

COUNCIL ACTION FORM

**SUBJECT: AMES COMMUNITY DEVELOPMENT PARK SUBDIVISION 4TH
ADDITION CHANGES TO COVENANTS**

BACKGROUND:

In 2009 the City entered into a Development Agreement for the Ames Community Development Park 4th Addition. Section 15 of the Development Agreement references an Exhibit "B", Restrictive Covenants, that all buildings within the subdivision must comply with. The covenants recorded with the development agreement in 2009 prohibits the parking of trailers or mobile homes, or other similar structures on any lot except those used by a contractor during construction, (Exhibit A, page 9, paragraph 1). **City Council is being asked to recognize a change in the Restrictive Covenants to allow the parking of auxiliary trailers on a site since the covenants are referenced and attached as an exhibit to the Development Agreement.**

In 2016, Story Construction built a new office building within this subdivision. At the time of site plan review the parking of job site trailers was not shown on the plan nor was it indicated they would be parked on site. Story Construction uses these trailers to preplan projects and then take to job sites. The length of time for which a trailer sits may vary dependent on the company's project schedule, but a trailer will never sit longer than six months. Story Construction has worked to amend the restrictive covenants to allow the job site trailers to be parked on site within the subdivision and has indicated they have support of the other property owners in the subdivision.

The Development Agreement and the associated Restrictive Covenants include restrictions related to building design, building materials, and site design above and beyond what the Zoning Code requires. **While the City is part of the Development Agreement, it is not involved in the Restrictive Covenants directly.** Staff completes a review of site plans for compliance with the Development Agreement and Covenants to ensure consistency with the construction requirements.

The limitation on storage of trailers is a higher-level restriction than what the General Industrial, GI, base zoning would permit. The proposed language change addressing trailers that are auxiliary to the primary use would meet the intent of the original covenant that was designed to stop large scale storage uses from occupying land in the development.

Changes to the Covenants have already been approved by all affected property owners and have been recorded. The change now allows "auxiliary use trailers". (Exhibit B, pages 2 and 3). Auxiliary use trailers will not be allowed to be parked in the same location for longer than six months and shall not be used for storage.

ALTERNATIVES:

1. Acknowledge changes to the Restrictive Covenants to include exceptions for auxiliary trailers that may be parked on a site for a period not to exceed six months.
2. Do not acknowledge the updated Restrictive Covenants

CITY MANAGER'S RECOMMENDED ACTION:

This change to the Restrictive Covenants facilitates the requestor's needs and there are no objections from other property owners in the subdivision. Acknowledging the change to the Restrictive Covenants will ensure consistency in site plan review by City staff. The proposed new exception will have limited impact on the buildout, appearance, and use of the property in the subdivision and meets the general intent of the original restriction.

Therefore, it is the recommendation of the City Manager that the City Council accept Alternative 1, as described above.

EXHIBIT A: 2009 Development Agreement

RETURN TO:
AMES CITY CLERK
BOX 811
AMES IA 50010-0811

SM
H
D
G
E
Instrument: 2009- 00001635
Date: Feb 18, 2009 02:38:21P
Rec Fee: 50.00 E-Com Fee: 1.00
Aud Fee: .00 Trans Tax: .00
Rec Management Fee: 1.00
Non-Standard Page Fee: .00
Filed for record in Story County, Iowa
Susan L. Vande Kamp, County Recorder

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

Prepared by: Douglas R. Marek, City of Ames Legal Department, 515 Clark, Ames, IA 50010
Return recorded document to: Ames City Clerk, 515 Clark Ave., Ames, IA 50010

DEVELOPMENT AGREEMENT FOR AMES COMMUNITY DEVELOPMENT PARK SUBDIVISION 4th ADDITION

4th THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this day of February 2009, 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 are sometimes collectively referred to herein as the "Parties").

WHEREAS, it is the intention and representation of the Developer to undertake a project to construct and market industrial buildings on certain real property (as more particularly described in Paragraph 2 herein) at below-market cost (the "Project"); and,

WHEREAS, the Developer desires that the City facilitate the Project by causing the construction of certain Public Improvements (as defined in Paragraph 5 herein) to serve the Project and the aforesaid real property; and,

WHEREAS, the Parties desire that, to the greatest extent possible, the cost of constructing and financing the Public Improvements be abated by an increment in property taxes based on the progress of the Project; and,

WHEREAS, the City has a policy of encouraging projects of economic development that have the potential for providing substantial increases in permanent employment opportunities, added revenue support for government services, and expansion of the property tax base.

