

## COUNCIL ACTION FORM

**SUBJECT: GRAND ASPEN SUBDIVISION, 3<sup>RD</sup> ADDITION DEVELOPER AGREEMENT**

### **BACKGROUND:**

In December 2003 the City Council approved a preliminary plat creating three outlots in the Grand Aspen Subdivision that are unbuildable lots. In order to assure that the necessary public improvements were installed in an appropriate time and manner, a Developer Agreement was executed with the City.

The agreement, among other obligations, specifies that the Developer will take the following actions:

#### Issues Related to Grand Avenue Extension

- Grant to the City a street easement for the future construction of Grand Avenue through the site from South 16<sup>th</sup> Street to the northern boundary of the site.
- Convey the area of the Grand Avenue street easement located within proposed Outlot A to the City of Ames without cost to the City at such time when Outlot A is replatted.
- Construct the street improvements for a two lane street extending from South 16<sup>th</sup> Street along the south line of the site, northward 300 feet at such time when Outlot A is replatted.
- Pay for the construction of the remaining length of the street improvements (two lanes) to the northern line of Outlot A by special assessment,
- Convey fee title to the City, in exchange for just compensation, for the street easement area located within proposed Outlot C at such time as this segment of Grand Avenue is constructed.

#### Issues Related To South 16<sup>th</sup> Street and Bike Path

- At such time as either proposed Outlot A or Outlot B is replatted, the property owner shall be responsible for the following:
  - \* Convey to the City fee title to a strip of land that is 10 feet wide and 726.58 feet long abutting the south line of the site for public right-of-way.
  - \* Construct a street lane to the standards of the City in accordance with plans and specifications approved by the City.
  - \* Construct a bicycle path along the south line of the site, in accordance with plans and specifications approved by the City.

