

COUNCIL ACTION FORM

REQUEST: REQUEST TO CONSIDER VOLUNTARY ANNEXATION OF 72.99 ACRES LOCATED AT 2105 AND 2421 DAYTON AVENUE

BACKGROUND:

The property owner of 2105 and 2421 Dayton Avenue, Dayton Avenue Development LLC, is requesting annexation of their property comprising 72.99 acres of land along the west side of Dayton Avenue (*Location Map- Attachment A*). The owner intends to develop the land once annexed into the city with industrial uses. **The proposed application is 100% voluntary; no non-consenting properties are included in the petition.**

The land use classification under the previous Land Use Policy Plan was changed from Agriculture & Farm Service to Planned Industrial in fall 2021 in anticipation of annexing this property. **Ames Plan 2040 was adopted in December and now controls for land use inside the City limits and for planned land use outside the City. The Ames Plan 2040 land use designation for this property is in the Employment category. This category anticipates this land being brought into the City and supports industrial classification once inside the City. (See Attachment B)**

The property is primarily row crop land with a small area of Natural Area in the northwest corner of 2421 Dayton Avenue. When the Land Use classification was changed last year, the Natural Area designation was left on the northwest portion of the property. The owner intends to develop small scale industrial-type lots on this site once annexed and rezoned. The applicant has indicated an interest in the zoning classification of General Industrial (GI). An Annexation Plat submitted with the petition shows the dimensions of the site along with the location of the Franklin Township cemetery. (*See Attachment C*)

The site is in the Ames Electric service territory and is able to be served adequately. A water line runs along Dayton Avenue abutting the site to Eagles Loft Daycare. The site is in the Ames Water service territory. Sewer services extend to the southeast corner of the site along Dayton Avenue. The site is able to served adequately by all utilities. The developer will need to make improvements to serve future development.

The Franklin Township cemetery is located in the northwest corner of 2421 Dayton Avenue. This cemetery is considered a pioneer cemetery due to inactivity. There are no longer active interments at this cemetery. The cemetery recently received maintenance by Franklin Township in 2021 to repair headstones and clean up the general surroundings.

Under state law pioneer cemeteries must be protected, the integrity maintained, and access must be ensured to the site by a governmental subdivision, which would be the

City if located within the corporate limits. However, Iowa Code permits a property owner to accept the delegated responsibilities. **The owner and developer have agreed to take responsibility of ensuring access, protection, and maintaining the integrity of the cemetery consistent with the terms of the Iowa Code. As a result, an agreement (Attachment D) has been prepared between the developer and the City that delegates the responsibility for providing access, protection, and maintaining the integrity of the cemetery to the developer and owner. The property owner plans to have the cemetery be part of common area lot that is part of the future subdivision.**

Planning & Zoning Commission Recommendation:

At the January 14th Planning & Zoning Commission meeting, the Planning & Zoning Commission voted 5-0 to recommend that the City Council approve the annexation of 72.99 acres at 2105 and 2421 Dayton Avenue, with the Franklin Township cemetery matter to be resolved prior to Council approval.

ALTERNATIVES:

1. Approve the 100% annexation of two parcels and abutting rights-of-way, totaling 72.99 acres (rights-of-way acreage included in calculation), for the properties located immediately west of the Ames corporate limits along Dayton Avenue, in Franklin Township, Story County, Iowa, by finding that the proposed annexation is consistent with the Ames Plan 2040 Comprehensive Plan and Urban Fringe Plan, and approval of the attached pre-annexation agreement to accept the responsibility of ensuring access, protection and to maintain the integrity of the Franklin Township Cemetery.
2. Deny the request to annex land located immediately west of the Ames corporate limits along Dayton Avenue, in Franklin Township, Story County, Iowa, by finding that the proposed annexation is not consistent with the Ames Plan 2040 Comprehensive Plan and Urban Fringe Plan.
3. Refer the request to staff or the applicant for more information.

CITY MANAGER'S RECOMMENDATION:

The proposed voluntary annexation aligns with the Ames Plan 2040 Comprehensive Plan land use designation which anticipates the land being brought into the City and developed under the Employment land use category. A rezoning and platting process must occur once the land is brought into the City prior to development occurring. The matter of responsibility for the Franklin Township Cemetery has been resolved through an agreement.