NOW, THEREFORE, in consideration of these premises and of the mutual promises hereinafter set out, the Parties hereto agree and covenant as follows:

1. **DESIGN**. The Developer shall be responsible for the design of the Project, including the design of all public infrastructure improvements.
2. **PLATTING**. The Developer shall prepare and submit to the City Council of the City of Ames, in accordance with applicable laws and ordinances, a final plat of subdivision (as depicted on the

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preliminary plat submitted on December 29, 2008, attached hereto as Exhibit "A") subdividing the real property legally described as follows:

Outlot 'Z', Four Seasons Park Subdivision, and Parcel 'L', in the SW ¼ of Section 7, T83N, R23W. All in the City of Ames, Story County, Iowa,

(the "Subdivision").

3. **GRADING.** The Developer shall be responsible for the grading of the Subdivision to accommodate the Public Improvements (as defined in Paragraph 5 herein) as well as the lots within the Subdivision.

4. **TIF DISTRICT.** The City shall institute proceedings for the establishment of a Tax Increment Finance District (the "TIF District"), pursuant to Chapter 403 of the Code of Iowa, that will coincide with the Subdivision.

5. **TIF PROCEEDS.** Once the TIF District is established, it is agreed that the proceeds therefrom (the "TIF Proceeds") shall be used by the City to pay for the construction of water mains, storm sewers, sanitary sewer mains, street lights, electric distribution facilities, streets, curbs, and gutters (the "Public Improvements") within or affecting the Subdivision. The Developer shall be responsible to pay for all other costs associated with the development of the Subdivision.

Notwithstanding the foregoing, if the bids received by the City for the water, sanitary sewer, storm sewer, and street improvements exceed \$875,000, it is agreed that the City, at its option, may repeal the ordinance establishing the TIF District identified in Paragraph 4 herein and will thereafter no longer be required to provide TIF Proceeds to support the Public Improvements needed for the Subdivision.

6. **DEDICATION OF RIGHTS-OF-WAY AND EASEMENTS.** All rights-of-way and easements needed for the development of the Subdivision shall be dedicated by the Developer to the City at no cost.

7. **FIRST SPECULATIVE BUILDING.** The Developer shall complete construction of a building (the "First Speculative Building") on a lot within the Subdivision, excluding lots greater than 1.5 acres in size, in accordance with the regulations of the City, not later than eighteen (18) months from the completion of the Public Improvements (the "First Speculative Building Completion Date") required for the approval of the final plat of the Subdivision. Notwithstanding the foregoing, if a person or entity not a party to this Agreement (a "Third-Party") is the titleholder of a lot within the Subdivision and completes the construction of a Speculative Building (as defined in Paragraph 20 herein) on said lot within the timeframe for construction identified above, said building shall be deemed the First Speculative Building and the Developer shall be deemed to be in compliance with this Paragraph 7.

8. **VALUE AND SIZE, FIRST SPECULATIVE BUILDING.** The First Speculative Building shall have an assessed taxable value, exclusive of land, of not less than \$350,000; and shall have not less than 10,000 square feet of floor area.

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9. SECOND SPECULATIVE BUILDING AND SUBSEQUENT SPECULATIVE BUILDINGS. Not later than twelve (12) months after the construction and occupancy of the First Speculative Building, or not later than twelve (12) months after the First Speculative Building is no longer speculative in nature, whichever occurs first (the "**Second Speculative Building Completion Date**"), the Developer shall complete the construction of a second building (the "**Second Speculative Building**") having an assessed taxable value, exclusive of land, of not less than \$350,000, and having not less than 10,000 square feet of floor area. Thereafter, not later than twelve (12) months after the construction and occupancy of the Second Speculative Building, or not later than twelve (12) months after the Second Speculative Building is no longer speculative in nature, additional buildings (the "**Subsequent Speculative Buildings**"), each of which shall have an assessed taxable value, exclusive of land, of not less than \$350,000, and shall not have less than 10,000 square feet in floor area, shall be constructed by the Developer so that there is at all times, a Subsequent Speculative Building available for occupancy or under construction. Subsequent Speculative Buildings shall be constructed by the Developer: (i) not later than twelve (12) months after the construction and occupancy of the Second Speculative Building, (ii) not later than twelve (12) months after the construction and occupancy of any Subsequent Speculative Building, or (iii) not later than twelve (12) months after the Second Speculative Building or any Subsequent Speculative Building is no longer speculative in nature, whichever occurs first (the "**Subsequent Speculative Building Completion Date**"). This requirement shall continue until all lots within the Subdivision, except lots greater than 1.5 acres in size, contain either the First Speculative Building, the Second Speculative Building, or Subsequent Speculative Buildings, or until the debt issued by the City to pay for the Public Improvements is paid in full, whichever occurs first. The Second Speculative Building and Subsequent Speculative Buildings shall not be constructed on lots greater than 1.5 acres in size. Notwithstanding the foregoing, if a Third-Party is the titleholder of a lot within the Subdivision and completes the construction of a Speculative Building within twelve (12) months after the completion and occupancy of the First Speculative Building, or within twelve (12) months after the First Speculative Building is no longer speculative in nature, whichever occurs first, said building shall be deemed the Second Speculative Building and the Developer shall be deemed to be in compliance with this Paragraph 9 as it relates to the construction of the Second Speculative Building. Thereafter, within twelve (12) months after the completion and occupancy of the Second Speculative Building or any Subsequent Speculative Building, or within twelve (12) months after the Second Speculative Building or any Subsequent Speculative Building is no longer speculative in nature, whichever occurs first, if a Third-Party is the titleholder of a lot within the Subdivision and completes the construction of a Speculative Building on said lot, such construction shall be deemed to be the construction of a Subsequent Speculative Building and the Developer shall be deemed to be in compliance with this Paragraph 9 as it relates to the construction of Subsequent Speculative Buildings.

