

COUNCIL ACTION FORM

SUBJECT: AMENDMENT TO SOUTH BELL AGREEMENT WITH DAYTON PARK, LLC

BACKGROUND:

The City of Ames and Dayton Park, LLC entered into a development agreement on February 4, 2009 in order to establish an urban renewal area and tax increment finance (TIF) district for the construction of the Ames Community Development Park 4th Addition. This development created 14 lots for industrial development and completed the connection of S. Bell Avenue between E. Lincoln Way and SE 16th Street.

The agreement, among other things, requires the developer to construct a series of speculative buildings. The first building was required within 18 months after the completion of the public improvements. The second speculative building was required to be constructed within twelve months of the occupancy of the first (or by July 23, 2013). This requirement was not met by the developer.

The agreement also required the developer to grant to the City a first lien mortgage in the amount of \$350,000 encumbering not less than 6.36 acres of the development. This mortgage was to ensure the completion of the required speculative buildings. This mortgage was never granted and the City is holding no financial security to ensure the developer performs.

At the December 17, 2013 meeting, the City Council directed staff to prepare amendments to the agreement to grant a one-time extension to require the second speculative building to be completed by June 1, 2014. The City Council also directed staff to obtain a letter of credit (rather than a mortgage) and to assess the developer \$12,000 as consideration for non-performance to meet the timeline for completion of the second speculative building and grant an extension.

At the January 28, 2014 City Council meeting, the Council reviewed a letter from Dayton Park, LLC offering amended terms to the development agreement. In response to this request (see attached), City Council directed staff to prepare an amendment to the agreement that required completion of the second building by July 1, 2014 and to accelerate the construction of the third speculative building to be completed by December 31, 2014.

An amendment to the Ames Community Development Park Subdivision 4th Addition Development Agreement has been prepared by staff based on that direction. The agreement has been reviewed by the developer and is signed and ready for execution by the City.

ALTERNATIVES:

1. The City Council can approve the amended Development Agreement for the Ames Community Development Park 4th Addition that requires the developer to complete the second speculative building by July 1, 2014, to commence construction of the third speculative building by July 1, 2014 with completion by December 31, 2014, and to provide a letter of credit to the City in the amount of \$350,000, rather than a first lien mortgage at execution of the agreement.
2. The City Council can deny the request to approve the amended the agreement.
3. The City Council can refer this item to staff for further information.

MANAGER'S RECOMMENDED ACTION:

The development agreement approved in 2009 required certain timeframes for completion of speculative buildings in the South Bell business park. Unfortunately, the timeframe to complete the second speculative building was not met by the developer. The proposed modification to the existing agreement accelerates the construction of the third speculative building by the developer as consideration for the City Council extending the time for the construction of the second building.

This agreement also provides the City with a more liquid form of financial security. With a letter of credit, the City is better able to draw upon any funds than with a mortgage, which would require foreclosure on the property.

Therefore, it is the recommendation of the City Manager that the City Council accept Alternative #1 as described above, thereby approving the amended Development Agreement for the Ames Community Development Park 4th Addition that requires the developer to complete the second speculative building by July 1, 2014, to commence construction of the third speculative building by July 1, 2014 with completion by December 31, 2014, and to provide a letter of credit in the amount of \$350,000 rather than a first lien mortgage.

Date: January 24, 2014

To: Honorable Mayor and City Council

From: Chuck Winkleblack

RE: S. Bell development agreement

Mayor and Council,

In December council directed staff to meet with our organization and make some modifications to our existing agreement as well as impose a penalty for not completing the second spec building per the terms of the agreement.

I met with the planning director to discuss alternatives to the council action that was taken in December. Dayton Park would like to suggest an alternative proposal to the direction that the council gave staff. Rather than pay a penalty of \$12,000 to the city of Ames, I propose that in addition to completing the building under construction prior to July 1 of 2014, Dayton Park also agrees to start another building within the TIF district by July 1, 2014 and completing the building by December 31, 2014.

