

**COUNCIL ACTION FORM**

**SUBJECT: REQUEST TO DEFER STREET WIDENING ASSESSMENT FOR EASTGATE PROPERTIES**

**BACKGROUND:**

First National Bank owns 12 lots within the Eastgate Subdivision (Near East 13<sup>th</sup> Street and Dayton Avenue). In 1998, the original Eastgate developer signed a development agreement promising payment for improvements to roads and utilities in the area. The development was then the subject of a bankruptcy proceeding, and in 2001, the City entered into a covenant that modified the owner's public infrastructure obligations. The covenant was intended to clarify the owner's obligations and more strictly bind the property owner to pay for improvements earlier than required under the development agreement. The property was ultimately acquired by First National Bank through the bankruptcy proceeding.

The covenant requires payment to the City for the estimated costs of widening Dayton Avenue for a turn lane and for connections to water and sewer service. **This payment is to be made upon the sale or transfer of each lot.** The water and sewer connection fees have all been paid, and only the road widening cost remains outstanding. The road widening cost was revised in 2004 to reflect increased construction costs. **The amount outstanding for the 12 lots remaining in the subdivision is \$94,710.**

**First National Bank has requested that it be allowed to sell the properties to its holding company, Ames National Corporation, without being required to pay the outstanding road assessment.** The rationale for this transfer is that federal regulations prohibit national banks from holding real estate for periods greater than ten years. December 15<sup>th</sup> is the ten-year anniversary of First National Bank's acquisition of the properties.

In a previous staff report, City staff recommended that deferring payment for the road widening costs should be made contingent upon a revision in the amount owed, since construction costs have increased since the time when the assessment was last revised. **First National Bank has requested that the construction cost not be revised, because this transaction is to a corporation with essentially the same ownership, and it further believes an increase in the assessment amount will make the lots more difficult to sell for development.**

The covenant indicates that the original cost estimate for the road widening was only binding until May 1, 2001. The City Council revised the construction cost in

**November 2004. It is City staff's belief that the City Council has the option in the future to again unilaterally revise the construction cost estimate in response to construction cost inflation, and therefore adjust the amount owed per lot for the widening of Dayton Road. This request to transfer the ownership of the property does not preclude adjustments in the construction cost estimate from being made in the future.**

Modifying the covenant and development agreement will have two additional effects: First, it will allow the development agreement to be clarified as to what components remain incomplete, and in what manner those components have been superseded by the covenant. Second, it will extend the duration of the covenant another 21 years from the date of revision. It is currently only binding until February 2022.

**ALTERNATIVES:**

1. Approve the attached amendments to the covenant and development agreement with First National Bank for the Eastgate Subdivision, allowing the properties to be sold to Ames National Corporation without requiring payment for the road widening costs. The road widening costs would become payable upon the sale of the lots by Ames National Corporation in accordance with the covenant.
2. Do not approve modifications to the covenant and development agreement.

**MANAGER'S RECOMMENDED ACTION:**

First National Bank has requested to transfer the Eastgate properties to its holding company without requiring payment for the road widening costs. The holding company would not develop the lots, but would continue to market them for sale to developers. The acquisition of the properties by Ames National Corporation is not an arm's length transaction, since the ownership of First National Bank and Ames National Corporation is largely identical. Therefore, the bank proposes that the costs owed not be due until the holding company sells the lots to a developer.

The need for the Dayton Road widening is driven primarily by the development of this subdivision. No project to widen the road has been designed, and the project remains a medium-term priority in the Long-Range Transportation Plan.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving modifications to the covenant and development agreement with First National Bank for the Eastgate Subdivision, allowing the properties to be sold to Ames National Corporation without requiring payment for the road widening costs. No revision to the road construction cost estimate has been proposed, but the City Council has the option to update the cost if it chooses in the future. These road widening costs would become payable upon the sale of the lots by Ames National Corporation in accordance with the covenant.