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

Addendum

Ames Plan 2040 Comprehensive Plan and Zoning.

The Ames Plan 2040 Comprehensive Plan designated this land in the Employment category for future growth. This category allows for uses such as Industrial or Commercial.

When a property is annexed into the City, it is automatically zoned as “Agricultural.” Zoning does not change unless a request is initiated by an individual property owner or by the City Council. Any proposed zoning must be consistent with the Ames 2040 Comprehensive Plan land use designation. The land owner plans to rezone this property to General Industrial once annexed into the City. A rezoning process involving Planning & Zoning Commission review and recommendation and City Council approval will be required.

Current Land Use:

The current land use is row crop land on the majority of the site with some wooded land to the northwest.

Development Plan:

The developer has shared a conceptual development plan showing small industrial lots for this site. The plan is conceptual at this point and is not finalized. The final design for the site will come with rezoning and platting once annexed into the City.

Development Issues

Infrastructure improvements will be necessary as development moves forward. These will involve extension of sewer mains, electric service onto the property and extending water main into the internal future development from the existing 12” main abutting the site running along Dayton Avenue. Street paving, sidewalk and shared use path improvements will be required.

Transportation Improvements:

The development will have frontage along Dayton Avenue. A traffic study has been completed for this area and has indicated that turn lane improvements will be needed at any access point connecting from the internal development to Dayton Avenue. This will involve the widening of Dayton Avenue where turn lanes are necessary.

Water Main Extension:

A 12” water main currently exists along Dayton Avenue that serves the Eagle’s Loft Daycare site to the north. This property can be served from the existing water line as it is adequate to serve this site.

Sanitary Sewer Improvements:

18” Sanitary sewer exists to the immediate south of the site and extends to the southeast corner of the site along Dayton Avenue. Extension of sanitary sewer will be required as the site develops.

Electric Improvements:

This property is within Ames Electric service territory. Service can be extended to this site.

Stormwater Improvements:

The conceptual development plan indicates outlots for stormwater detention along the western edges of the site. Any future formal development proposal will be reviewed by city staff to ensure compliance with Chapter 5A and B stormwater standards.