Dayton Park would also like to amend the agreement to allow for a letter of credit instead of a mortgage for security against future improvements.

Thanks in advance for your consideration.

Respectfully submitted,



Chuck Winkleblack
Hunziker & Associates, Realtors

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

Prepared by: Judy K. Parks, City of Ames Legal Department, 515 Clark Ave., Ames, IA 50010; 515-239-5146

Return to: Ames City Clerk, Ames City Hall, 515 Clark Ave., P.O. Box 811, Ames, IA 50010

**ADDENDUM TO DEVELOPMENT AGREEMENT
FOR THE AMES COMMUNITY DEVELOPMENT PARK
SUBDIVISION, 4TH ADDITION**

THIS DEVELOPMENT AGREEMENT ADDENDUM is made and entered into this _____ day of March, 2014, by and between the CITY OF AMES, IOWA (hereinafter called the **“City”**) and DAYTON PARK, L.L.C. (hereinafter called the **“Developer”**) (the City and the Developer collectively being referred to herein as the **“Parties”**).

WHEREAS, the Parties originally entered into a Development Agreement for the Ames Community Development Park Subdivision 4th Addition (“Development Agreement”) on the 4th day of February, 2009, for construction and marketing of industrial buildings on South Bell Avenue in the City of Ames; and

WHEREAS, the Development Agreement (recorded as instrument number 2009-00001635 on February 18, 2009, in the office of the Story County Recorder) called for sequential construction of buildings and provision of security, as well as for a mechanism to pay for the improvements the City constructed and paid for at the beginning of the project; and

WHEREAS, the Developer has fallen behind in the completion milestones such that the building currently under construction will not be completed by the deadline called for by the Development Agreement, and is now seeking modification of the provisions of the Development Agreement; and

WHEREAS, the Parties are interested in continuation of the project, and modification of its terms would further the realization of the mutual benefits that the Parties sought to achieve.

NOW, THEREFORE, the Parties agree to modification of the specific terms of Sections 9 and 10 the Development Agreement as set forth below.

1. **REVISED COMPLETION DATE FOR SECOND AND THIRD SPECULATIVE BUILDINGS AND SUBSEQUENT SPECULATIVE BUILDINGS.** The Parties agree that in lieu of the completion date provided in section 9 of the Development Agreement for the Second Speculative Building, the completion date of the Second Speculative Building shall be not later July 1, 2014.

The Parties further agree that in lieu of the completion date provided in section 9 of the Development Agreement for the Third Speculative Building, construction of the Third Speculative Building shall be started by July 1, 2012, and the completion date of the Third Speculative Building shall be no later than December 31, 2014.

Completion of buildings subsequent to the third one shall be according to the terms of the Development Agreement, and all other terms in section 9 of the Development Agreement shall remain in full force and effect.

2. **REVISED FORM OF SECURITY.** The Parties agree that in lieu the requirement in section 10 of the Development Agreement for Developer to execute and deliver to the City a first lien mortgage in the amount of \$350,000.00, the Developer shall provide to the City, upon execution of this Addendum, an irrevocable Letter of Credit in the amount of \$350,000.00 as the security for future improvements.

All other terms and requirements of section 10 of the Development Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their authorized representatives as of the date first above written.

<p>CITY OF AMES, IOWA</p> <p>By _____ Ann H. Campbell, Mayor</p> <p>Attest By _____ Diane R. Voss, City Clerk</p> <p>STATE OF IOWA, COUNTY OF STORY, ss:</p> <p>On this _____ day of _____, 2014, 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, 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 _____, 2014, 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.</p> <p>_____ Notary Public in and for the State of Iowa</p>	<p>DAYTON PARK, L.L.C.</p> <p>By _____ Dean E. Hunziker, Manager</p> <p>STATE OF IOWA, COUNTY OF STORY, ss:</p> <p>This instrument was acknowledged before me on _____, 2014, by Dean E. Hunziker, Manager of Dayton Park, L.L.C.</p> <p>_____ Notary Public in and for the State of Iowa</p>
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