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

Prepared by: Jessica D. Spoden, 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

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AMENDMENT TO EASTGATE SUBDIVISION  
COVENANT FOR ASSESSMENT OF COSTS OF IMPROVEMENTS  
DAYTON AVENUE

This Amendment to Eastgate Subdivision Covenant for Assessment of Costs of Improvements made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Ames, Iowa (hereinafter called "City") and First National Bank, Ames, Iowa, its successors and assigns (hereinafter called "Owner"), amends the Covenant for Assessment of Costs of Improvement (hereinafter "Covenant") entered into between Eastgate Development, Inc. (hereinafter called "Developer") and the City on the 13<sup>th</sup> day of February, 2001, and recorded in the office of the Story County Recorder on March 13, 2001, as Instrument No. 01-02822.

WITNESSETH THAT:

WHEREAS, Owner owns twelve (12) lots (hereinafter "Property") within the Eastgate Subdivision (hereinafter called "Eastgate"); and

WHEREAS, the Developer, Eastgate Development, Inc., entered into a Development Agreement (hereinafter called "Agreement") with the City promising payment for improvements to roads and utilities in the area; and

WHEREAS, the Agreement required the Developer to pay for certain public improvements in the area, including the widening of Dayton Avenue for a left turn lane; and

WHEREAS, during a bankruptcy proceeding for Eastgate, the City and Developer entered into the Covenant that modified the Developer's public infrastructure obligations to clarify the obligations and to more strictly bind the Developer and any future property owner(s) to pay for improvements earlier than required under the Agreement; and

WHEREAS, the Owner ultimately acquired Eastgate through the bankruptcy proceeding;  
and

WHEREAS, as the successor to the Developer, Owner is bound by the Agreement and required to pay for the cost of improvements upon sale or transfer of the property; and

WHEREAS, the total cost of the improvement was subject to change after May 1, 2001 pursuant to an increase in anticipated construction costs; and

WHEREAS, Owner desires to transfer the Property to its holding company, Ames National Corporation (hereinafter "ANC"), while deferring the obligation to pay for the widening of Dayton Avenue to add a left turn lane.

NOW, THEREFORE THE PARTIES HERETO HAVE AGREED TO THE FOLLOWING:

1. The parties agree to amend the Covenant to clarify the obligation(s) related to the widening of Dayton Avenue and the costs associated with the improvement. Provision 3 of the Covenant is amended to state: "The Developer, its successors, and assigns, including purchasers of lots, shall be responsible for all costs of construction for a northbound left turn lane on Dayton Avenue by paying to the City that amount that is the percentage shown on Exhibit A with respect to said lot or lots to be sold or transferred. Such costs for the said left turn lane on Dayton Avenue shall be due and payable upon the sale or transfer of the property."
2. The parties agree to allow Owner to transfer the Property to ANC without paying said costs for the left turn lane on Dayton Avenue. Owner shall be required to pay such costs for the improvement upon the future sale or transfer from ANC to a third party. At such time, Owner shall pay the costs established by Exhibit A, or as revised by the City.

IN WITNESS WHEREOF, the parties hereto have caused this amendment to be executed as of the date referenced above.

CITY OF AMES, IOWA

FIRST NATIONAL BANK, AMES, IOWA

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

By \_\_\_\_\_  
Scott T. Bauer, President

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

STATE OF IOWA, COUNTY OF STORY, ss:

STATE OF IOWA, COUNTY OF STORY, ss:

This instrument was acknowledged before me on \_\_\_\_\_, 2015, by Scott T. Bauer, President of First National Bank, Ames, Iowa.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, 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 \_\_\_\_\_, 2015, 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

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

EXHIBIT A  
EASTGATE SUBDIVISION

December, 2015

LOT #	AREA	% of ASSESSMENT	COST ALLOCATION
8	0.95	3.1	\$ 6,510.00
9	0.95	3.1	\$ 6,510.00
10	0.95	3.1	\$ 6,510.00
11	0.95	3.1	\$ 6,510.00
12	2.00	6.6	\$ 13,860.00
13	2.00	6.6	\$ 13,860.00
15	1.00	3.3	\$ 6,930.00
16	1.00	3.3	\$ 6,930.00
17	1.00	3.3	\$ 6,930.00
21	1.01	3.3	\$ 6,930.00
22	0.91	3.0	\$ 6,300.00
23	1.00	3.3	\$ 6,930.00
TOTALS	19.23		\$94,710.00*

\*The total cost shall be subject to revision by the City in response to an increase in anticipated construction costs. The revision shall not require an amendment to the Covenant.

