

ITEM #: 24  
DATE: 08-22-23  
DEPT: P&H

**COUNCIL ACTION FORM**

**SUBJECT: SPECULATIVE BUILDING AMENDMENT TO THE NORTH DAYTON INDUSTRIAL PARK DEVELOPMENT AGREEMENT**

**BACKGROUND:**

On July 25th, 2023, the City Council directed staff to draft an amendment to the North Dayton Avenue Industrial Park Development Agreement in response to a letter from Chuck Winkleblack representing Dayton Avenue Development LLC. In the letter Mr. Winkleblack explained that Dayton Avenue Development LLC needed additional time to construct the first required Speculative Building and that the building would not be constructed by the current deadline of November 30<sup>th</sup>, 2023. A penalty of \$15,000 is due if the building is delayed. The request is to extend the deadline to May 1<sup>st</sup>, 2024.

Mr. Winkleblack has indicated he should have no issue meeting the proposed May 1<sup>st</sup>, 2024 deadline. He further stated that delays in the federal environmental approval process led to the subdivision infrastructure getting started later than anticipated. This delay means that the first speculative building cannot be constructed and connected to City infrastructure as soon as initially planned.

City staff has drafted an amendment to the Development Agreement changing the deadline of construction of the first speculative building from November 30<sup>th</sup>, 2023 to May 1<sup>st</sup>, 2024. The draft Development Agreement Amendment is attached and has been agreed to and signed by all of the covenant members of the North Dayton Industrial Park.

**ALTERNATIVES:**

1. Approve the attached amendments to the North Dayton Avenue Industrial Park Development Agreement.
2. Decline to approve the proposed amendment.

**CITY MANAGER'S RECOMMENDED ACTION:**

The developer was provided a TIF incentive for development of the subdivision and for a commitment to construct a minimum of one speculative building. The developer was unable to construct the first speculative building in a timely manner due to a delay in the Army Corps of Engineers issuing the necessary permits to proceed. Staff and the developer are comfortable and confident that the first Speculative Building will be constructed as required no later than May 1<sup>st</sup>, 2024. No other terms of the agreement will be amended. Therefore, it is the recommendation of the City Manager that the City Council approve Alternative #1.

**AMENDMENT TO DEVELOPMENT AGREEMENT FOR  
NORTH DAYTON INDUSTRIAL PARK**

**THIS IS AN AMENDMENT** to an Agreement made by and between the City of Ames, Iowa and Dayton Avenue Development, LLC, an Iowa limited liability company, upon the following terms and conditions:

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

- 1.1 “City” means the City of Ames, Iowa, an Iowa Municipal Corporation.
- 1.2 “Developer” means Dayton Avenue Development, LLC, an Iowa limited liability company.
- 1.3 “Development Agreement” means the recorded Agreement, and any existing amendments thereto, presently in force between the City and Developer, its successors and assigns, filed in the office of the Recorder of Story County, Iowa, on October 14, 2022, as Instrument No. 2022-10047, as approved by City Resolution No. 22-547 governing certain improvements upon the Real Property by Developer and certain tax increment financing rebates granted by the City.
- 1.4 “Amendment” means this instrument as signed by the parties hereto.
- 1.5 “Real Property” means the real property (together with all easements and servient estates appurtenant thereto) situated in Ames, Story County, Iowa, legally described as follows:  
The Southeast Quarter (SE¼) of the Northeast Quarter (NE¼) of Section Thirty-six (36); the Northeast Quarter (NE ¼) of the Northeast Quarter (NE¼), of Section Thirty-six (36) **except** the North 1 rod and **except** A part of the NE¼ of the NE¼ of Sec. 36-T84-R24W of the 5<sup>th</sup> P.M., Story County, Iowa, described as follows: Beginning at a point on the east line, 16.5 feet south of the NE Corner of said NE¼ of the NE¼; thence N88°41’W 925.0 feet, parallel and 16.5 feet distant from the north line of said NE¼ of the NE¼, thence South 275.0 feet, thence S88°41’E 925.0 feet to the east line of said NE¼ of the NE¼; thence North 275.0 feet to the point of beginning.

