

COUNCIL ACTION FORM

SUBJECT: DEVELOPER'S AGREEMENT FOR GRAND ASPEN, 4TH ADDITION

BACKGROUND:

The Randall Corporation has made application to the City to further subdivide the Grand Aspen Subdivision. Grand Aspen is to be divided into three lots which will include one developable lot, one outlot, and one right-of-way lot. In order to approve the proposed subdivision, the developable lot (Lot 1) must have frontage on City street right-of-way. As proposed, the subdivision relies on access to an existing private driveway that serves the Coldwater Golf Course, which does not satisfy the City subdivision requirement as a public right-of-way.

As you might recall, over the years the responsibilities detailed in a developer agreement between the City and Randall Corporation have been negotiated many times in order to facilitate the development of their property on both sides of the private driveway. However, while individual responsibilities have changed over time, the ultimate cost to each party has remained as originally proposed.

The challenge facing the City staff and Developer is a provision in the existing developer agreement that does not require the City to accept ownership of the right-of-way for the proposed extension of Grand Avenue south through Coldwater Golf Course and Grand Aspen Subdivision to S. 16th Street until the City has secured federal financing to build the project. Until this occurs, a "negative easement" exists whereby the Developer cannot construct any building or improvement on the easement area and no public road will be built. Without access of all the proposed lots to a public right-of-way, the subdivisions cannot be approved.

The Developer has informed the City they would like to proceed with developing their properties and have an opportunity to proceed immediately with an apartment project on Lot 1 of Grand Aspen. The Developer is requesting that the City consider accepting the road right-of-way and paving the section of the proposed Grand Avenue extension adjacent to Grand Aspen and Aspen Ridge subdivisions as soon as possible. The current estimate for this unbudgeted project is \$400,000. In order to facilitate this request, a new Developer's Agreement must be created for Grand Aspen Subdivision, 4th Addition. In addition, the Developer is requesting that an additional curb cut be allowed for the Aspen Ridge subdivision off of S. 16th Street.

ALTERNATIVES:

- 1) The City Council can approve the attached Developer's Agreement for the Grand Aspen Subdivision, 4th Addition. If this action is supported, the City will be responsible to pave a portion of Grand Avenue adjacent to the subdivision beginning next May, while the Developer will be responsible to begin the paving of the fourth lane on the south side of S. 16th west of the golf course entry road by May 1, 2011 as well. In order to finance this unbudgeted project, \$400,000 of savings from previously issued bonds will be used.
- 2) The City Council can choose not to approve the attached Developer's Agreement for the Grand Aspen Subdivision, 4th Addition. If this action is supported, the City will not be required to pave a portion of Grand Avenue Extension adjacent to the subdivision. Without adequate access and egress into the subdivision, development of Lot 1 is unlikely.

MANAGER'S RECOMMENDED ACTION:

After reviewing the many issues in support and in opposition of this request, the City Council, at the September 14, 2010 meeting, directed staff to work with the Randall Corporation to develop an agreement that would facilitate their request.

The proposed agreement that is attached for your review reflects the following highlights:

- The City will initiate construction no later than May 1, 2011, for the extension of Grand Avenue from the south line of the Site and extending four hundred fifty feet (450') north to a point north of the north edge of the access to Lot 1.
- In the event that Developer has not, by March 1, 2011, obtained a building permit, zoning permit, or any other permit of the City with respect to any excavation or construction on the Site, the City will not be obligated to proceed with construction of Grand Avenue until such later time as the City Council initiates construction.
- The City will be responsible for the construction of a sidewalk within the right of way on the east side of and adjacent to Grand Avenue. The City will construct the sidewalk in conjunction with and according to the schedule of construction of Grand Avenue as provided in this agreement. This obligation is a tradeoff in recognition that the developer will be paying for the cost of the extra depth of the fourth lane along S. 16th Street which is traditionally paid by the City.
- The City will grant another curb cut off of S. 16th to serve Aspen Ridge and the Developer agrees that no other access points will be granted by the City for this subdivision.

- The Developer will construct a street lane from a point on the south side of South 16th Street directly south of the east boundary of the Site to a point approximately six hundred seventy-five feet (675') west along the south side of South 16th Street that completes the connection of previously completed lane improvements. The construction of the street segment of additional arterial street lane is required to begin no later than May 1, 2011.

However, the City will not issue any occupancy permits for the Site until the construction of the fourth lane is completed to the satisfaction of City's Engineer.

- In the event that Developer has not, by March 1, 2011, obtained a building permit, zoning permit, or any other permit of the City with respect to any excavation, or construction on the Site, the Developer will not be required to construct the additional arterial street land on South 16th Street until the Developer has applied for a permit of the City with respect to any building, zoning, excavation, or construction on the Site.
- If the property within Lot 1 ever becomes exempt from property taxes, the owner of the property will be required to make payments to the City amounts equal to what would have been paid if the property (land and buildings) was not tax exempt.