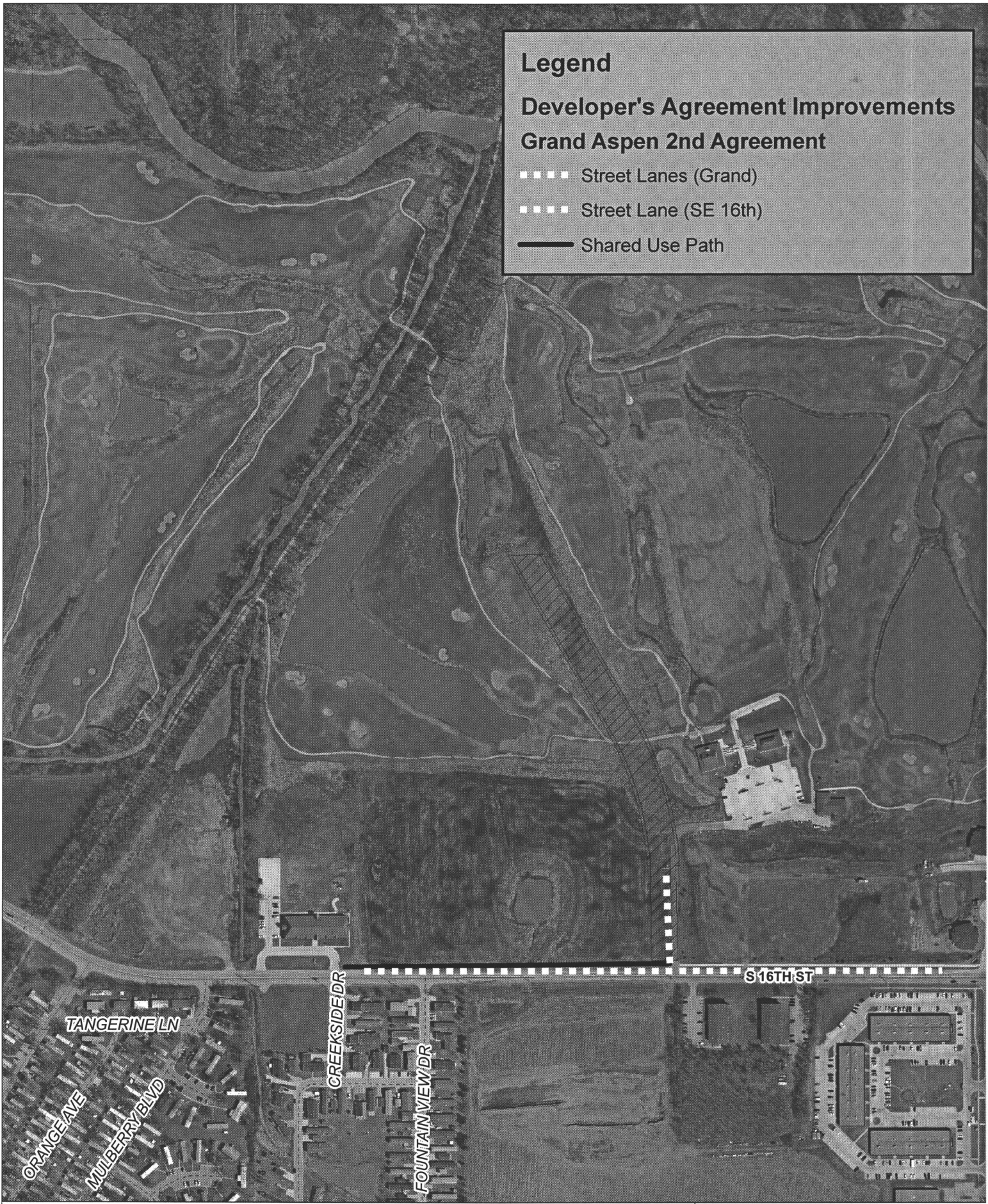
# Legend

## Developer's Agreement Improvements Grand Aspen 2nd Agreement

▣▣▣▣ Street Lanes (Grand)

▣▣▣▣ Street Lane (SE 16th)

— Shared Use Path



Information in this map is a representation only. All information should be field verified.



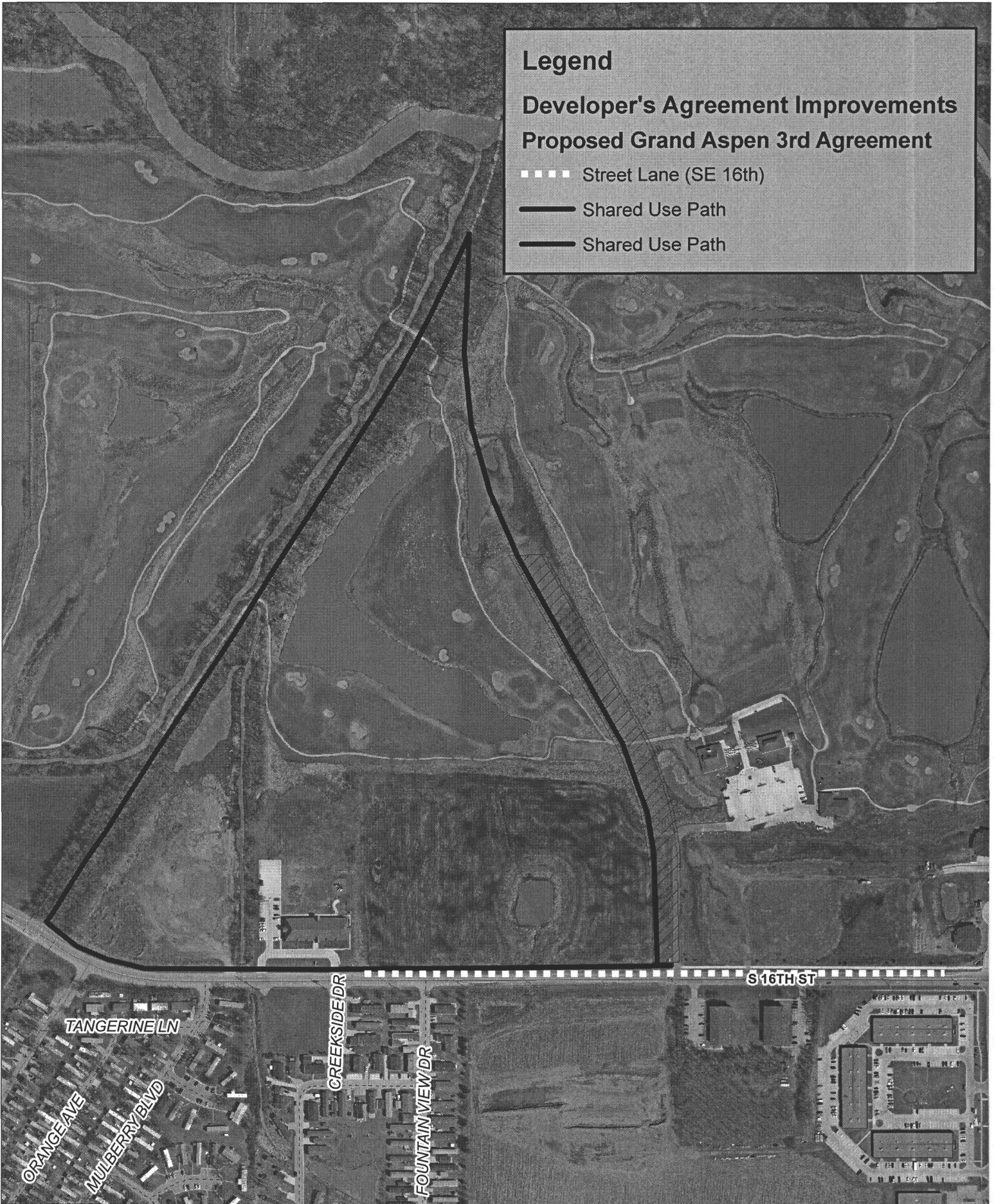
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## Developer's Agreement Improvements Proposed Grand Aspen 3rd Agreement

