



City Attorney's Office

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Ames, IA 50010  
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June 6, 2011

Honorable Ann C. Campbell, Mayor,  
and Members of the City Council

Re: Termination of Use Restrictions in Commercial Node at Bloomington and Stange

Dear Mayor Campbell and Members of the Council:

Earlier this spring you considered a request from Kurt Friedrich to lift the use restrictions in the Convenience Commercial Node on the north side of the intersection of Bloomington and Stange. The use restrictions were imposed both by the terms of the Land Use Policy Plan and by restrictive covenants contained in the 2008 agreement with Uthe Development Company for that site.

At the March 1 City Council meeting, following a public hearing, you amended the Land Use Policy Plan to eliminate exception criteria for Commercial Nodes. You also indicated support for terminating the use restriction covenants that were included in the development agreement for the site at Bloomington and Stange. An excerpt from the minutes of the March 1, 2011 meeting is attached for your reference.

The attached Termination and Release of Restrictive Covenants was drafted for the purpose of eliminating the use restrictions in the development agreement. Mr. Friedrich has obtained signatures from all of the property owners in the area subject to the restrictive covenants. In order to finalize the Termination and Release of Restrictive Covenants, it is recommended that the City Council pass a resolution approving the agreement and directing that it be recorded.

Yours truly,

Douglas R. Marek  
City Attorney

c: Kurt Friedrich, Diane Voss

Attachments

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**DO NOT WRITE IN THE SPACE ABOVE THIS LINE, RESERVED FOR RECORDER**

Prepared by: Douglas R. Marek, City of Ames Legal Department, 515 Clark Avenue, Ames, Iowa 50010 (Phone: 515-239-5146)  
Return to Ames City Clerk, P.O. Box 811, Ames, IA 50010

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**TERMINATION AND RELEASE OF RESTRICTIVE COVENANTS  
ON LOTS 2, 3, AND 4, NORTHRIDGE HEIGHTS 12<sup>th</sup> ADDITION, AND  
LOTS 1 AND 2, NORTHRIDGE HEIGHTS 13<sup>th</sup> ADDITION TO THE CITY OF AMES**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of April, 2011, by and between the CITY OF AMES, IOWA (hereinafter called "City"), and R. FRIEDRICH AND SONS, INC., CLINIC BUILDING COMPANY, INC., BBNC, L.L.C., CASEY'S MARKETING COMPANY, and FAREWAY STORES, INC., (hereinafter referred to collectively as "Property Owners");

**WITNESSETH THAT:**

**WHEREAS**, City and Uthe Development Company, L.L.C. ("Developer"), entered into an agreement dated June 10, 2008, and filed with the Story County Recorder as Instrument 2008-00009177, said agreement constituting a covenant with the land, binding on Developer's successors and assigns, and placing restrictions on permitted uses in an area legally described as set out on Attachment A (hereinafter called the "Site"); and

**WHEREAS**, Property Owners are successors and assigns of Developer who desire to have the restrictions on permitted uses on the Site terminated and released; and,

**WHEREAS**, the City has determined that restrictions on permitted uses on the Site are no longer consistent with the applicable zoning and land use policy plan;

**NOW, THEREFORE**, the City and the Property Owners agree that the restrictive covenants previously adopted and filed with the Story County Recorder as Instrument 2008-00009177 are hereby terminated and released. Release of the aforesaid restrictive covenants shall not waive any other lawful restriction upon the use of the Site otherwise prohibited by the laws of the state, local ordinances, rules, regulations, or any other laws which shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed effective as of the date first above written.

**CITY OF AMES, IOWA**

By: \_\_\_\_\_  
Ann H. Campbell, Mayor

Attest:

By: \_\_\_\_\_  
Diane R. Voss, City Clerk

STATE OF IOWA, STORY COUNTY ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2011, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. \_\_\_\_\_ adopted by the City Council on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and that Ann H. Campbell and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

**R. FRIEDRICH AND SONS, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_, Authorized Agent

By: \_\_\_\_\_  
\_\_\_\_\_, Authorized Agent

STATE OF IOWA, STORY COUNTY ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2011, before me, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn or affirmed did say that that person is \_\_\_\_\_ of said limited liability company and that said instrument was signed on behalf of the said limited liability company by authority of its managers and the said \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

**CLINIC BUILDING COMPANY, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_, Authorized Agent

By: \_\_\_\_\_  
\_\_\_\_\_, Authorized Agent

STATE OF IOWA, STORY COUNTY ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2011, before me, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn or affirmed did say that that person is \_\_\_\_\_ of said limited liability company and that said instrument was signed on behalf of the said limited liability company by authority of its managers and the said \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

**BBNC, L.L.C.**

By: \_\_\_\_\_, Authorized Agent

By: \_\_\_\_\_, Authorized Agent

STATE OF IOWA, STORY COUNTY ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2011, before me, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn or affirmed did say that that person is \_\_\_\_\_ of said limited liability company and that said instrument was signed on behalf of the said limited liability company by authority of its managers and the said \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

**CASEY'S MARKETING COMPANY**

By: \_\_\_\_\_, Authorized Agent

By: \_\_\_\_\_, Authorized Agent

STATE OF IOWA, STORY COUNTY ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2011, before me, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn or affirmed did say that that person is \_\_\_\_\_ of said limited liability company and that said instrument was signed on behalf of the said limited liability company by authority of its managers and the said \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