10. SECURITY. As security to the City for the completed construction of the aforesaid First Speculative Building, the Second Speculative Building or the Subsequent Speculative Buildings, the Developer hereby promises to pay the sum of \$350,000.00 to the City on the First Speculative Building Completion Date, the Second Speculative Building Completion Date or any Subsequent Speculative Building Completion Date, as the case may be, if said buildings are not then completed by said dates and, to effectuate this Paragraph 10, the Developer shall execute and deliver to the City a first lien mortgage in the amount of \$350,000.00 that shall encumber a portion of the Subdivision. Said portion shall be identified and determined at the time the final

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plat and other platting documents for the Subdivision are approved by the City and shall encumber only that portion of the Subdivision identified therein and only as to the amount specified herein; however, said portion shall encumber not less than 6.36 acres of land within the Subdivision. Said mortgage shall be delivered to the City within thirty (30) days after the recording of the final plat and other documents necessary to subdivide the real property of which the Subdivision is comprised.

11. LAND PRICE CEILING. The Developer, and any lot owner of record, as the case may be, covenant not to sell any of the lots within the Subdivision for a price greater than the price per acre of \$55,000, plus an increase of five percent (5%) per acre on July 1 of each year beginning July 1, 2011 (the "**Price Ceiling**"). It is the understanding of the Parties that when title to a lot within the Subdivision is in the name of a Third-Party (a "**Third Party Lot**"), the Developer shall not be liable, in any way, for any sale of a Third-Party Lot at a price in excess of the Price Ceiling. The City agrees to look only to the Third-Party making the sale for any resulting damages and further agrees that such a sale shall in no way be considered a breach of this Agreement by the Developer.

12. NO TAX EXEMPTION. The Developer, and any lot owner of record, as the case may be, shall not apply for the industrial property tax exemption provided by Ames Municipal Code Sections 24.8 to 24.13 pursuant to Chapter 427B of the Code of Iowa, or for any other tax exemption that may be or become available to the Developer or lot owner of record with regard to a lot within the Subdivision or any buildings or machinery constructed or placed on a lot within the Subdivision. Notwithstanding the foregoing, the City hereby agrees that the Developer shall not be liable, in any way, for the application by a Third-Party for tax exemptions related to a Third Party Lot and that the City shall look only to the Third-Party making such application for any resulting damages, including, but not limited to, the difference in the property taxes that would have been derived from the Third Party Lot pursuant to this Agreement and without said exemptions and the property taxes actually derived from the Third-Party Lot. In addition, the City agrees that the application for tax exemption by a Third-Party related to a Third-Party Lot shall in no way be considered a breach of this Agreement by the Developer.

13. SALE OF LAND. In order to assure that no single entity is able to buy all of the lots within the Subdivision, the Developer shall make available for sale, to any person or entity not affiliated with the Developer, at least fifty percent (50%) of the lots titled in the Developer's name and containing no improvements thereon, all in accordance with and subject to the Price Ceiling identified in Paragraph 11 herein.

14. MINIMUM ASSESSMENT. The Developer agrees to enter into a Minimum Assessment Agreement with the City and City Assessor for all lots greater than 1.5 acres in size that authorizes the City Assessor to establish an assessment on buildings that are constructed on said lots at a taxable value of, at least, \$266,000 per acre. This minimum assessment requirement will terminate once the debt issued by the City to pay for the Public Improvements has been paid off.

15. BUILDING QUALITY. In order to assure that the buildings constructed on the lots within the Subdivision are of a superior quality, the Developer agrees to adopt the restrictive covenants attached hereto as Exhibit "**B**" and by this reference incorporated herein, and to require that said

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restrictive covenants be recorded contemporaneously with the recording of the final plat of the Subdivision.