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Prepared by: Jessica D. Spoden, 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

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AMENDMENT TO DEVELOPMENT AGREEMENT  
EASTGATE SUBDIVISION

This Amendment to Development Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Ames, Iowa (hereinafter called "City") and First National Bank, Ames, Iowa its successors and assigns (hereinafter called "Owner") amends the Development Agreement (hereinafter called "Agreement") entered into between Eastgate Development, Inc. (hereinafter called "Developer") and the City on the 6<sup>th</sup> day of October 1998, and recorded in the office of the Story County Recorder on October 16, 1998, as Instrument No. 98-14377.

WITNESSETH THAT:

WHEREAS, Owner owns twelve (12) lots (hereinafter "Property") within the Eastgate Subdivision (hereinafter called "Eastgate"); and

WHEREAS, the Developer, Eastgate Development, Inc., signed the above reference Agreement promising payment for improvements to roads and utilities in the area; and

WHEREAS, the Agreement required the Developer to pay for certain public improvements in the area, including the widening of Dayton Avenue for a left turn lane; and

WHEREAS, during a bankruptcy proceeding for Eastgate, the City and Developer entered into a covenant that modified the Developer's public infrastructure obligations to clarify the obligations and to more strictly bind the Developer and any future property owner(s) to pay for improvements earlier than required under the Agreement; and

WHEREAS, the Owner ultimately acquired Eastgate through the bankruptcy proceeding;  
and

WHEREAS, as the successor to the Developer, Owner is bound by the Agreement and required to pay for the cost of improvements upon sale or transfer of the property; and

WHEREAS, Owner desires to transfer the Property to its holding company, Ames National Corporation (hereinafter called "ANC"), while deferring the obligation to pay for the widening of Dayton Avenue to add a left turn lane.

NOW, THEREFORE, THE PARTIES HERETO HAVE AGREED TO THE FOLLOWING:

1. Certain provisions of the Agreement were superseded by the Eastgate Subdivision Covenant for Assessment of Costs of Improvements Dayton Avenue (hereinafter called "Covenant") Therefore, the parties agree to amend the Agreement. Section II.2.d. Streets: Vehicular and Pedestrian Access of the Agreement is amended to state: "Developer shall be responsible for all costs of construction for a northbound left turn lane on Dayton Avenue to facilitate Plymouth Drive. Such turn lane may be constructed by the City when there is sufficient traffic to warrant that improvement under established standards of traffic engineering. The Developer shall pay for the costs incurred for the said left turn lane on Dayton Avenue upon the sale or transfer of the property. The costs for such improvement shall be as listed in Exhibit A of the Eastgate Subdivision Covenant for Assessment of Costs of Improvements Dayton Avenue, notwithstanding a revision to the cost which may be made at any time by the City in response to an increase in anticipated construction costs."
2. The parties agree to allow Owner to transfer the Property to ANC without paying for the left turn lane on Dayton Avenue. Owner shall be required to pay such costs for the improvement upon the future sale or transfer from ANC to a third party. At such time, Owner shall pay the costs as established by the Covenant, or as revised by the City.



IN WITNESS WHEREOF, the parties hereto have caused this amendment to be executed as of the date referenced above.

CITY OF AMES, IOWA

FIRST NATIONAL BANK, AMES, IOWA

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

By \_\_\_\_\_  
Scott T. Bauer, President

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

STATE OF IOWA, COUNTY OF STORY, ss:

STATE OF IOWA, COUNTY OF STORY, ss:

This instrument was acknowledged before me on \_\_\_\_\_, 2015, by Scott T. Bauer, President of First National Bank, Ames, Iowa.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, 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 \_\_\_\_\_, 2015, 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

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