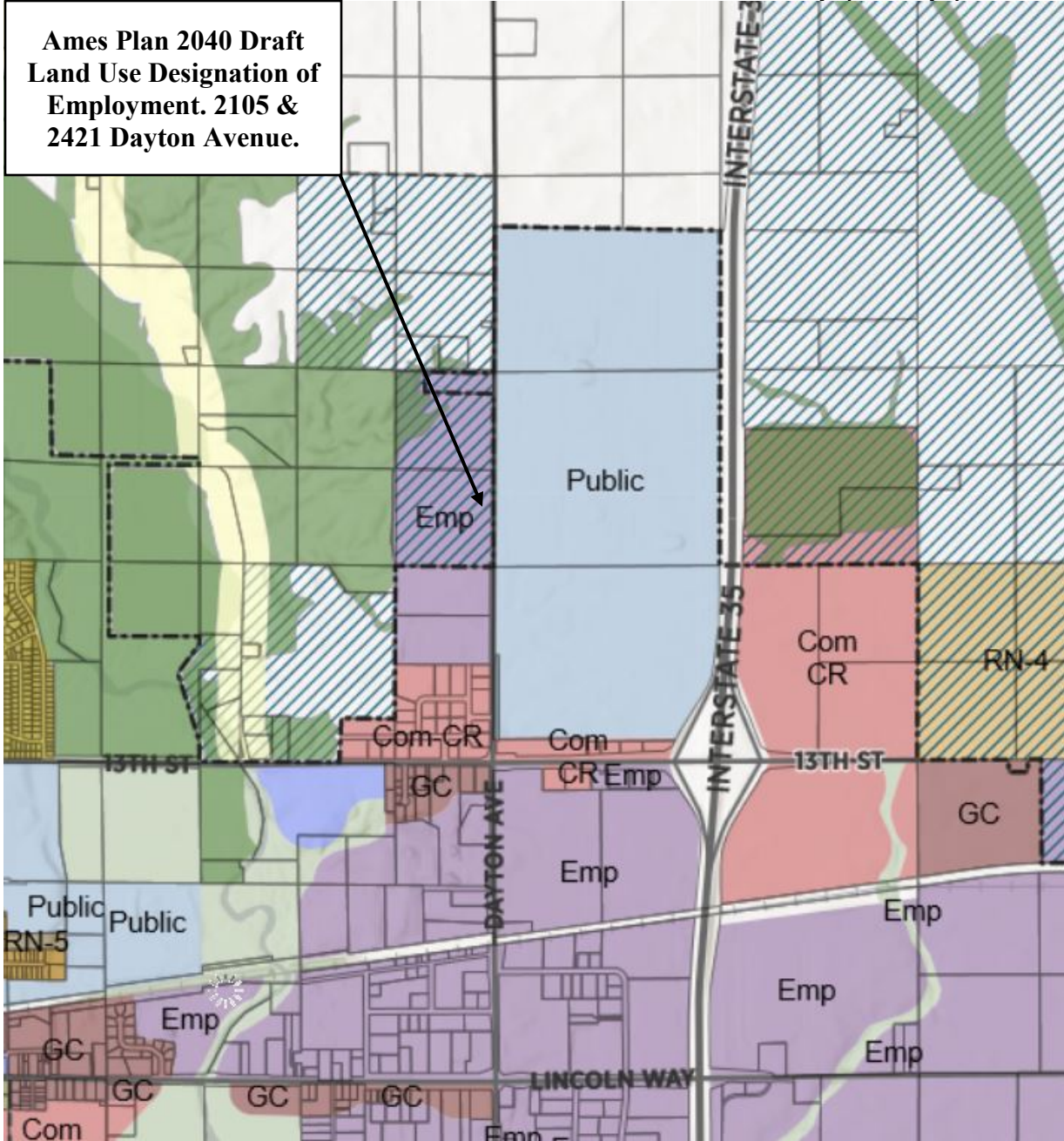
Attachment A- Location Map



2105 & 2421 Dayton Avenue
Location Map

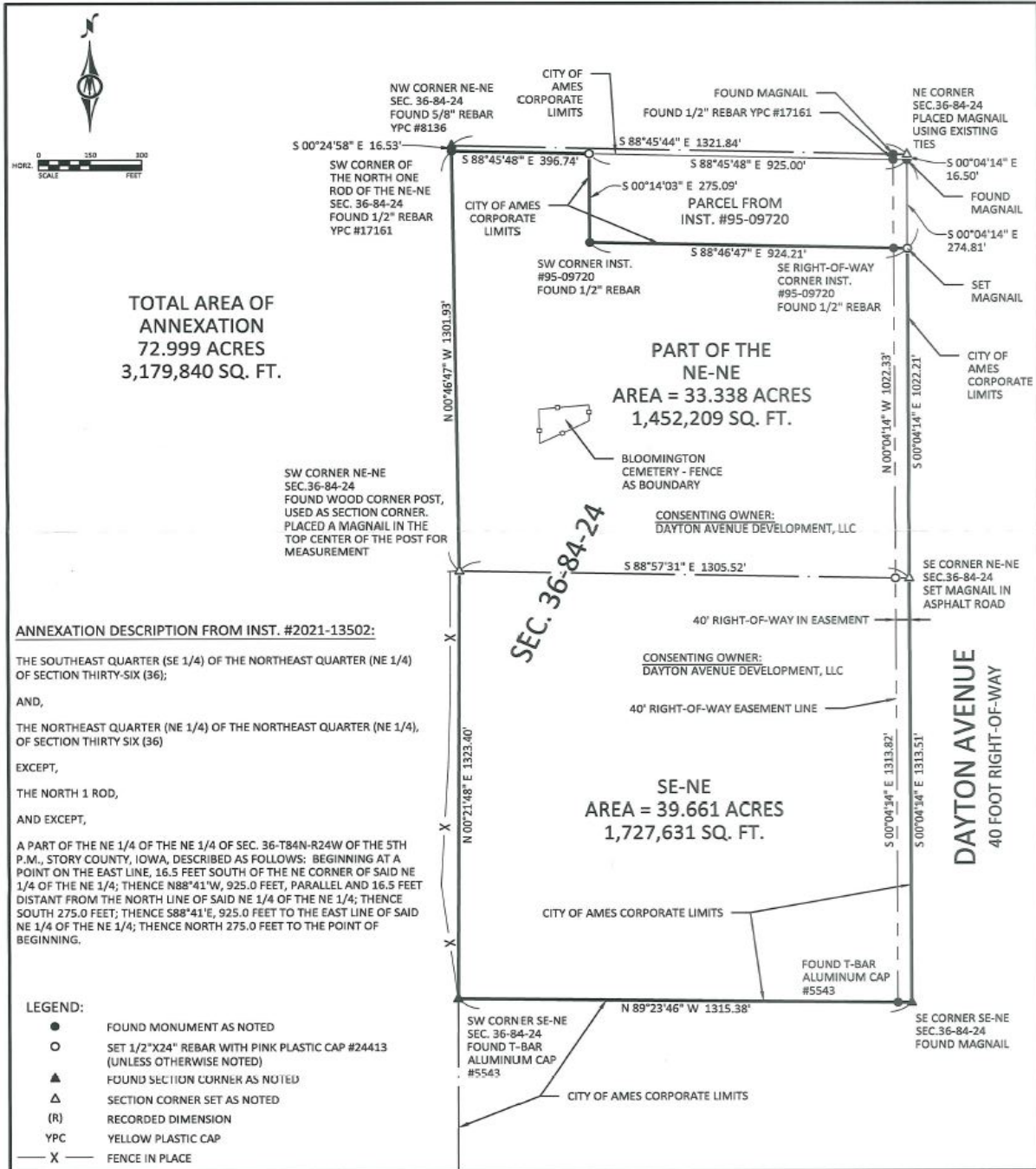


Attachment B- Ames Plan 2040 Future Land Use Map (Excerpt)



Attachment C- Annexation Plat

FOR RECORDER USE ONLY



TOTAL AREA OF ANNEXATION
72.999 ACRES
3,179,840 SQ. FT.

PART OF THE NE-NE
AREA = 33.338 ACRES
1,452,209 SQ. FT.

SE-NE
AREA = 39.661 ACRES
1,727,631 SQ. FT.

ANNEXATION DESCRIPTION FROM INST. #2021-13502:
THE SOUTHEAST QUARTER (SE 1/4) OF THE NORTHEAST QUARTER (NE 1/4) OF SECTION THIRTY-SIX (36);
AND,
THE NORTHEAST QUARTER (NE 1/4) OF THE NORTHEAST QUARTER (NE 1/4), OF SECTION THIRTY SIX (36)
EXCEPT,
THE NORTH 1 ROD,
AND EXCEPT,
A PART OF THE NE 1/4 OF THE NE 1/4 OF SEC. 36-T84N-R24W OF THE 5TH 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 NE 1/4 OF THE NE 1/4; THENCE N88°41'W, 925.0 FEET, PARALLEL AND 16.5 FEET DISTANT FROM THE NORTH LINE OF SAID NE 1/4 OF THE NE 1/4; THENCE SOUTH 275.0 FEET; THENCE S88°41'E, 925.0 FEET TO THE EAST LINE OF SAID NE 1/4 OF THE NE 1/4; THENCE NORTH 275.0 FEET TO THE POINT OF BEGINNING.

- LEGEND:**
- FOUND MONUMENT AS NOTED
 - SET 1/2"X24" REBAR WITH PINK PLASTIC CAP #24413 (UNLESS OTHERWISE NOTED)
 - ▲ FOUND SECTION CORNER AS NOTED
 - △ SECTION CORNER SET AS NOTED
 - (R) RECORDED DIMENSION
 - YPC YELLOW PLASTIC CAP
 - X — FENCE IN PLACE

ANNEXATION PLAT
PART OF THE NE 1/4-NE 1/4, THE SE 1/4-NE 1/4, ALL OF SECTION 36-T84N-R24W, STORY COUNTY, IA

I hereby certify that this land surveying document was prepared by me and the related field work was performed by me or under my direct personal supervision and that I am a duly licensed Land Surveyor under the laws of the State of Iowa.