16. TIMELINE FOR CONSTRUCTING BUILDINGS. The intent of the Project is for purchasers of the lots within the Subdivision to make improvements promptly and not to hold the property in an undeveloped state or to delay making improvements. Therefore, the purchaser of any lot within the Subdivision shall complete construction of all building improvements within eighteen (18) months of taking title to a lot. If the construction of all building improvements does not begin within one (1) year of taking title to the lot, then the purchasers shall make the lot available for sale to any willing buyer, including the Developer, in accordance with Paragraph 11.

17. PAYMENTS IN LIEU OF TAXES.

a. In the event that a building constructed pursuant to and in accordance with Paragraphs 7, 8 or 9, as the case may be, is assessed for tax purposes at a value of less than \$350,000, the Developer, or the lot owner of record, as the case may be, shall make an annual payment to the City equal to the difference in property taxes that would have been derived from said building with a taxable value of \$350,000, and the taxable value at which said building is actually assessed.

b. The payment in lieu of taxes shall be due and payable in accordance with the statutory schedule for the payment of property tax.

c. With respect to any lot within the Subdivision that may be exempt from property taxes or may from time-to-time become exempt from property taxes pursuant to section 427.1 of the Code of Iowa (or any other provision of the laws of the State of Iowa), the Developer, or the lot owner of record, as the case may be, shall make to the City an annual payment in lieu of taxes, on the dates when property taxes are due, in such amount as shall then be equal to the amount that would have been payable as property taxes if the property, with or without improvements, was not exempt as aforesaid. This obligation to make payments in lieu of taxes shall terminate once the debt issued by the City to pay for the public improvements is paid off.

18. AMENDMENTS. Any and all provisions of this Agreement may be amended, cancelled or extended by the mutual agreement of the Parties in writing.

19. COVENANT WITH THE LAND. This Agreement, and all promises and covenants herein expressed, shall be a covenant running with the Subdivision, and shall be binding on the Developer, its successors and assigns, and upon the grantees of the Developer's rights in said Subdivision, including mortgagees, except the City if the City is a the mortgagee of a mortgage encumbering a lot within the Subdivision.

20. SPECULATIVE BUILDING. Notwithstanding anything in this Agreement to the contrary, for purposes of this Agreement, the term "**Speculative Building**" shall mean a building, whether completed or under construction, that is open and available for sale or lease and actively marketed for such purposes. Furthermore, the phrase "no longer speculative in nature" shall mean that the First Speculative Building, Second Speculative Building, or any Subsequent

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Speculative Building, as the case may be, whether completed or under construction, is no longer open and available for sale or lease or is not actively marketed for such purposes.

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

CITY OF AMES, IOWA

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

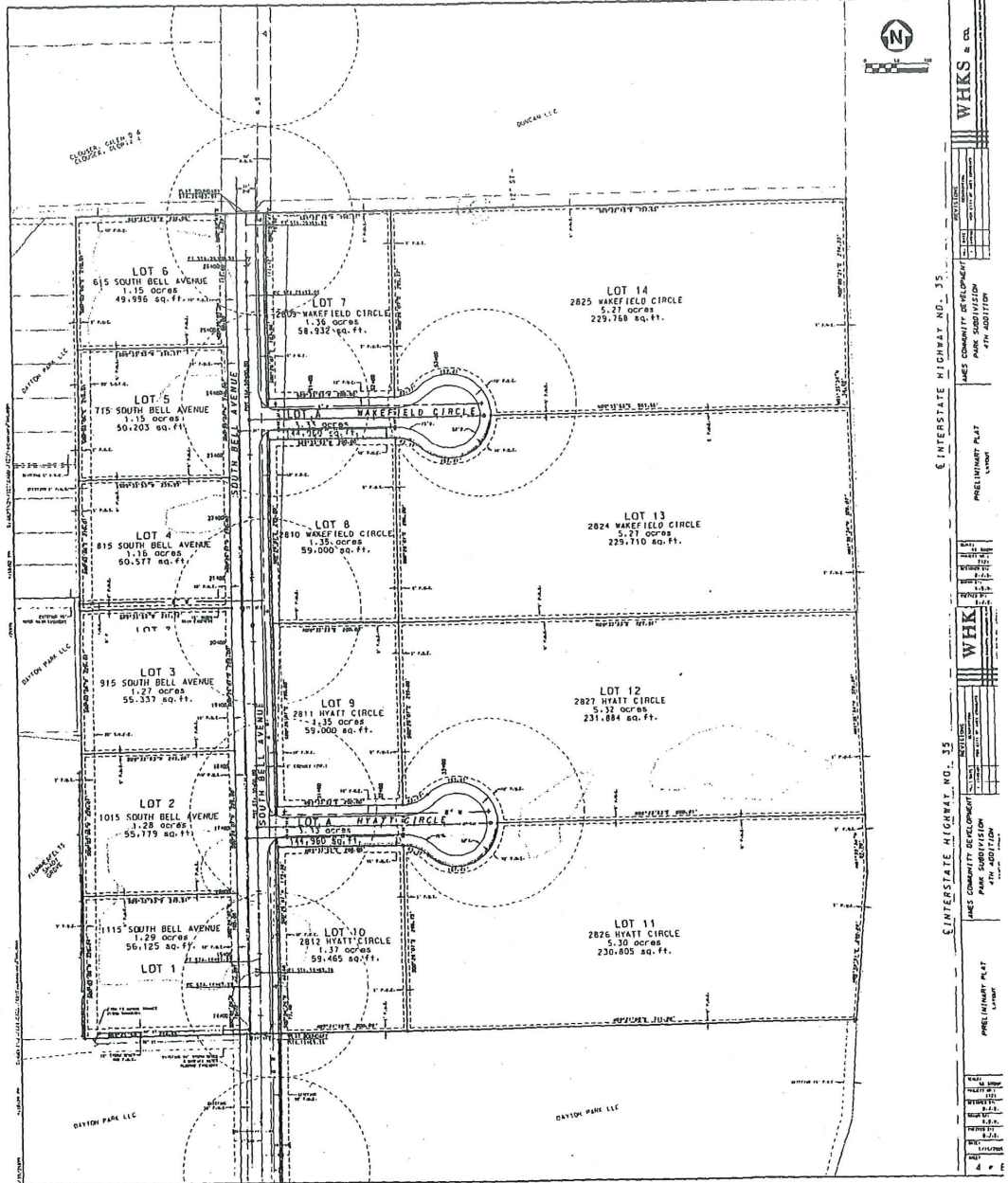
DAYTON PARK, L.L.C.

