parcel J (the "Federal Street Segment"). This work must include all improvements necessary to operate a complete segment of Federal Street as a City-standard street, including without limitation, the road, curbs and gutters, stormwater management, sidewalks, street lighting, traffic control devices, park strips, signs, and landscaping improvements. The work must also include the installation of a City-approved 15" PVC gravity sewer line as described in the Amelia Court sanitary sewer and lift station plan attached to this Development Agreement as **Exhibit B**. The Federal

Street Segment must be designed and constructed consistent with the adopted Creative Village Streetscape Guidelines and is subject to final review and approval by Certificate of Appearance Approval. The Federal Street Segment must be delivered and accepted by the City before any certificate of occupancy is issued by the City for the principal structure of the Student Housing Project.

5. **Streetscape Credit for Livingston Street Work.** As part of its development of the Student Housing Project, SHP will design, permit, and construct the City-required streetscape along the entire northern side of the length of West Livingston Street that was going to be constructed by the City as part of the City's current construction of the West Livingston Street extension and which abuts Parcel J (the "Livingston Streetscape Work"). This plan for the Livingston Streetscape Work provides a cost effective solution for the City and SHP because the Livingston Streetscape Work does not have to be built twice. The Livingston Streetscape Work must be designed and constructed consistent with the adopted Creative Village Streetscape Guidelines and is subject to final review and approval by Certificate of Appearance Approval. To compensate SHP for the cost of the Livingston Streetscape Work that would otherwise have been performed by the City, the City shall reimburse SHP for the value of the work, which is hereby agreed to be \$268,462. The City shall pay the reimbursement within 60 days of receiving an invoice after the work has been inspected and approved by the City.
6. **Transportation Impact Fee Credits.** In accordance with Part I, Chapter 56, Orlando City Code, the Student Housing Project will be subject to the City transportation impact fees. Based on the approved development program and applicable impact fee rates as of the Effective Date, transportation impact fees in the amount of \$449,998, will be due, such amount being calculated based on a Student Housing Project comprised of a 453-bedroom dormitory facility (totaling \$396,828 in impact fees), 100,000 square feet public educational space (exempt from transportation impact fees by virtue of being a state-funded public educational facility), and 10,000 square feet of retail space (totaling \$53,170).

Pursuant to section 11.03 of the Master Development Agreement, on February 7, 2011, the City and CVD established a Transportation Impact Fee Credit Account for the Creative Village (the "Creative Village TIFCA"), with such balance in the Creative Village TIFCA being sufficient to offset the transportation impact fees due for the Student Housing Project. On or before the date that transportation impact fees are due and payable to the City for the Student Housing Project, the City and CVD shall together assign transportation impact fee credits to the Student Housing Project, as applicable, from the Creative Village TIFCA in an amount equal to the final transportation impact fee liability as set forth herein. This section shall apply to any future transportation impact fees for interior build-outs (e.g., the ground-floor retail space) at the Student Housing Project.

7. **Sewer Benefit Fees.** In accordance with section 30.19, Orlando City Code, the Student Housing Project will owe the City sewer benefit fees. Sewer benefit fees are calculated on the basis of the sewer flow generated by the proposed property use. Pursuant to section 30.19 (5) (b), Orlando City Code, and based on the UCF student housing average water use study attached to this Development Agreement as Exhibit C, the

City hereby acknowledges and agrees that the sewer benefit fees owed to the City for the purpose-built student housing beds in the Student Housing Project shall be initially calculated on a flow rate of 34 gallons per day ("GPD") per bed, such estimated maximum flow rate being subject to review and reasonable downward or upward adjustment of the sewer benefit fee based on actual flow performance as provided by separate agreement between the parties. The parties also hereby acknowledge and agree that the public educational use in the Student Housing Project is exempt from sewer benefit fees, and that the retail use will be charged based on standard City fee and flow rates. This section only governs the calculation of sewer benefit fees for purposes of the Student Housing Project (as it relates to the student housing beds and the public educational space) and nothing herein shall be construed to exempt the Student Housing Project from designing and constructing required onsite or offsite sewer facilities in accordance with adopted City standards. If available, CVD reserves the right to assign sewer credits to the Student Housing Project consistent with the methodology established for transportation impact fee credits in section 6 of this Development Agreement.

