

ITEM # 35  
DATE 6/10/08

## COUNCIL ACTION FORM

**SUBJECT:** DEVELOPMENT AGREEMENT RESTRICTING USES IN THE CONVENIENCE COMMERCIAL NODE AT BLOOMINGTON ROAD AND STANGE ROAD.

### **BACKGROUND:**

The City Council approved an amendment to the Land Use Policy Plan in December 2007 allowing Convenience Commercial Nodes at certain locations near village residential subdivisions. The Nodes would be limited to certain uses:

1. Grocery Stores;
2. Convenience Stores, which may include gasoline and food sale but no sit-down restaurants;
3. Medical Offices and Clinics; and
4. Car Washes.

The amendment to the LUPP also stated that these use limitations would be assured through a development agreement approved prior to final zoning action by the City Council.

The LUPP map was amended at the May 13 meeting to place a CVCN node at the intersection of Bloomington Road and Stange Road. The City Council approved the first reading of the ordinance to rezone a portion of Northridge Heights at that intersection at the May 27 meeting. The attached development agreement provides the mechanism by which the uses on those four lots will be limited. The agreement should be approved prior to the third reading of the ordinance to rezone the property.

### **DEVELOPER'S AGREEMENT:**

The development agreement identifies the subject site as Lots 400, 401, 402 and 403 of Northridge Heights and limits permissible uses to those approved on May 13, 2008 in Resolution Number 08-196. The use limitations are binding on the current developer, and its successors and assigns.

The City's remedies to enforce these limitations include refusing to approve or issue any permit for development on the site that is not consistent with the uses. Other enforcement actions would be similar to those of any other zoning infraction as allowed by the zoning ordinance.

### **ALTERNATIVES:**

1. The City Council can approve the Development Agreement restricting uses in the Convenience Commercial Node at Bloomington Road and Stange Road.

2. The City Council can deny approval of the Development Agreement restricting uses in the Convenience Commercial Node at Bloomington Road and Stange Road.
3. The City Council can refer this request back to staff and/or the applicant for additional information. However, approval of the Development Agreement should occur before the final approval of the ordinance to rezone.

**MANAGER'S RECOMMENDED ACTION:**

It is the recommendation of the City Manager that the City Council approve Alternative #1. This is a recommendation to approve the Development Agreement.

**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

**AN AGREEMENT PERTAINING TO THE  
DEVELOPMENT OF LOTS 1, 2, 3, AND 4,  
NORTHRIDGE HEIGHTS 12<sup>th</sup> ADDITION IN THE CITY OF AMES**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of June, 2008, by and between the CITY OF AMES, IOWA (hereinafter called "City"), and Uthe Development Company, L.L.C. (hereinafter called "Developer"), their successors and assigns,

**WITNESSETH THAT:**

**WHEREAS**, the parties hereto desire the improvement and development of an area legally described as set out on Attachment A, hereinafter called the Site; and,

**WHEREAS**, Developer has applied to the City for rezoning of the Site to CVCN Convenience Commercial Node; and,

**WHEREAS**, the Land Use Policy Plan for the Site provides for CVCN zoning with use restrictions that allow only grocery stores, convenience stores (which may include gasoline and food sales but not sit-down restaurants), medical offices and clinics, and car washes; and

**WHEREAS**, Developer has agreed to restrict uses at Site to those included in the Land Use Policy Plan.

**NOW, THEREFORE**, the parties hereto have agreed and do agree as follows:

**I.  
PURPOSE**

A. It is the purpose of this Agreement to:

1. Document, record, and give notice of a certain plan of development, and the restrictions on uses for the Site.

2. Provide remedies to the City in the event the said plan of development is not adhered to or achieved by the Developer.

B. This Agreement does not create or vest in any person or organization, other than the City, any rights or cause of action with respect to any performance, obligation, plan, schedule or undertaking stated in this Agreement, with respect to the Developer. No person shall have any cause of action or recourse against the City or Developer by reason of any such amendment, modification, or release.