By: Dean E. Hunziker
Dean E. Hunziker, Manager

Attested By: Diane R. Voss
Diane Voss, City Clerk

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Exhibit A



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W H K S & C O.

PRELIMINARY PLAT

JAMES COMMUNITY DEVELOPMENT PARK SUBDIVISION

JULY 2011

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Exhibit B

**RESTRICTIVE COVENANTS
Ames Community Development Park Subdivision, 4th Addition
AMES, STORY COUNTY, IOWA**

WHEREAS, Dayton Park, LLC an Iowa Limited Liability Company ("Dayton Park"), is the sole lawful owner in fee simple of real estate (the "Subdivision") situated in Story County, Iowa, described as follows:

Ames Community Development Park Subdivision, Fourth Addition

WHEREAS, Dayton Park for its protection and for the benefit of subsequent owners of lots within the Subdivision, desires to restrict the use thereof in certain particulars.

NOW, THEREFORE, Dayton Park hereby covenants, bargains, and agrees for itself and its successors and assigns that all lots within the Subdivision and the use thereof shall be subject to the following covenants, conditions, and restrictions:

1. No building or structure of any nature shall be commenced, erected, or maintained upon the real estate, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved by Dayton Park or its representative as to compliance with these listed covenants. All buildings and improvements shall be of new construction only. No pre-existing buildings shall be permitted to be moved onto a lot, nor shall any trailer, mobile home, or other similar structure be placed upon any lot, excepting those used on a temporary basis by a contractor during construction.

2. The dimension of any wall of any structure or improvement which faces South Bell Avenue, Hyatt Circle, or Wakefield Circle in the Subdivision shall not exceed seventy percent (70%) of the total width of the lot so as to permit an open view between the buildings and structures on adjacent lots.

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3. Not less than fifteen percent (15%) of the total area of a lot shall be used for landscaping and lawn purposes or green space.

4. Buildings constructed in the Subdivision shall have all exterior surfaces constructed with steel, brick, wood trim, split face block, stone, glass, exterior insulation and finish systems (EIFS), or precast wall panels, or combinations thereof. Any corrugated steel on the front façade shall comprise less than 60 percent of the area of the façade.

5. No building shall be erected nearer than fifteen (15) feet to any side lot line, or nearer than twenty (20) feet to any rear lot line.

6. Any improvement or structure built upon a lot shall be fully finished and ready for use within twelve (12) months from the date of commencement of construction.

7. Equipment, trash cans, garbage cans, and storage piles shall be kept screened from view by adequate planting or fencing so as to conceal them from the view of other owners of lots within the Subdivision. All rubbish, trash, or garbage shall be regularly removed and shall not be permitted to accumulate.

8. All ground-mounted utility transformers situated upon any lot shall be appropriately screened from view by wood, brick, or shrubbery, but only in such manner as is permitted and authorized by the City of Ames, Iowa.

9. All vehicles parking on the property must be moved on and off the property on a regular basis. No land may be used to "store" vehicles.