Luke D. Ahrens

LUKE D. AHRENS L.S.
REG. NO. 26413 DATE: 2/23/23
MY LICENSE RENEWAL DATE IS 12/31/2023
PAGES OR SHEETS COVERED BY THIS SEAL:
THIS SHEET

BOLTON & MENK

1519 BALTIMORE DRIVE
AMES, IOWA 50010
(515) 233-6100

SHEET
1 OF 1

Attachment D- Agreement Delegating Cemetery Responsibilities

INSTRUMENT PREPARED BY:	Brian D. Torresi, 2605 Northridge Pkwy., Ames, IA 50010 (515) 288-2500
RETURN TO:	City of Ames, Iowa, Attn: City Clerk, 515 Clark Ave., Ames, IA 50010

PRE-ANNEXATION AGREEMENT - DAYTON AVENUE DEVELOPMENT

THIS PRE-ANNEXATION AGREEMENT – DAYTON AVENUE DEVELOPMENT (this “Agreement”), is made and entered into this ___ day of February, 2022, by and between the City of Ames, Iowa (the “City”), and Dayton Avenue Development, LLC (collectively, with the successors and assigns thereof, the “Developer”). City and Developer are hereinafter collectively referred to as the “Parties” or individually as a “Party”. This Agreement shall be effective as of the date the last of the Parties hereto executes same (the “Effective Date”).

RECITALS

WHEREAS, the Parties desire the improvement and development of the real property in Story County, Iowa as legally described on the attached Exhibit A (the “Property”);

WHEREAS, the Developer has applied to the City for the voluntary annexation of the Property, and adjacent real property, in accordance with Chapter 368 of the Iowa Code and the rezoning of the Property with the intent to seek subdivision platting of the Property in the future; and

WHEREAS, a burial site (the “Burial Site”) has been located on the Property and said Burial Site is not located within a dedicated “cemetery” (as that term is defined in the Act (as that term is defined herein)) which would require, after the Annexation (as that term is defined herein), the City to preserve and protect the Burial Site in accordance with the provisions of the Iowa Cemetery Act, Iowa Code §§ 5231.101 *et seq.* (the “Act”); and

WHEREAS, the Parties desire to enter into an agreement pursuant to the Act with respect to the delegation by the City to the Developer of the obligations to preserve and protect the Burial Site

NOW, THEREFORE, in consideration of the Recitals and of the mutual covenants contained herein, and reliance on the same, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

I. **INTENT AND PURPOSE**

1. It is the intent of this Agreement to:

- a. recognize that, as of the Effective Date, the Developer is the fee simple owner of the Property, and that the Property is located outside of the limits of the City but within the two-mile fringe area set forth in Iowa Code § 354.8;
- b. acknowledge that the City and the Developer desire the Annexation and the development of the Property within the City if, but only if, the Conditions Precedent (as that term is defined herein) are satisfied;
- c. acknowledge that the Burial Site is not located within a dedicated cemetery;
- d. delegate the preservation and protection obligations of the City, as set forth in Iowa Code § 523I.316(3)(a), to the Developer;
- e. identify any and all obligations of the Developer with respect to the Burial Site after the Annexation; and
- f. provide remedies to the City in the event the Developer fails to fulfill its obligations with respect to the preservation and protection of the Burial Site.

II.
CONDITIONS PRECEDENT; ANNEXATION

The City and the Developer agree that for the rights, duties, and responsibilities of this Agreement to become effective as to either Party, all of the following must first occur (collectively, the “Conditions Precedent”):

- a. the voluntary annexation of the Property into the City must be accepted, and the Property must become a part of the City as contemplated by law (the “Annexation”); and
- b. the Developer shall execute and deliver this Agreement to the City.

III.
PROTECTION AND PRESERVATION OF BURIAL SITE

1. Pursuant to the Act, upon Annexation, the City is required to preserve the Burial Site and protect the Burial Site as necessary to restore or maintain the physical integrity thereof as a “burial site” (as that term is defined in Iowa Code § 523I.102(2)), and additionally, to provide a reasonable means of ingress and egress to or from the Burial Site.

