ITEM # 14
Date 1-13-09

COUNCIL ACTION FORM

SUBJECT: DEVELOPER AGREEMENT REGARDING AMES COMMUNITY DEVELOPMENT PARK (SOUTH BELL AVENUE) TAX INCREMENT FINANCING DISTRICT FOR INDUSTRIAL LAND DEVELOPMENT

BACKGROUND:

On August 26, 2008 the City Council reviewed a letter from Chuck Winkleblack requesting that the City provide a tax increment financing incentive for infrastructure improvements to develop approximately 37 acres of industrial land along South Bell Avenue. Mr. Winkleblack indicated that there is not a sufficient amount of industrial land available in the City because it is too costly for developers to construct this type of subdivision without financial support from the City. He also stated that he was aware the City staff is working to create an industrial park east of Highway 35 with larger lots than he is proposing. However, because of the complexity involved with completing this type of large lot project, he believes his project can be built faster to fill an immediate void in the industrial land market.

At this Council meeting, the staff was directed to "initiate steps to provide tax increment financing for the construction of the public infrastructure to serve approximately 37 acres of industrial land along South Bell Avenue." It was indicated at that time that the first step in the approval process would be to finalize a Developer Agreement outlining the responsibilities and requirements of both the City and Developer. In accordance with this directive, numerous negotiating sessions have been held in an effort to finalize an agreement that is acceptable to both parties. **We have reached a point where the City staff and Developer are in support of the attached agreement.**

Highlights of the proposed agreement include:

- **Sale Price** The Developer guarantees a selling price for land in the subdivision of an amount no greater than $55,000 per acre through June 30, 2011. This price can be increased by as much as 5% on each July 1 thereafter.

  The funding by the City of the public improvements for the subdivision through the tax increment financing mechanism guarantees a below-market price for fully developed industrial land. The below-market land price will hopefully attract new industries to the City and entice existing industries to expand here.

- **Allowing Others To Take Advantage of This Incentive** The developer will make at least 50% of the lots in the subdivision available for sale to other interested developers.

  In the two other projects where a TIF financing incentive was utilized, other developers complained that they did not have access to this low-cost land. This provision will assure other developers that they can take advantage of this City incentive.

- **Timeframe To Build** Once a lot is purchased from the Developer, the property owners will have 18 months to complete building improvements. If these improvements are not made in a timely fashion, the property owner may be obligated to sell the property back to the Developer at an amount 90% of the sale price.

  This provision was added to prohibit individuals from purchasing a lot at the below-market cost and holding on to the property for a long period of time without making improvements. Since the City's debt to pay for the public infrastructure will be paid off from improvements made on the land, it is important that buildings be constructed as soon as possible in the TIF district.

- **Speculative Buildings** Not later than 18 months after the public improvements are completed, the Developer will be required to construct on the smaller lots (less than 1.5 acres) a spec building with a taxable value of not less than $350,000. After the first spec building is completed and occupied or no longer available on the market for lease or sale, the Developer will be required to complete construction of a second spec building with the same taxable value as the first building within 12 months. This obligation to build spec buildings of the same value will continue until the City's debt for the public improvements is paid off.

  This requirement will assure that some incremental value is added to the TIF district to help pay off the debt. In addition, the existence of a spec building will be a valuable component of our economic development efforts. The contract language does allow the Developer's responsibility to construct spec buildings to be satisfied if another property owner in the subdivision erects a spec building in accordance with the timeframes.

- **Security**
  As a means to secure the promise to construct spec buildings in accordance with the specifications (taxable value of $350,000, 10,000 square feet, within 18/12 month timeframes) reflected in the agreement, the Developer will be required to make a payment of $350,000 if the spec buildings are not timely built. As an additional measure of security for this obligation, the Developer will provide the City a first lien mortgage on 6.36 acres in the subdivision.

- **No Tax Abatements.** The Developer, or the ultimate owners of the property, will not be able to apply for any tax abatement program. Furthermore, if their property ever becomes exempt from property taxes, the Developer, or the ultimate owners of the property, will be required to pay to the City payments-in-lieu of tax as if the property was not exempt.

  This provision is important since the City's debt for the public infrastructure will be paid off from the additional taxes generated from improvements in the TIF District. The more buildings in this district that are exempt from taxes, the less revenue there will be to pay off this debt.

- **Developer's Major Responsibilities To Complete The Subdivision** The Developer is responsible for the costs associated with designing, platting, and grading the subdivision.

  It should be remembered that this is a private development project. The TIF financing strategy is being used to lessen the costs to the Developer and pass on these infrastructure savings to new or expanding companies in Ames. Therefore, the developers will take the lead in accomplishing this new subdivision.