10. No lot within the Subdivision shall be subdivided without the prior written approval of Dayton Park.

11. These restrictions and conditions shall be deemed to be covenants running with the land and shall endure and be binding upon Dayton Park, its successors in interest and assigns, for a period of twenty-one (21) years from the date of the recording of these Restrictive Covenants in the office of the Recorder of Story County, Iowa. The benefit of these Restrictive Covenants may be extended by the owner of any lot within the Subdivision for an additional period of twenty-one years by filing a "Verified Claim", as provided by the Code of Iowa, in the office of the Recorder of Story County, Iowa.

12. In the event of the violation of any of these Restrictive Covenants, any person or entity then owning a lot within the Subdivision is specifically authorized to resort to an action at law or in equity for relief, either by injunction or for damages against the person, persons, or entity so violating these Restrictive Covenants.

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13. Invalidation of any of these Restrictive Covenants by a judgment or order or court having jurisdiction therefore shall in no way affect any of the other provisions which shall remain in full force and effect.

14. All drive access points shall be approved by the City of Ames planning and housing and public works departments. The City of Ames may limit or restrict access points on some lots so as to line up driveways with corresponding driveways or streets on the opposite side of the street frontage.

15. All buildings and site plans shall comply with the current zoning codes, building codes and ordinances at the time each lot is being developed.

IN WITNESS WHEREOF, Dayton Park, LLC., has caused this instrument to be executed this 4th day of February, 2009.

DAYTON PARK LLC

By *Dean E. Hunziker*
Dean E. Hunziker, Manager

STATE OF IOWA, COUNTY OF STORY, SS:

On February 4th, 2009, before me the undersigned, a Notary Public in and for said state, personally appeared Dean E. Hunziker, to me personally known, who, being by me duly sworn, did say that the persons are the managers of said LIMITED LIABILITY COMPANY executing the foregoing instrument; that NO SEAL has been procured by the said limited liability company; that said instrument was signed on behalf of said limited liability company by authority of its managers and the said Dean E. Hunziker acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

Dianne Suntken
Notary Public



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ATTACHMENT B: 2019 AMENDED RESTRICTIVE COVENANTS

Filed By / Return To: ATS of Story County
212 SE 16th Street, Ames, IA 50010
File No. COV 1953

Instrument #: 2019-11953
12/12/2019 03:01:59 PM Total Pages: 7
COV COVENANTS
Recording Fee \$ 37.00
Stacie Herridge, Recorder, Story County Iowa



INSTRUMENT PREPARED BY AND RETURN TO:	Brian D. Torrest, 2605 Northridge Pkwy, Ames, IA 50010 (515) 288-2500
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**AMENDED AND RESTATED RESTRICTIVE COVENANTS
AMES COMMUNITY DEVELOPMENT PARK SUBDIVISION, 4TH ADDITION
AMES, STORY COUNTY, IOWA**

THIS AMENDED AND RESTATED RESTRICTIVE COVENANTS AMES COMMUNITY DEVELOPMENT PARK SUBDIVISION, 4th ADDITION, AMES, STORY COUNTY, IOWA (this "Amendment") is made and entered into as of the Effective Date (as that term is defined herein) by and between the Lot Owners (as that term is defined herein) and Dayton Park, L.L.C. (the "Developer") (the Lot Owners and the Developer are hereinafter collectively referred to as the "Parties"). This Amendment shall be effective as of the date the last of the Parties hereto executes same (the "Effective Date").

RECITALS

WHEREAS, prior to the platting of the Subdivision (as that term is defined herein) the Developer entered into and executed that certain Development Agreement for Ames Community Development Park Subdivision 4th Addition dated February 4, 2009, and filed in the office of the Recorder of Story County, Iowa, on February 18, 2009, as Instrument No. 2009-00001635 (the "Agreement"); and

WHEREAS, the Agreement was drafted with respect to, among other things, the development of the Project (as that term is defined in the Agreement) and the creation of the TIF District (as that term is defined in the Agreement) on and for the real property to be platted as Ames Community Development Park Subdivision Fourth Addition, Ames, Story County, Iowa (the "Subdivision"); and

WHEREAS, Paragraph 15 of the Agreement provides that, "[i]n order to assure that the buildings constructed on the lots within the Subdivision are of a superior quality", the Developer agreed to adopt the restrictive covenants attached as Exhibit B to the Agreement (collectively, the

"Covenants") and required the Developer to record the Covenants with the recording of the platting documents for the Subdivision; and

WHEREAS, the platting documents for the Subdivision were filed in the office of the Recorder of Story County, Iowa, on March 25, 2009, as Instrument No. 2009-00003134 (collectively, the, "Platting Documents"), and the Covenants were not recorded as part of the Platting Documents; and

WHEREAS, the undersigned owner(s) of lots within the Subdivision (collectively, the "Lot Owners") and the Developer desire to execute and record this Amendment to comply with the requirement in the Agreement related to the recording of the Covenants and to amend a provision within the Covenants unrelated to the quality of the construction of any buildings on the lots within the Subdivision.