2. Notwithstanding the preservation, protection, and access responsibilities and obligations of the City as set forth in the Act, by this written Agreement, the City hereby delegates to the Developer any and all of its obligations under the Act with respect to the Burial Site.

3. From and after Annexation, the Developer shall:

- a. preserve the Burial Site in the condition thereof as of the Effective Date in order to maintain the physical integrity thereof as a burial site under the Act;

- b. protect the Burial Site in order to maintain the physical integrity thereof as a burial site under the Act; and
- c. provide reasonable means of ingress and egress through the Property to and from the Burial Site.

4. In fulfilling the delegated responsibilities and obligations of the City with respect to the Burial Site under this Agreement, the Developer shall not be required to make any improvements to the Property.

IV.
MODIFICATION OF AGREEMENT

The Parties agree that this Agreement may only be modified, amended, or supplemented by written agreement of the Parties.

V.
COVENANTS RUN WITH THE PROPERTY

This Agreement shall run with the Property and shall be binding upon the Developer and any and all of its successors and assigns. Each Party hereto agrees to cooperate with the other in executing a Memorandum of Agreement that may be recorded in place of this document if required by the City.

VI.
INCORPORATION OF RECITALS AND EXHIBITS

The Recitals, together with any and all exhibits and/or other attachments hereto, are confirmed by the Parties as true and correct and incorporated herein by reference as if fully set forth verbatim. The Recitals, exhibits, and/or other attachments are a substantive, contractual part of this Agreement.

VII.
MISCELLANEOUS

Time is of the essence in this Agreement. The failure to promptly assert any rights herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default. To facilitate execution, this Agreement may be executed in as many counterparts as may be required and the Parties may execute facsimiles of this Agreement. It shall not be necessary that the signature on behalf of the Parties hereto appear on each counterpart. All counterparts shall collectively constitute a single Agreement.

VIII.
JURY TRIAL WAIVER

THE PARTIES HERETO, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED ON OR ARISING OUT OF THIS AGREEMENT OR INSTRUMENT,

OR ANY RELATED INSTRUMENT OR AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS, WHETHER ORAL OR WRITTEN, OR ACTION OF ANY PARTY HERETO. NO PARTY SHALL SEEK TO CONSOLIDATE BY COUNTERCLAIM OR OTHERWISE, ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY ANY PARTY HERETO EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY ALL PARTIES.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed as of the Effective Date.

(SIGNATURE PAGE FOLLOWS)

**SIGNATURE PAGE OF
PRE-ANNEXATION AGREEMENT - DAYTON AVENUE DEVELOPMENT**

CITY OF AMES, IOWA

By: _____
John A. Haila, Mayor

Attest by: _____
Diane R. Voss, City Clerk

STATE OF IOWA, COUNTY OF STORY, SS:

On this ___ day of February, 2022, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared John A. Haila, Mayor, and Diane R. Voss, City Clerk, to me known to be the identical persons named in and who executed the foregoing instrument, and acknowledged that they executed the same as their voluntary act and deed.

Notary Public, State of Iowa
My commission expires _____

DAYTON AVENUE DEVELOPMENT, LLC

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

STATE OF IOWA, COUNTY OF STORY, SS:

This instrument was acknowledged before me on this 17th day of February, 2022, by Charles E. Winkleblack, as a Manager of Dayton Avenue Development, LLC.

Jennifer Kapaun
Notary Public, State of Iowa
My commission expires 3/11/23



EXHIBIT A
PROPERTY - LEGAL DESCRIPTION

The Northeast Quarter (NE¼) of the Northeast Quarter (NE¼) of Section Thirty-six (36), Township Eighty-four (84) North, Range Twenty-four (24) West of the 5th P.M., Story County, Iowa **EXCEPT** the North 1 rod, **AND EXCEPT** a part of the Northeast Quarter (NE¼) of the Northeast Quarter (NE¼) of Section Thirty-six (36), Township Eighty-four (84) North, Range Twenty-four (24) West of the 5th 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