**2 CIRCUMSTANCES/BACKGROUND.** After the approval and recordation of the Development Agreement, the Real Property has been subdivided twice: (1) On February 14, 2023, by Resolution 23-075, the City approved North Dayton Industrial Subdivision, Ames, Story County, Iowa, which was filed with the Story County Recorder on February 21, 2023, as

Instrument No. 2023-00969; and (2) On June 27, 2023, by Resolution 23-388, the City approved North Dayton Industrial Subdivision Second Addition, Ames, Story County, Iowa, which was filed with the Story County Recorder on June 29, 2023, as Instrument No. 2023-04341. The terms of the Development Agreement were binding on successors and assigns of the Developer. Subsequent to City approval of the Development Agreement, Developer conveyed a part of the Real Property locally known as 2120 Bailey Avenue, Ames, Iowa, and legally described as "Lot 10, North Dayton Industrial Subdivision, Ames, Story County, Iowa" to Health Ventures of Central Iowa, L.L.C., by a Warranty Deed filed March 10, 2023, as Instrument No. 2023-01350. Additionally, Developer conveyed another part of the Real Property locally known as 2125 Bailey Avenue, Ames, Iowa, and legally described as "Lot 1, North Dayton Industrial Subdivision, Ames, Story County, Iowa" to Ames Industrial, LLC, by a Warranty Deed filed March 17, 2023, as Instrument No. 2023-02620.

**3 ADDITIONAL CIRCUMSTANCES.** Developer has requested an extension of time to construct the First Speculative Building as that term is defined in the Development Agreement. The Development Agreement, at Part IV, paragraph (1), reserved to the Parties (defined as the City, the Developer, or the titleholders of the Lots) the ability to amend with consent. The Development Agreement, at Part II, paragraph (3), stated a deadline of November 30, 2023, for the construction of said First Speculative Building. Developer requests to extend said deadline until May 1, 2024, and the City approves of said extension request.

**4 AMENDMENT.** The Development Agreement, at Part II, paragraph (3), is hereby amended by removing "November 30, 2023" and substituting "May 1, 2024" in lieu thereof.

**5 CONTINUED FULL FORCE.** The Development Agreement shall continue to have full force and effect in accordance with the terms thereof, subject, however, to this Amendment.

**IN WITNESS WHEREOF**, the City and Developer, and Developer's successor and assigns, have executed this Amendment on the dates shown below.

**DAYTON AVENUE DEVELOPMENT,  
LLC**

Dated August 7<sup>th</sup>, 2023.

By: Charles E. Winkleblack  
Charles E. Winkleblack, Manager

**STATE OF IOWA, COUNTY OF STORY, SS.:** This instrument was acknowledged before me on August 7<sup>th</sup>, 2023, by Charles E. Winkleblack, as Manager of Dayton Avenue Development, LLC.




Jennifer Kapaun  
NOTARY PUBLIC

Owner of Lot 1, North Dayton Industrial Subdivision. Ames, Story County, Iowa.

**AMES INDUSTRIAL, LLC**

Dated August 8, 2023.

By:   
\_\_\_\_\_  
Tiffany Earl Williams, Manager

**STATE OF IOWA, COUNTY OF STORY, SS.:** This instrument was acknowledged before me on August 8, 2023, by Tiffany Earl Williams, as Manager of Ames Industrial, LLC.

  
\_\_\_\_\_  
NOTARY PUBLIC



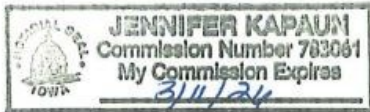
Owner of Lot 10, North Dayton Industrial Subdivision, Ames, Story County, Iowa.

**HEALTH VENTURES OF CENTRAL  
IOWA, L.L.C.**

Dated 8/7/, 2023.

By: *Gary E. Botine*  
Gary Botine, Manager

STATE OF IOWA, COUNTY OF STORY, SS.: This instrument was acknowledged before me on August 7<sup>th</sup>, 2023, by Gary Botine, as Manager of Health Ventures of Central Iowa, L.L.C.



*Jennifer Kapaun*  
NOTARY PUBLIC

Passed and approved on \_\_\_\_\_, 2023, by Resolution No. 23-\_\_\_\_\_,  
adopted by the City Council of Ames, Iowa.

**CITY OF AMES, IOWA**

Attest:

By:

\_\_\_\_\_  
Renee Hall, City Clerk

\_\_\_\_\_  
John A. Haila, Mayor

**STATE OF IOWA, COUNTY OF STORY, SS.:**

This instrument was acknowledged before me on \_\_\_\_\_, 2023, by Renee  
Hall and John A. Haila, as City Clerk and Mayor, respectively, of the City of Ames, Iowa.

\_\_\_\_\_  
**NOTARY PUBLIC**