- **Minimum Assessment** The Developer, or the ultimate owner of the property, will enter into a minimum assessment agreement for lots over 1.5 acres to assure that the taxable value of the building improvements on each lot is at least $266,000 per acre.

  This provision will help assure that small buildings are not constructed on the larger lots in the subdivision and, thereby, increase the chances that the City's debt will be paid off quicker.

- **Repeal of TIF District** If the bids for the storm sewers, sanitary sewers, streets, and water mains come in above $875,000, the City will have the option to repeal the TIF district and not be obligated to provide funding for this subdivision.

  The staff has emphasized previously that utilizing TIF financing for this type of development is quite risky. The financial feasibility of this project is based on current estimated costs associated with constructing the public infrastructure and a conservative projection for the absorption rate of the land. If the actual costs substantially exceed these estimates, the financial feasibility of the project will be in doubt. Therefore, this type of "out clause" is essential.

ALTERNATIVES:

1. The City Council pass a resolution approving the attached Developer Agreement with Dayton Park L.L.C. This action will facilitate the development of approximately 37 acres of industrial land along South Bell Avenue for a below-market sale price.

2. The City Council can decide not to support a resolution approving the attached Developer Agreement with Dayton Park L.L.C. The Developer will have to decide whether or not to proceed with the development of this industrial land without the City incentive.

3. The City Council can direct the staff to continue negotiations with the Developer in an attempt to modify specific elements of the attached agreement before taking action to approve the document.

MANAGER'S RECOMMENDED ACTION:

In accordance with a previous Council directive, the staff has negotiated an acceptable Developer Agreement to provide a tax increment financing incentive for the proposed development. Approving this agreement will 1) help assure a below-market sale price for industrial land along South Bell Avenue and 2) facilitate the completion of a north/south collector street in the eastern part of the community. **Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving the attached agreement.**

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

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is made and entered into this 9th day of January, 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

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, storms 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.

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

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 24.8to 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 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, for one (1) year after the completion of the Public Improvements, 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

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, at the request of the Developer, shall sell the lot back to the Developer for ninety percent (90%) of the original purchase price of the lot and the Developer shall immediately make the lot available for sale in accordance with Paragraphs 11 and 13 herein.

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 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, Mayor

DAYTON PARK, L.L.C.

