

COUNCIL ACTION FORM

SUBJECT: REVISION TO SIDEWALK AND STREET TREES AGREEMENT FOR NORTHRIDGE HEIGHTS 14TH ADDITION

BACKGROUND:

On July 28, 2011, City Council approved the Final Plat for the Northridge Heights 14th Addition, establishing the site where the Grayhawk Apartments are now under construction on the north side of Bloomington Road west of Stange. An Agreement for Sidewalk and Street Trees was also approved providing for completion of two segments of the public walk system before any occupancy permits are approved for those apartment buildings. (See Attachment A showing sidewalk locations.)

On January 24, 2012, the City Council referred to staff a letter from HCS Builders asking permission for temporary occupancy permits to be issued when two of the apartment buildings are completed, which HCS Builders expects to occur before the required walks are completed. The letter states that exceptionally good weather allowed these buildings to be ahead of schedule, although weather and site conditions still prevented the walk from being built. HCS Builders offered to provide financial security to assure completion of the walks. (See Attachment B – Letter from HCS.)

A revised and signed amendment to the Agreement for Sidewalk and Street Trees has been provided that provides for completion of the walks by March 1, 2013, and for financial security. (See Attachment C) The financial security provides for an amount adequate to construct all the walks along Farnham Drive and Bloomington Road.

ALTERNATIVES:

1. The City Council can approve the “First Amendment to Agreement for Sidewalks and Street Trees” for Northridge Heights 14th Addition.
2. The City Council can approve the agreement with conditions.
3. The City Council can choose not approve the agreement.
4. The City Council can refer the issue to staff for further information.

MANAGER’S RECOMMENDED ACTION:

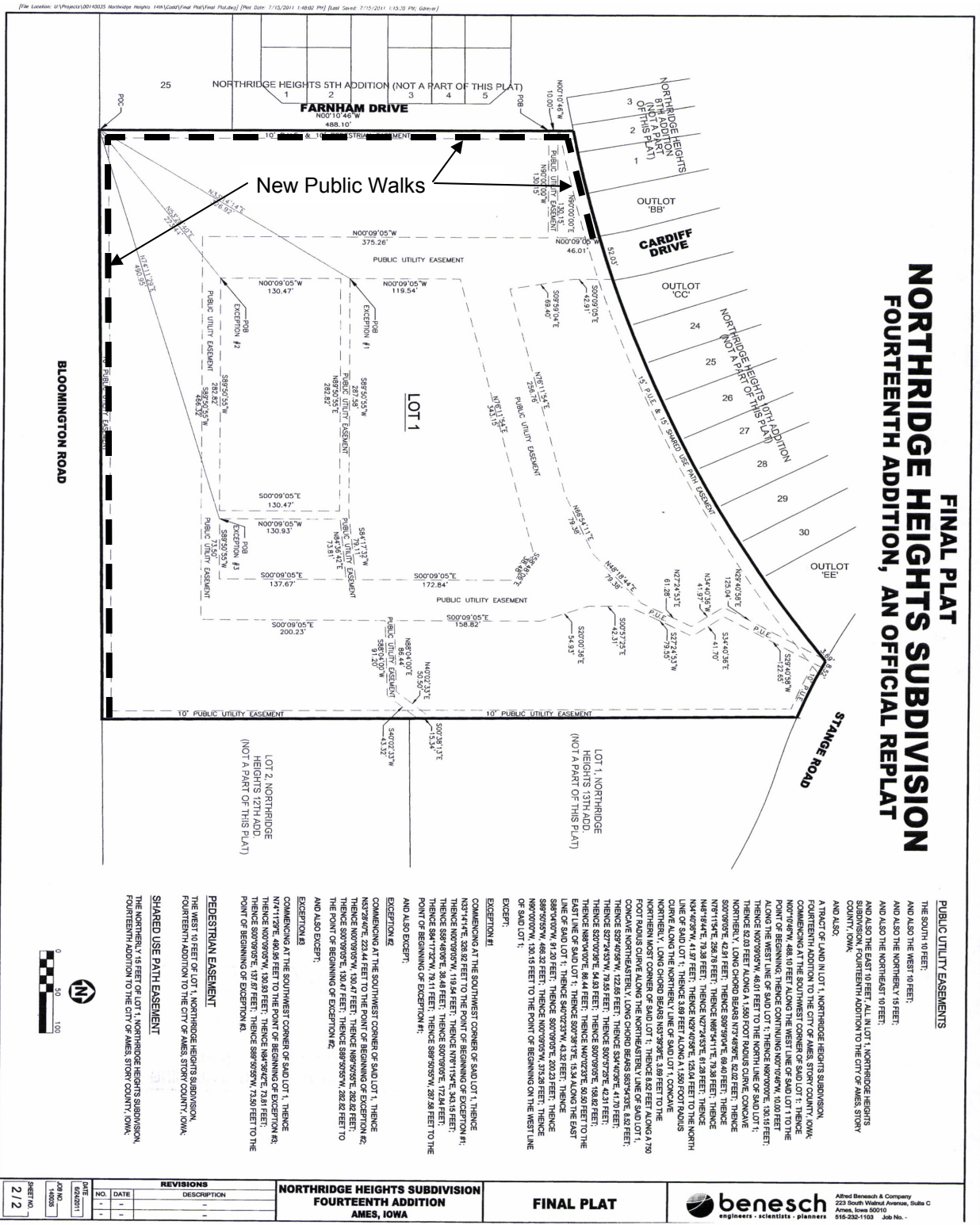
In approving the original sidewalk agreement, City Council affirmed the importance of these walks to the pedestrian system used by the residents of this entire area, especially in accessing the new commercial services. The proposed amendment and

financial security will assure that these key links are made soon and also allow new residents to occupy the apartments as soon as each building is completed.