NOW, THEREFORE, in consideration of the Recitals, and for other good and valuable consideration, the Parties hereby agree as follows:

1. **INCORPORATION OF RECITALS.** The foregoing Recitals are incorporated herein and made a part of this Amendment as if fully set forth verbatim. The Recitals and exhibits hereto, if any, are a substantive, contractual part of this Amendment.

2. **DECLARATION OF COVENANTS.** For their protection and for the benefit of subsequent owners of lots within the Subdivision, the Parties desire to restrict the use thereof in certain particulars, and hereby covenant, bargain, and agree for themselves and for their successors and assigns, that all lots within the Subdivision and the use thereof shall be subject to the following covenants, conditions, and restrictions:

a. No building or structure of any nature shall be commenced, erected, or maintained within or upon the Subdivision, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved by the Developer, or its representative, as to compliance with restrictions and covenants noted herein. All buildings and improvements shall be of new construction only. No preexisting buildings shall be permitted to be moved onto a lot, nor shall any trailer, mobile home, or other similar structure be placed upon any lot, excepting those used on a temporary basis by a contractor during construction and further excepting mobile trailers used, post-construction and development, as an auxiliary use ("Auxiliary Use Trailer"), when said trailers are used for a purpose other than storage; provided, however, that any such Auxiliary Use Trailer shall not be parked in the same location for a period greater than six (6) consecutive months.

b. The dimension of any wall of any structure or improvement which faces South Bell Avenue, Hyatt Circle, or Wakefield Circle in the Subdivision shall not exceed seventy percent (70%)

of the total width of the lot so as to permit an open view between the buildings and structures on adjacent lots.

c. Not less than fifteen percent (15%) of the total area of a lot shall be used for landscaping and lawn purposes or green space.

d. Buildings constructed in the Subdivision shall have all exterior surfaces constructed with steel, brick, wood trim, split face block, stone, glass, exterior insulation and finish systems (EIFS), or precast wall panels, or combinations thereof. Any corrugated steel on the front facade shall comprise less than sixty percent (60%) of the area of the facade.

e. No building shall be erected nearer than fifteen (15) feet to any side lot line, or nearer than twenty (20) feet to any rear lot line.

f. Any improvement or structure built upon a lot shall be fully finished and ready for use within twelve (12) months from the date of commencement of construction.

g. Equipment, trash cans, garbage cans, and storage piles shall be kept screened from view by adequate planting or fencing so as to conceal them from the view of other owners of lots within the Subdivision. All rubbish, trash, or garbage shall be regularly removed and shall not be permitted to accumulate.

h. All ground-mounted utility transformers situated upon any lot shall be appropriately screened from view by wood, brick, or shrubbery, but only in such manner as is permitted and authorized by the City of Ames, Iowa (the "City").

i. All vehicles parking on the property must be moved on and off the property on a regular basis. No land may be used to "store" vehicles, except with respect to Auxiliary Use Trailers as noted above.

j. No lot within the Subdivision shall be subdivided without the prior written approval of the Developer.

k. In the event of the violation of any of the covenants and restrictions noted herein, any person or entity then owning a lot within the Subdivision is specifically authorized to resort to an action at law or in equity for relief, either by injunction or for damages against the person, persons, or entity so violating said covenants and restrictions.

l. Invalidation of any of these covenants and restrictions by a judgment or order of court having jurisdiction therefore shall in no way affect any of the other provisions which shall remain in full force and effect.

m. All drive access points shall be approved by the City, and the City may limit or restrict access points on some lots so as to line up driveways with corresponding driveways or streets on the opposite side of the street frontage

n. All buildings and site plans shall comply with the current zoning codes, building codes and ordinances at the time each lot is being developed.

3. **TERM OF COVENANTS.** The Parties hereby understand, acknowledge, and agree that, by the execution of this Amendment, lots within the Subdivision shall be subject to the terms, conditions, and restrictions hereof, and the covenants and restrictions noted herein shall be deemed to be covenants running with the Subdivision and shall endure and be binding upon the Lot Owners, for a period of twenty-one (21) years from the date of the recording of this Amendment in the office of the Recorder of Story County, Iowa, unless claims to continue any interest herein are filed as provided by law.

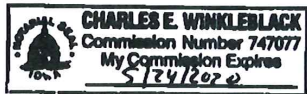
IN WITNESS WHEREOF, the Parties have executed this Amendment as of the dates set forth below.