By: _____
Gary J. Hunziker, Manager

Attested By: _____
Diane Voss, City Clerk

APPROVED AS TO FORM
BY _____
DOUGLAS R. MAREK
CITY ATTORNEY

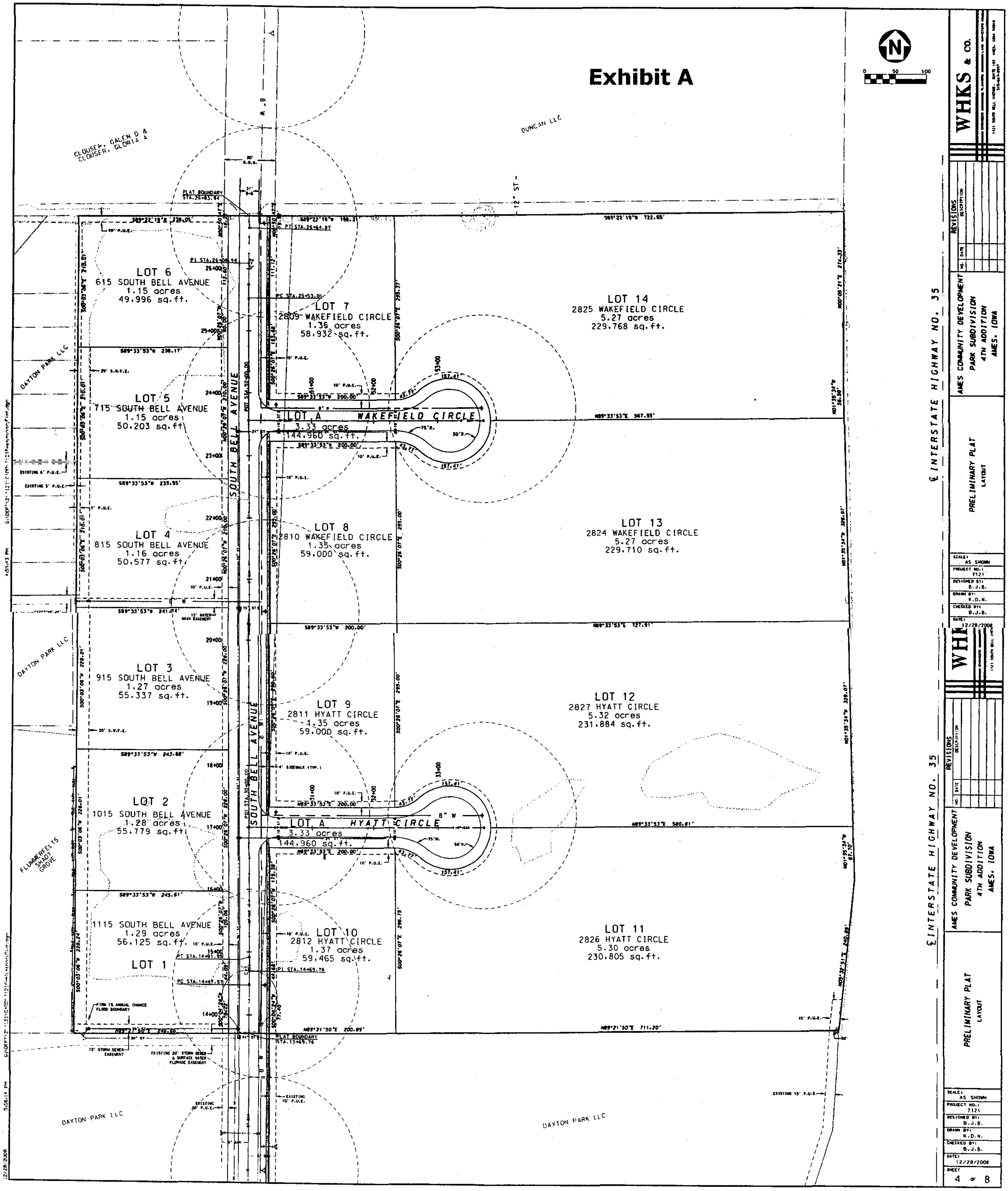
Exhibit A
DUNCAN LLC
CLOUSER, GALEN D &
CLOUSER, GLORIA A
DAYTON PARK LLC
FLUMMERFELTS SHADY GROVE
SOUTH BELL AVENUE
WAKEFIELD CIRCLE
HYATT CIRCLE
LOT 6
615 SOUTH BELL AVENUE
1.15 acres
49,996 sq.ft.
LOT 5
715 SOUTH BELL AVENUE
1.15 acres
50,203 sq.ft.
LOT 4
815 SOUTH BELL AVENUE
1.16 acres
50,577 sq.ft.
LOT 3
915 SOUTH BELL AVENUE
1.27 acres
55,337 sq.ft.
LOT 2
1015 SOUTH BELL AVENUE
1.28 acres
55,779 sq.ft.
1115 SOUTH BELL AVENUE
1.29 acres
56,125 sq.ft.
LOT 1
LOT 7
2809 WAKEFIELD CIRCLE
1.36 acres
58,932 sq.ft.
LOT A
3.33 acres
144,960 sq.ft.
LOT 8
2810 WAKEFIELD CIRCLE
1.35 acres
59,000 sq.ft.
LOT 9
2811 HYATT CIRCLE
1.35 acres
59,000 sq.ft.
LOT A
3.33 acres
144,960 sq.ft.
LOT 10
2812 HYATT CIRCLE
1.37 acres
59,465 sq.ft.
LOT 14
2825 WAKEFIELD CIRCLE
5.27 acres
229,768 sq.ft.
LOT 13
2824 WAKEFIELD CIRCLE
5.27 acres
229,710 sq.ft.
LOT 12
2827 HYATT CIRCLE
5.32 acres
231,884 sq.ft.
LOT 11
2826 HYATT CIRCLE
5.30 acres
230,805 sq.ft.
℄ INTERSTATE HIGHWAY NO. 35
WHKS & CO.
AMES COMMUNITY DEVELOPMENT PARK SUBDIVISION 4TH ADDITION AMES, IOWA
PRELIMINARY PLAT LAYOUT
REVISIONS
SCALE: AS SHOWN
PROJECT NO.: 7121
DESIGNED BY: B.J.B.
DRAWN BY: K.D.N.
CHECKED BY: B.J.B.
DATE: 12/28/2006
SHEET 4 of 8

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 it's representative. 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.

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, 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.

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 9 day of Jan, 2009.

DAYTON PARK, LLC

By _____
Gary J. Hunziker, Manager

STATE OF IOWA, COUNTY OF STORY, SS:

On January 9th, 2009, before me the undersigned, a Notary Public in and for said state, personally appeared Gary J. 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 Gary J. Hunziker acknowledged the execution of said instrument to be the voluntary act and deed of said limited liability company by it voluntarily executed.

_____
Notary Public

CHARLES E. WINKLEBLACK
Commission Number 747077
My Commission Expires
5-29-2010