While withholding occupancy is the typical way in which construction of public improvements is assured, the Code also allows for financial security to be posted as a means of granting occupancy prior to completion of those improvements.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving the "First Amendment to Agreement for Sidewalks and Street Trees" for Northridge Heights 14th Addition.

Public Walks at Grayhawk Apartments



Letter from HCS Builders

Jeff Benson
Planning and Housing
Ames City Hall
515 Clark Ave.
Ames, Iowa 50010

January 16, 2012

We respectfully request that the apartment buildings at 3715 Grayhawk and 3613 Grayhawk be excluded from the following requirement stated in Paragraph 2 section (b.) of the AGREEMENT FOR SIDEWALK AND STREET TREES signed July 22, 2011.

(b.) The Owner shall construct all of the sidewalks along the west boundary of Lot 1 (along Farnham Drive) and on the south boundary of Lot 1 (along Bloomington Road) before any building or zoning permit will be issued by the City with respect to the Subdivision or, in the alternative, the Owner may obtain said permits and proceed with construction pursuant to said permits with the understanding that *any and all occupancy permits within the Subdivision under City ordinances shall be withheld until the sidewalks are completed.*

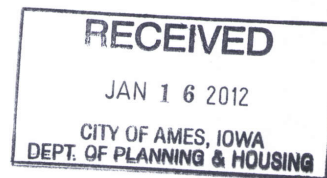
Specifically, our request is that HCS Builders may obtain a temporary occupancy permit for these two properties pending final inspection and approval by the City of Ames Building Inspection Department. Because of the exceptionally good weather over the last four months, 3715 Grayhawk is ahead of schedule and will be ready for March 1st occupancy. Likewise, 3613 Grayhawk will be ready to occupy on April 1st. Historically, concrete construction cannot begin before April 1st because of weather and frost issues. We are asking for the exception only on these two properties. The other five apartments currently under construction will be able to meet the requirement.

The area of the sidewalks in question is approximately 5339 sf. If necessary, HCS Builders is willing to issue a check for \$17,000 (the cost of building the sidewalks) that the city could hold to assure performance of all requirements. We intend to begin installing sidewalks as soon as the weather permits in the spring. We feel that these measures will uphold the intent of paragraph (b.) and we ask for your approval. Please respond as soon as possible, because we already have tenants that would like to occupy March 1st.

Sincerely,


Alan Christy
Vice President
HCS Builders, Inc.

105 South 16th Street
Ames, Iowa 50010-8009
Office 515 239 8690
Fax 515 233 5821
Cell 515 231 8099



Return document to: David W. Benson, Attorney at law, 1416 Buckeye Ave. Ste. 200, Ames, IA 50010

Document prepared by: David W. Benson , Attorney at law, 1416 Buckeye Ave. Ste. 200, Ames, IA 50010 – 515-956-3913

FIRST AMENDMENT TO AGREEMENT FOR SIDEWALK AND STREET TREES

THIS IS AN AMENDMENT by and between City and Owner as follows:

1. **DEFINITIONS.** As used in this Amendment, unless otherwise required by the context:

- a. “City” means the City of Ames, Iowa
- b. “Owner” means Uthe Development Company, L.L.C.
- c. “Agreement” means the Agreement for Sidewalk and Street Trees dated July 22, 2011, filed August 1, 2011, and recorded as Instrument No. 11-07222.
- d. “Subdivision” means Northridge Heights Subdivision Fourteenth Addition, Ames, Story County, Iowa.

2. **AGREEMENT AMENDED.** For good and valuable consideration in hand paid and acknowledged, City and Owner agree that the original terms of the Agreement should be and are hereby amended by striking paragraph 1, subparagraph b, and inserting in lieu thereof the following:

(b) The Owner shall construct all of the sidewalks along the west boundary of Lot 1 (along Farnham Drive) and on the south boundary of Lot 1 (along Bloomington Road) before any building or zoning permit will be issued by the City with respect to the Subdivision or, in the alternative, the Owner may obtain said building and zoning permits and proceed with construction pursuant to said building and zoning permits and if otherwise qualifying may obtain occupancy permits upon delivery to City of a surety. A surety delivered to the

City under this paragraph shall be in the amount of \$18,732.00 and shall be in the form of a cash deposit or a letter of credit. If the surety is in the form of a letter of credit, it shall be an irrevocable letter of credit payable at sight and in a form satisfactory to City. If the surety is in the form of a cash deposit, income thereon shall inure to the benefit of the City. In the event Owner fails to construct the sidewalks before the March 1, 2013, unless extended by the City by a separate written amendment hereto, the City may draw on the surety and complete public improvements not then completed. Upon satisfactory completion of the sidewalks, unused balance of the surety shall be released and returned to the Owner.

3. **AGREEMENT REAFFIRMED.** Except as modified by this Amendment, the Agreement is hereby reaffirmed.

IN WITNESS OF THIS AMENDMENT, City and Owner have caused it to be executed to be effective on the date last executed as follows:

UTHE DEVELOPMENT COMPANY, L.L.C.

By: _____
Charles E. Winkleblack, Manager

By: _____
Dean E. Hunziker, Manager

STATE OF IOWA, STORY COUNTY, SS:

This instrument was acknowledged before me on _____, 2012, by Charles E. Winkleblack and Dean E. Hunziker as Managers of Uthe Development Company, L.L.C.

Notary Public in and for the State of Iowa

-CITY OF AMES, IOWA-

By: _____
John Joiner
Director of Public Works

STATE OF IOWA, STORY COUNTY, SS:

This instrument was acknowledged before me on _____, 2012, by John Joiner as Director of Public Works for the City of Ames, Iowa.

Notary Public in and for the State of Iowa