- Street Lane (SE 16th)
- Shared Use Path
- Shared Use Path



Information in this map is a representation only. All information should be field verified.



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**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)

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**AN AGREEMENT PERTAINING TO THE  
SUBDIVISION PLATTING OF GRAND ASPEN  
SUBDIVISION, 3<sup>RD</sup> ADDITION, AMES, IOWA**

**THIS AGREEMENT**, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_,  
2009, by and between RANDALL CORPORATION (Developer) and the CITY OF AMES,  
IOWA (City)

**WITNESSES THAT:**

1. This Agreement is made for the purpose of meeting the subdivision platting regulations of the City with respect to certain public improvements required by the City as a condition precedent to approval of the subdivision plat for Grand Aspen Subdivision, 3<sup>rd</sup> Addition, Ames, Iowa,

A replat of Outlot A, Grand Aspen Subdivision 2<sup>nd</sup> Addition, Ames, Iowa,  
containing 17.68 acres. (The Site)

Said plat shall consist of only two lots, those lots to be designated respectively, as Lot 1 and Outlot B.

2. It is understood and agreed that the Developer shall not construct or install any building or other improvement on any part of the Site that is platted as an "outlot" except after the portion of the Site where such building or improvement is to be installed is officially platted again as a lot with a numeric designation and not as an "outlot".
3. It is understood and agreed that the Developer does hereby grant to the City a street easement for the future construction of an extension of Grand Avenue, without the right of present possession of the easement area, but with the right, power, and privilege to prevent and enjoin the construction of any building or improvement on the easement area for a period of twenty-one (21) years from the date of this Agreement. The said street easement shall be for a city street roadway over eighty feet of its width, plus a slope easement ten feet (10') wide on each

side of the roadway portion of the street easement. Said easement shall extend from the south line of the Site to the north line of the Site, except that for a distance of three hundred feet (300') north from the south line of the Site, roadway easement eighty feet (80') wide is granted without the aforesaid slope easements. The said easement area shall be as shown and described on **Exhibit A** attached hereto and by this reference made a part hereof. The aforesaid twenty-one (21) year easement shall also be shown on the official plat of the subdivision that is the subject of this Agreement.