**FAREWAY STORES, INC.**

By: \_\_\_\_\_, Authorized Agent

By: \_\_\_\_\_, Authorized Agent

STATE OF IOWA, STORY COUNTY ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2011, before me, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn or affirmed did say that that person is \_\_\_\_\_ of said limited liability company and that said instrument was signed on behalf of the said limited liability company by authority of its managers and the said \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

## ATTACHMENT A

LOTS 2, 3, AND 4, NORTHRIDGE HEIGHTS 12<sup>TH</sup> ADDITION TO THE CITY OF AMES; AND

LOTS 1 AND 2, NORTHRIDGE HEIGHTS 13<sup>TH</sup> ADDITION TO THE CITY OF AMES

## **AMENDMENT TO LAND USE POLICY PLAN PERTAINING TO USE RESTRICTIONS**

**FOR THE CONVENIENCE COMMERCIAL NODE (CVCN):** Director Osguthorpe advised that Kurt Friedrich of Friedrich Companies had requested that the text of the LUPP be amended to eliminate the use restrictions under the exception criteria for CVCN land use designations.

Mr. Osguthorpe gave the history of when and why the concept of convenience nodes was originally developed back in 2004. The intent under this concept was to provide nodes of commercial development in close proximity to, and for the convenience of, the immediate neighborhood, but in a manner and scale that would be compatible with the residential character of the neighborhood. During the development of this concept, the development community proposed locational criteria that would allow convenience commercial nodes everyone-halfmile. The locational criteria that were ultimately adopted required a spacing of two miles between nodes and two miles from village commercial centers. The Council's language allowed the convenience node to become an area for only those uses not otherwise provided for in the village, but ensured it would not compete with business opportunities in the village.

According to Mr. Osguthorpe, a number of amendments have been approved since 2004. Those amendments were described in detail. Subsequent to the development of the grocery store and car wash, a request was submitted to divide the McFarland Clinic lot. This division created a fifth lot in a zone that allowed only four uses. Staff reminded the applicant that a fifth use was not allowed. However, the proposed division met basic subdivision requirements, and there was nothing in the use restrictions for the zone that prohibited more than one of the four uses in the zone. During the subdivision review, the Council inquired of the applicant what use he had in mind for the fifth lot. A use was not disclosed at that time, but the Council was reminded that the division met subdivision requirements.

Mr. Osguthorpe stated that the current use limitations were adopted to ensure that a CVCN district located close to a village would not undermine the viability of the village. The concern was that the node would attract businesses that may want the locational advantages of the village, but that would not want to comply with the more stringent standards within the village. In retrospect, however, two things became evident under the adopted standards. First, limiting the number of uses within the convenience node could become problematic if one of those businesses were to close down and no other use were allowed to occupy the vacated building. Second, limiting the number of uses without further limiting the size of the convenience node has resulted in a node that is perhaps larger than necessary for just four uses. This is evident by the large size of both the car wash site and the original McFarland Clinic site (the McFarland Clinic site was later divided because of that. The first issue might be addressed by easing the restrictions on uses, but the City Council would have to be confident that this would not undermine business opportunities in the village.

The Council was advised by Director Osguthorpe that the second issue could be addressed by modifying the language that defines the size of convenience nodes. The current language allows nodes of "between two and five acres, but not greater than ten acres." Ten acres appears to be too large for only four businesses. Mr. Osguthorpe advised that a two-to five-acre limit may be more appropriate for nodes approved under the exception criteria.

Mr. Osguthorpe said that the exception criteria were adopted to facilitate a customer's request to place a convenience node at Stange and Bloomington. It appears, however, that many of the standards that were originally deemed necessary to both facilitate a node and protect surrounding commercial and neighborhood interests have proven problematic to businesses wanting to locate in the node. This is evident by the many changes that have been requested since the Node was created. According to Mr. Osguthorpe, this may be an indication that the exception criteria are not functioning as originally intended.

The alternatives available to the City Council were explained by Director Osguthorpe.. He noted that, when considering the alternatives, the Council should be aware that eliminating the use restrictions from the LUPP would not be effective at the Stange/Bloomington node because those use restrictions are also included in the Developer's Agreement that was approved when that node was created. To make the proposed LUPP amendments effective at the Stange/Bloomington node, the Council would need to support an amendment to eliminate the use restrictions from the Developer's Agreement associated with the approval of that node. The amendment was recorded against all properties within the node and an amendment would have to be approved by each owner of property in the node.

Mr. Osguthorpe stated that, at its meeting of February 16, 2011, with a vote of 5-0-1, the Planning & Zoning Commission recommended that the Council support the applicant's request by eliminating the exception criteria altogether and supporting an amendment to the Developer's Agreement eliminating the use restrictions.

The public hearing was opened by the Mayor. No one came forward to speak, and the Mayor closed the hearing.

Moved by Wacha, seconded by Orazem, to adopt RESOLUTION NO. 11-082 eliminating the use restrictions in Convenience Nodes by eliminating the exception criteria in the LUPP altogether and by supporting an amendment to the Developer's Agreement eliminating the use restrictions at the Stange/Bloomington Node.

Council Member Wacha expressed his desire to not restrict uses for villages. Council Member Goodman emphatically disagreed, stating that it would not be respectful to current property owners who have made investments based on the regulations at that time. He also believes that if the use restrictions are lifted, it will hinder the pedestrian feel to the village.

Roll Call Vote: 5-1. Voting aye: Davis, Larson, Mahayni, Orazem, Wacha. Voting nay: Goodman. Resolution declared adopted, signed by the Mayor, and hereby made a portion of these minutes.