DAYTON PARK, L.L.C., the Developer
(owner of: (i) Lots 1, 2, 5, 6, and 12 within the Subdivision, (ii) Lot 2, Ames Community Development Park Subdivision, Fifth Addition, Ames, Story County, Iowa, and (iii) Parcel "C" a part of Lot 11 within the Subdivision as shown on the Plat of Survey recorded as Instrument No 2018-03258)

By: *Dean E. Hunziker*
Dean E. Hunziker, Manager

STATE OF IOWA, COUNTY OF STORY, ss:

This instrument was acknowledged before me on this 27th day of November, 2019, by Dean E. Hunziker, as a Manager of Dayton Park, L.L.C.



Charles E. Winkler
Notary Public in and for the State of Iowa
My commission expires 5/24/2020

(SIGNATURE PAGES FOLLOW)

**SIGNATURE PAGE OF
AMENDED AND RESTATED RESTRICTIVE COVENANTS
AMES COMMUNITY DEVELOPMENT PARK SUBDIVISION, 4TH ADDITION
AMES, STORY COUNTY, IOWA**

SWPP AMES, LLC, Lot Owner
(owner of Lot 3 within the Subdivision)

By: *Scott A. Bleich*
Scott A. Bleich, Manager

STATE OF IOWA, COUNTY OF STORY, ss:

This instrument was acknowledged before me on this 2nd day of ^{December} ~~November~~, 2019, by Scott A. Bleich, as a Manager of SWPP Ames, LLC.



Lisa M. Camp
Notary Public in and for the State of Iowa
My commission expires 11/26/2022

D AND E OUTSIDE SERVICES, LLC, Lot Owner
(owner of Lot 4 within the Subdivision)

By: *Doug Robey*
Doug Robey, Manager

STATE OF IOWA, COUNTY OF STORY, ss:

This instrument was acknowledged before me on this 2nd day of ^{December} ~~November~~, 2019, by Doug Robey, as a Manager of D and E Outside Services, LLC.



Lisa M. Camp
Notary Public in and for the State of Iowa
My commission expires 11/26/2022

(ADDITIONAL SIGNATURE PAGE FOLLOWS)

**SIGNATURE PAGE OF
AMENDED AND RESTATED RESTRICTIVE COVENANTS
AMES COMMUNITY DEVELOPMENT PARK SUBDIVISION, 4TH ADDITION
AMES, STORY COUNTY, IOWA**


BADGER INVESTMENTS, L.C., Lot Owner
(owner of Lots 7 and 14 within the Subdivision)

By: 
MICHAEL J. BADGER, Manager

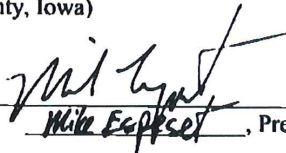
STATE OF IOWA, COUNTY OF STORY, ss:

This instrument was acknowledged before me on this 4th day of November, 2019, by Michael Badger as a Manager of Badger Investments, L.C.




Notary Public in and for the State of Iowa
My commission expires 3/11/20

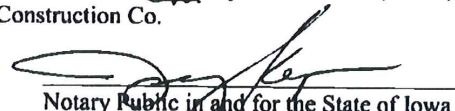
STORY CONSTRUCTION CO., Lot Owner
(owner of Lot 1, Ames Community Development Park Subdivision, Fifth Addition, Ames, Story County, Iowa)

By: 
Mike Espset, President

STATE OF IOWA, COUNTY OF STORY, ss:

This instrument was acknowledged before me on this 3rd day of December, 2019, by Mike Espset, as the President of Story Construction Co.




Notary Public in and for the State of Iowa
My commission expires 3/11/20

(ADDITIONAL SIGNATURE PAGE FOLLOWS)

**SIGNATURE PAGE OF
AMENDED AND RESTATED RESTRICTIVE COVENANTS
AMES COMMUNITY DEVELOPMENT PARK SUBDIVISION, 4TH ADDITION
AMES, STORY COUNTY, IOWA**


FOREVERGREEN PROPERTIES, LLC, Lot Owner
(owner of Lot 9 within the Subdivision)

By: 
Randy Duncan Manager

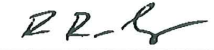
STATE OF IOWA, COUNTY OF STORY, ss:

This instrument was acknowledged before me on this 9th day of ~~November~~ December, 2019, by Randy Duncan, as a Manager of Forevergreen Properties, LLC.




Notary Public in and for the State of Iowa
My commission expires 3/11/20


PRESTAGE FARMS OF IOWA, LLC, Lot Owner
(owner of Parcel "B" a part of Lots 10 and 11 within the Subdivision as shown on the Plat of Survey recorded as Instrument No. 2018-03258) Lot 10 within the Subdivision)

By: 
Ryan Pudenz Manager

STATE OF IOWA, COUNTY OF STORY, ss:

This instrument was acknowledged before me on this 29th day of November, 2019, by Ryan Pudenz, as a Manager of Prestage Farms of Iowa, LLC.




Notary Public in and for the State of Iowa
My commission expires 5/24/2020