4. It is understood and agreed that fee simple title to the land included in the area of the aforesaid Grand Avenue street easement shown and described on **Exhibit A** shall be acquired by the City for the extension of Grand Avenue to South 16<sup>th</sup> Street. Acquisition shall be according to the Federal Acquisition Process that is current at the time of the Grand Avenue extension project as determined by the City.
5. With respect to South 16<sup>th</sup> Street abutting the south line of the Site and extending west an additional nine hundred eighty-five feet (985'), approximately, the Developer shall, at the sole expense of the Developer and without charge to the City, construct a bicycle path in accordance with plans and specifications approved by the City along the south line of the Site and extending west an additional nine hundred eighty-five feet (985'), approximately, to connect with the bicycle path on the west side of Greenbriar Park, which completes the connection of previously completed improvements.

The installation of said bicycle path adjacent to Outlot B and Lot 1 of Grand Aspen 3<sup>rd</sup> Addition and Lot 1 of Grand Aspen Subdivision shall be completed prior to approval of the final plat and the bicycle path adjacent to Greenbriar Park shall be completed within one year of the completion of the renovation of Greenbriar Park as generally described in the City's 2009-2014 Capital Improvements Plan.

Prior to approval of the final plat of Grand Aspen Subdivision, 3<sup>rd</sup> Addition, the Developer shall file with the City Clerk a bond, letter of credit, or other improvement guarantee acceptable to the City Attorney, in an amount not less than the certified estimate of the Director of Public Works for the cost of constructing the bike path adjacent to Greenbriar Park. Said improvement guarantee shall have an initial term of not less than two years and shall be renewed or replaced in an amount not less than the then-current estimate of the Director of Public Works as needed to keep current and on file an improvement guarantee until such time as the improvement is satisfactorily completed.

6. At such time as the City Council approves the funding for the Grand Avenue extension, the Developer shall construct in accordance with plans and specifications approved by the City's engineer, at the sole expense of the Developer and without charge to the City, a bicycle path by paving the existing granular trail within the former railroad right-of-way from South 16<sup>th</sup> Street, northeast approximately two thousand five hundred twenty-five feet (2,525'), to the intersection of the future Grand Avenue right-of-way. Alternatively, at the Developer's request, the City shall construct said bike path and the Developer shall reimburse the City for the cost of construction. Said construction or reimbursement shall be completed no later than

the date of completion of the extension by the City of Grand Avenue to South 16<sup>th</sup> Street. Prior to approval of the final plat of Grand Aspen Subdivision, 3<sup>rd</sup> Addition, the Developer shall file with the City Clerk a bond, letter of credit, or other improvement guarantee acceptable to the City Attorney, in an amount not less than the certified estimate of the Director of Public Works for the cost of constructing the bike path. Said improvement guarantee shall have an initial term of not less than two years and shall be renewed or replaced in an amount not less than the then-current estimate of the Director of Public Works as needed to keep current and on file an improvement guarantee until such time as the improvement is satisfactorily completed.

7. Upon extension of Grand Avenue to South 16<sup>th</sup> Street, the City shall construct a bicycle path along Grand Avenue, from its intersection with the former railroad right-of-way to its intersection with South 16<sup>th</sup> Street, and the Developer shall reimburse the City for the cost of such construction. Prior to approval of the final plat of Grand Aspen Subdivision, 3<sup>rd</sup> Addition, the Developer shall file with the City Clerk a bond, letter of credit, or other improvement guarantee acceptable to the City Attorney, in an amount not less than the certified estimate of the Director of Public Works for the cost of constructing the bike path. Said improvement guarantee shall have an initial term of not less than two years and shall be renewed or replaced in an amount not less than the then-current estimate of the Director of Public Works as needed to keep current and on file an improvement guarantee until such time as the improvement is satisfactorily completed.