Given the fact that the proposed agreement has be developed in accordance with the City Council's previous directive to resolve this issue, it is the recommendation of the City Manager that the City Council approve Alternative #1.

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

Prepared by: Douglas R. Marek, City of Ames Legal Department, 515 Clark Avenue, Ames, Iowa 50010 (Phone: 515-239-5146)
Return to: City Clerk, 515 Clark Avenue, Ames, Iowa 50010

**AN AGREEMENT PERTAINING TO
THE SUBDIVISION PLATTING OF
GRAND ASPEN SUBDIVISION, 4TH ADDITION, AMES, IOWA**

THIS AGREEMENT is made and entered into this _____ day of _____, 2010, by and between SCOTT E. RANDALL and RANDALL CORPORATION (Developer) and the CITY OF AMES, IOWA (City), and their successors and assigns.

WITNESSES THAT:

1. This Agreement is made for the purpose of supplementing the June 23, 2009 Agreement Pertaining to The Subdivision Platting of Grand Aspen Subdivision, 3rd Addition, Ames, Iowa, recorded as Instrument 2009-00007919 in the office of the Story County Recorder, and also to provide for the replatting of Outlot B of Grand Aspen Subdivision, 3rd Addition, Ames, Iowa, consisting of 14.68 acres (the Site), as Grand Aspen Subdivision, 4th Addition, Ames, Iowa, consisting of Lot 1, Lot A, and Lot D, as more fully described and depicted in **Exhibit 1**.
2. Dedication of Right of Way. It is understood and agreed that the Developer shall dedicate to the City Lot A, as shown on **Exhibit 1**, for the future construction of an extension of Grand Avenue, for right of way purposes. It is further understood and agreed that until such time that the City gives written notice to Developer of City's initiation of construction of the Grand Avenue extension, the Developer shall continue to control and maintain Lot A in its present condition and to indemnify, defend, and hold harmless the City from any claims or damages arising from the use of Lot A. To facilitate the construction of Grand Avenue, Developer also grants to the City a ten foot slope easement on the west side of Lot A from a point three hundred (300) feet north of the south line of the Site and extending to the north line of the Site, as shown and described on **Exhibit 1**.

3. Additional Arterial Street Lane on South 16th Street. It is understood and agreed that development of the Site will result in an increase in motor vehicle traffic turning from South 16th Street onto Grand Avenue, thereby necessitating the addition of a lane on South 16th Street. With respect to South 16th Street abutting the south line of the Site, the Developer shall construct, at the sole expense of the Developer and without charge to the City, a street lane in accordance with plans and specifications approved by the City's Engineer to meet the City's standards for an arterial street on the south side of South 16th Street, from a point on the south side of South 16th Street directly south of the east boundary of the Site to a point approximately six hundred seventy-five feet (675') west along the south side of South 16th Street that completes the connection of previously completed lane improvements, as generally depicted on **Attachment A**. Developer shall initiate construction of this segment of additional arterial street lane no later than May 1, 2011. However, in the event that Developer has not, by March 1, 2011, obtained a building permit, zoning permit, or any other permit of the City with respect to any excavation, or construction on the Site, the Developer shall not be required to construct the additional arterial street land on South 16th Street until such later time as Developer has applied for a permit of the City with respect to any building, zoning, excavation, or construction on the Site. The City shall not issue any occupancy permits for the Site until the construction of the fourth lane is completed to the satisfaction of City's Engineer.
4. Payments in Lieu of Taxes. With respect to any property within the bounds of Lot 1 that shall be exempt from property taxes or from time to time become exempt from property taxes pursuant to section 427.1, Code of Iowa, (or any other provision of the laws of the State of Iowa) the then-current fee simple title holder of Lot 1 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 (land and building) were not exempt as aforesaid.
5. Construction of Grand Avenue Extension. The City and not the Developer shall be responsible for the construction of an extension of Grand Avenue upon platting of Grand Aspen Subdivision, 4th Addition. The City shall initiate construction no later than May 1, 2011, for the extension of Grand Avenue from the south line of the Site and extending four hundred fifty feet (450') north to a point north of the north edge of the Access to Lot 1 as described in Paragraph 10 below, and as shown on **Exhibit 1**. The City shall not be required by this Agreement to complete construction of Grand Avenue to the north boundary of Site. In the event that Developer has not, by March 1, 2011, obtained a building permit, zoning permit, or any other permit of the City with respect to any excavation, or construction on the Site, the City shall not be obligated to proceed with construction of Grand Avenue until such later time as the City Council initiates construction.
6. Construction of Sidewalk. The City and not the Developer shall be responsible for the construction of a sidewalk within the right of way on the east side of and adjacent to Grand Avenue. The City shall construct the sidewalk in conjunction with and according to the schedule of construction of Grand Avenue as provided in this agreement.