## **II. RESTRICTIONS ON USES PERMITTED ON THE SITE**

Permissible uses at the Site are limited to those approved by the Ames City Council on May 13, 2008, in Resolution Number 08-196, amending the Land Use Policy Plan Map. Developer, its successors and assigns, covenant and agree to limit uses of the Site to the following:

- A. Grocery stores;
- B. Convenience stores, which may include sales of gasoline and food but not sit-down restaurants;
- C. Medical offices and clinics; and
- D. Car washes.

## **III. CITY'S REMEDIES**

A. In that the Developer seeks to persuade and induce the City to approve a rezoning of the Site to CVCN Convenience Commercial Node, it is understood and agreed that the City shall not issue any permits with respect to any place on the Site for which a final plat of subdivision has not been approved and filed for record.

B. The City shall not issue a building permit, zoning permit, or any other permit of the City with respect to any excavation, construction, reconstruction or remodeling on the Site unless said work is undertaken in accordance with the provisions of this Agreement.

C. The City shall not approve any final plat of any phase of development on the Site unless said plat is in accordance with and meets the provisions and conditions of this Agreement.

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

E. City may enforce violations of this Agreement in the same manner as a violation of Chapter 29, Ames Municipal Code, through means that include but are not limited to withholding permits, revoking permits, stopping work, revoking plans or approvals, seeking injunctions or other equitable relief, abating or removing violations, or filing municipal infractions and seeking civil penalties.

**IV.  
COVENANT WITH THE LAND**

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

**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: \_\_\_\_\_  
\_\_\_\_\_, Mayor

Attest by:

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

STATE OF IOWA, STORY COUNTY ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me, a Notary Public in and for the State of Iowa, personally appeared \_\_\_\_\_ 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 \_\_\_\_\_ 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

**UTHE DEVELOPMENT COMPANY,  
L.L.C.**

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

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

STATE OF IOWA, STORY COUNTY ss:

On this \_\_\_\_ day of \_\_\_\_\_, 2008, 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

APPROVED AS TO  
BY DM  
DOUGLAS R. MAE  
CITY ATTORNEY

**AN AGREEMENT PERTAINING TO THE  
DEVELOPMENT OF LOTS 1, 2, 3, and 4,  
NORTHRIDGE HEIGHTS 12<sup>th</sup> ADDITION IN THE CITY OF AMES**

**ATTACHMENT A**

**Legal Description of the Site:**

That part of the North Half of Section 28, Township 84 North, Range 24 West of the 5<sup>th</sup> P.M., City of Ames, Story County, Iowa, described as follows: Commencing at the Southeast Corner of the Northwest Quarter of said Section 28; thence N89°21'34"E, 692.28 feet along the Southerly line of said Northeast Quarter to the Point of Beginning; thence N89°21'34" E, 933.18 feet; thence N00°37'55"W, 426.06 feet; thence S89°21'34"W, 300.61 feet to a point on a 167.00 foot radius, non-tangent curve, concave Southeasterly; thence Southwesterly, 98.11 feet along said curve having a chord bearing S72°31'48"W, 96.70 feet to a point on a 700.00 foot radius, non-tangent curve, concave Southwesterly; thence Northwesterly, 667.17 feet along said curve having a chord bearing N46°57'49"W, 642.20 feet to a point on a 700.00 foot radius curve, concave Northeasterly; thence Northwesterly, 80.31 feet along said curve having a chord bearing N70°58'49"W, 80.29 feet; thence S00°38'26"E, 868.58 feet to the Point of Beginning; said tract containing 12.69 acres (9.79 acres net) more or less.

**Also known as Lots 1, 2, 3, and 4, Northridge Heights 12<sup>th</sup> Addition.**

CAF APPROVAL

SS \_\_\_\_\_ BK \_\_\_\_\_ SL \_\_\_\_\_

DM DM JP JP

To be sent to:

Chuck Winkleblack  
Hunziker & Associates  
105 South 16<sup>th</sup> Street  
Ames, Iowa 50010