8. **Parks Impact Fees.** In accordance with Part II, Chapter 56, Orlando City Code, the Student Housing Project will owe the City parks impact fees. The City hereby acknowledges and agrees that, in accordance with subsection 56.37(b), Orlando City Code, the Student Housing Project will be entitled to credit against their parks impact fee liability in an amount equal to the agreed-upon value of the park improvements dedicated to the City by CVD and/or SHP as part of CVD's work to design, permit, and construct the Creative Village "Central Park", as generally depicted and described in the Creative Village Planned Development zoning ordinance. In order to give the parties ample time to establish a parks impact fee credit account and negotiate and enter into a parks impact fee credit agreement pursuant to paragraph 56.37(b)6., Orlando City Code, the City hereby agrees to defer the payment of the parks impact fee, if any, until no later than the issuance of the first certificate of occupancy for the Student Housing Project.
9. **Environmental Work Credit.** At the time of closing under the Purchase Agreement, the City shall agree to a \$75,000 credit against the amount owed to the City at closing, such credit representing the City's compensation to SHP for soil management work to be conducted by SHP on Parcel J during development of the Student Housing Project.
10. **Necessary Site Improvements and Ancillary Site Improvements.** Pursuant to the Phase I Point of Determination Letter from the City dated May 19, 2016, Parcel J (representing a portion of Creative Village Phase I) has achieved a Point of Determination, subject to completion of any remaining Necessary Site Improvements for Parcel J. The City agrees that completion of the Federal Street Segment and the Livingston Streetscape Work described in sections 4 and 5 of this Development Agreement will constitute completion of all Necessary Site Improvements required for the development of Parcel J, and SHP agrees to complete such work in connection with its construction of the Student Housing Project. CVD and SHP have demonstrated that sufficient funds have been obtained to construct such remaining Necessary Site Improvements as required under section 5.1 of the Purchase Option Agreement. The City agrees that it has no rights or remedies as to Parcel J or its owner under the

Master Development Agreement or the Purchase Option Agreement with respect to any Necessary Site Improvements or Ancillary Public Improvements.

11. **Waiver of Development Rights by City.** CVD and/or SHP (or their respective agent) has/have applied to the City of Orlando building official for building permits to construct the Student Housing Project (City of Orlando building permit Nos. BLD2017-07319 and BLD2017-08478). As proposed, the principal structure of the Student Housing Project will include an integrated, multi-story, structured parking garage (the "Parking Garage"). Part of the Parking Garage will be built directly along the west property line of Parcel J (specifically, along the property line described as "Line 7" on the sketch of description in **Exhibit A**). To provide adequate ventilation, the Parking Garage is designed to have wall openings along this Line 7 property boundary. Under section 705.8, Florida Building Code (2014), wall openings are forbidden along property boundaries unless the building official can be assured that future development will not occur at the property line (or within 30' of the property line) on the adjoining parcel of land. In this case, as of the Effective Date, the owner of the adjoining parcel of land is the City and the adjoining land is currently improved with the Tennis Center and the Tennis Center Building. After the Tennis Center is relocated, the land abutting the Parking Garage will be used (at least temporarily) as an unimproved public space and will not include a structure within 30' of the Parking Garage façade along Line 7. To allow the Parking Garage wall openings as currently proposed in Case No. BLD2017-08478, the City hereby agrees to convey, waive, or otherwise reserve its right to develop vertical structures within 30' of the Parcel J property line identified as Line 7. The City shall do so by instrument satisfactory to the building official so that the building official may approve the Parking Garage wall openings. Such instrument shall be executed by the City within 90 days of the Effective Date. The instrument conveying, waiving, or otherwise reserving these development rights shall be revocable on the condition that the Parking Garage and other applicable portions (if any) of the Student Housing Project are retrofitted to comply with then-existing fire separation requirements of the Florida Building Code or other applicable building regulation. Nothing herein shall prohibit subsequent development of the property adjacent to the west property line of Parcel J by a future owner (or the City) in accordance with the Master Development Agreement and applicable land development regulations as long as applicable fire-separation requirements of the Florida Building Code (or other applicable building code) are satisfied.
12. **Reconveyance Deed.** Pursuant to section 21 of the Purchase Option Agreement and section 8.1 of the Purchase Agreement, the City agrees that CVD and SHP have achieved Commencement of Construction, in that vertical permits for the Student Housing Project have been applied for and that site-work has been commenced, meaning that no Reconveyance Deed is required in connection with the sale of Parcel J.
13. **Development Rights.** Upon acquisition of Parcel J pursuant to the Purchase Agreement, Development Rights under the Master Development Agreement and the Purchase Option Agreement necessary for the Student Housing Project are fully assigned and allocated by the City and CVD to Parcel J.