7. Platting of Further Subdivisions. The Developer shall undertake the official platting of further subdivisions of the Site pursuant to the procedures established by the statutes of the State of Iowa and the ordinances of the City. The Developer shall apply to the City for approval of official plat of further subdivisions of the Site subject to such specific requirements for improvements of that portion of the Site being further platted as the City may then require. All regulations and policies of the City shall be met with respect to such future development of the Site.
8. Permits Issued in Conformity with Agreement. It is understood and agreed that the City shall not issue any building permits with respect to any part of the Site for which an official plat of subdivision designating a lot or lots by number, and not as "outlots", has not been approved and filed for record. The City shall not issue a building permit, zoning permit, or any other permit of the City with respect to any excavation, construction, reconstruction, or remodeling on the Site unless said work is undertaken in accordance with the provisions of this Agreement.
9. Access to South 16th Street. The Developer does hereby grant to the City a perpetual negative easement with respect to the south line of the Site and with respect to the south line of Outlot B, Aspen Ridge Subdivision, such that there shall be no access to South 16th Street, except for one thirty foot (30') intersecting driveway, the center of which shall be three hundred thirty-six and two tenths (336.2) feet east of the east boundary of the Site, and three hundred thirty-six and two tenths (311.2) feet east of the west boundary of Outlot B, Aspen Ridge Subdivision, on the north side of South 16th Street, as generally shown and labeled as "New Access" on Attachment A. The Developer consents that no further access will be granted to South 16th Street from the Site or from Outlot B, Aspen Ridge Subdivision. This access limiting easement shall be shown on the face of the official plat of Aspen Ridge Subdivision, 2nd Addition.
10. Access to Grand Avenue. The Developer does hereby grant to the City a perpetual negative easement with respect to the easterly and westerly sides of the street right-of-way granted by this Agreement for extension of Grand Avenue through the Site, such that there shall be no access to that street right-of-way from either the easterly or westerly sides thereof, except for a driveway thirty feet (30') wide from the easterly and westerly sides, the center of which is located four hundred nineteen and ninety-nine hundredths feet (419.99') north of the south line of the Site.
11. Covenants Binding on Subdivision. This Agreement shall be binding upon Grand Aspen Subdivision, 4th Addition. This instrument shall be filed for record in the office of the Story County Recorder, and all covenants, agreements, promises, and representations herein stated shall be deemed to be covenants running with the land and shall endure and be binding on the parties hereto, their mortgagees, lienholders, successors and assigns, for a period of twenty-one years from the date of the recording of these covenants, unless claims to continue any interest in the covenants are filed as provided by law. The City shall have a right to file a claim to continue its interest in these covenants.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the date first above written.

CITY OF AMES, IOWA

STATE OF IOWA, STORY COUNTY ss:

By: _____
Ann H. Campbell, Mayor

Attest by: _____
Diane R. Voss, City Clerk

On this _____ day of _____, 2010, before me, a Notary Public in and for the State of Iowa, personally appeared Ann H. Campbell and Diane R. Voss, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. _____, adopted by the City Council on the ___ day of _____, 2010, and that Ann H. Campbell and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa

DEVELOPER
RANDALL CORPORATION

STATE OF IOWA, STORY COUNTY ss:

By: _____

On this _____ day of _____, 2010, before me, a Notary Public in and for the State of Iowa, personally appeared _____, to me personally known, who being by me duly sworn did say that that person is _____ of said corporation and that said instrument was signed on behalf of the said corporation by authority of its board of directors and the said acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Notary Public in and for the State of Iowa

OWNER

Scott E. Randall

STATE OF IOWA, STORY COUNTY SS:
This instrument was acknowledged before me on _____, 2010, by Scott E. Randall.

Notary Public in and for the State of Iowa

MORTGAGEE'S SUBORDINATION

KNOW ALL PERSONS BY THIS INSTRUMENT THAT:

Community State Bank, is the present owner of that certain Mortgage given by _____, dated _____, and filed for record _____, as Inst. No. _____ in the office of the Recorder for Story County, Iowa, and for good and valuable consideration agrees that the aforesaid real estate mortgage shall be subordinate to the foregoing agreement and the grant of easements and rights in real estate to the City of Ames, Iowa.

IN WITNESS WHEREOF, the said mortgage has caused this instrument to be executed on its behalf on this _____ day of _____, 20____.

COMMUNITY STATE BANK

By: _____

STATE OF IOWA, STORY COUNTY ss:

On this _____ day of _____, 2010, before me, a Notary Public in and for the State of Iowa, personally appeared _____, to me personally known, who being by me duly sworn, did say that person is of said corporation, that the seal affixed to said instrument is the seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors and the said acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

Notary Public in and for Story County