14. **Assignment of Rights and Obligations.** Except as otherwise expressly provided herein, the rights and obligations incurred by the parties under this Development Agreement may be assigned to third parties and/or successors-in-interest only upon the express written consent of the parties hereto, except that the rights and obligations incurred hereunder by CVD and SHP are freely assignable among these two parties upon express written notice to the City.
15. **Applicable Law and Jurisdiction.** This Development Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Each party agrees that any action or proceeding with respect to this Development Agreement may only be brought in a federal or state court situated in Orange County, Florida, and by execution and delivery of this Development Agreement, such party irrevocably consents to jurisdiction and venue in each such court.
16. **Litigation Costs.** Each party agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by the other in connection with any litigation concerning this Development Agreement in which the other party prevails in such litigation, whether commenced by the City, CVD, or SHP.
17. **Third Party Beneficiaries.** It is expressly agreed and by this statement specifically intended by the parties that nothing within this Development Agreement shall be construed as indicating any intent by any party to benefit any other entity or person not a party signatory to this Development Agreement and that nothing herein shall entitle any third party to any right of action on account hereof.
18. **Notices.** Notices and communications given under this Development Agreement must be made in writing and if to (i) the City, then to the address hereinabove set forth, in care of the Chief Administrative Officer, or to such other person and address as may be provided by the City; and if to (ii) CVD or SHP, then to the address hereinabove set forth, or to such other person and address as may be provided by CVD or SHP.
19. **Hold Harmless.** The parties hereto shall defend, indemnify, and hold harmless each other (individually and collectively as applicable), and each of their respective officers, directors, agents, and employees, whether elected, appointed, or otherwise (collectively referred to as the "Indemnitees" and individually as the "Indemnatee" for the purposes of this section only) from and against any and all liabilities, losses, damages, costs, expenses, claims, obligations, penalties, and causes of action (including without limitation, reasonable fees and expenses for attorneys, paralegals, expert witnesses, and other consultants, at their respective prevailing market rates for such services) whether based upon negligence, strict liability, absolute liability, product liability, misrepresentation, contract, implied or express warranty, or any other principle or theory of law or equity, that are imposed upon, incurred by, or asserted against an Indemnatee or the Indemnitees or which an Indemnatee or the Indemnitees may suffer or be required to pay and which arise out of or relate in any manner from the respective party's performance under this Development Agreement (or failure to perform any obligation or duty associated this Development Agreement), and which is caused in whole or in part by the respective party, or any of its agents, employees, officers, directors, contractors, subcontractors, affiliates, or anyone directly or

indirectly employed by any of them, or anyone for whose acts or omissions any of them may be liable. Nothing contained in this section shall constitute a waiver by the City of its privileges under the principle of sovereign immunity.

20. **Entire Agreement; Amendments.** Except as expressly provided herein, this Development Agreement contains the entire agreement between the parties and may not be changed, modified, amended, waived, or cancelled except by an agreement in writing and executed by each of the parties hereto.
21. **Counterparts and Facsimile Signatures.** This Development Agreement may be executed in one or more counterparts each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Development Agreement may be executed by facsimile or .pdf electronic signature by any party and such signature will be deemed binding for all purposes hereof without delivery of an original signature being thereafter required.
22. **Recording Costs.** This Development Agreement may be recorded in the official records of Orange County, Florida, at the time and expense of CVD or SHP.

[Signature page to follow.]



**Signature Page**

For the **City of Orlando, Florida:**

Attest:

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**City Clerk**

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**Mayor/Mayor Pro Tempore**

Approved as to form and legality for the use  
and reliance of the City of Orlando, Florida:

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**City Attorney**

For **Creative Village Development, LLC**

By: Creative Village Orlando, LLC as its Manager

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**Craig T. Ustler, Manager**

For **Creative Village SHP Owner, LLC:**

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**Craig T. Ustler, Manager**

**Exhibit A**

**Legal Description and Sketch of Description of Parcel J (2 pages)**

**Exhibit B**

**Amelia Court Sanitary Sewer and Lift Station Plan (1 page)**

**Exhibit C**

**UCF Student Housing Average Water Use Study (1 page)**