Notwithstanding the requirements to file a guarantee acceptable to the City Attorney for the Developer's obligations specified in Paragraphs 5, 6, and 7, the Developer may ask the City Council to consider some form of guarantee other than a bond or letter of credit if the City does not begin construction of Grand Avenue Extension to South 16<sup>th</sup> Street within five years from the date of the approval of the final plat.

8. With respect to South 16<sup>th</sup> Street abutting the south line of Lot 1, Grand Aspen Subdivision, 3<sup>rd</sup> Addition, the Developer shall, at the sole expense of the Developer and without charge to the City, construct a street lane prior to the approval of the final plat in accordance with plans and specifications approved by the City's engineer to meet the City's standards for an arterial street.
9. With respect to South 16<sup>th</sup> Street abutting the south line of Outlot B of Grand Aspen Subdivision, 3<sup>rd</sup> Addition, and Outlot B of Aspen Ridge Subdivision, at such time as when that portion of Outlot B of Grand Aspen Subdivision, 3<sup>rd</sup> Addition, or Outlot B of Aspen Ridge Subdivision is platted into one or more lots with numeric designation and not as an outlot, or at such time as the City Council approves the funding agreement for the extension of Grand Avenue to South 16<sup>th</sup> Street, whichever occurs first, the Developer shall, at the sole expense of the Developer and without charge to the City, construct a street lane that meets the standards of the City for an arterial street in accordance with plans and specifications approved by the City and that completes the connection of previously completed improvements. The City shall issue written notice to proceed with the project to the Developer. All of the aforesaid shall be done in accordance with plans and specifications approved by the City's engineer. Prior to approval of the final plat of Grand Aspen Subdivision, 3<sup>rd</sup> Addition, the Developer shall file with the City Clerk a bond, letter of credit, or other improvement guarantee acceptable to the City



Attorney, in an amount not less than the certified estimate of the Director of Public Works for the cost of constructing the street lane abutting Outlot B of Grand Aspen Subdivision, 3<sup>rd</sup> Addition, and Outlot B of Aspen Ridge Subdivision. Said improvement guarantee shall have an initial term of not less than two years and shall be renewed or replaced in an amount not less than the then-current estimate of the Director of Public Works as needed to keep current and on file an improvement guarantee until such time as the improvement is satisfactorily completed.

10. The Developer shall not be responsible for the construction of an extension of Grand Avenue extending three hundred feet (300') north from the south line of the site upon platting of Grand Aspen Subdivision, 3<sup>rd</sup> Addition.
11. 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.
12. 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.
13. The Developer does hereby grant to the City a perpetual negative easement with respect to the south line of the Site such that there shall be no access to South 16<sup>th</sup> Street from the Site except for one thirty foot (30') intersecting driveway, located directly across from and aligned with Fountain View Drive, to serve as access to Lot 1. The Developer consents that no further access will be granted to South 16<sup>th</sup> Street from the Site. This access limiting easement shall be shown on the face of the official plat of subdivision that is the subject of this Agreement.
14. 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 located four hundred nineteen and ninety-nine hundredths feet (419.99') north of the south line of the Site.
15. Notwithstanding anything to the contrary herein, no future owners, tenants, and holders of any interest of Lot 1, Grand Aspen Subdivision, 3<sup>rd</sup> Addition ("Lot 1"), or any portion thereof (a "Future Owner") shall be responsible for the obligations of Developer hereunder. This Agreement shall not constitute covenants and obligations running with Lot 1 and shall not be binding on a Future Owner.

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

**CITY OF AMES, IOWA**

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

Attest by: \_\_\_\_\_  
Diane R. Voss, City Clerk

STATE OF IOWA, STORY COUNTY ss:  
On this \_\_\_\_ day of \_\_\_\_\_, 2009, 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 \_\_\_\_\_, 2009, 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**

By: \_\_\_\_\_

STATE OF IOWA, STORY COUNTY ss:  
On this \_\_\_\_ day of \_\_\_\_\_, 2009, 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



**MORTGAGEE'S SUBORDINATION**

**KNOW ALL PERSONS BY THIS INSTRUMENT THAT:**

First National Bank, Ames, Iowa, 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\_\_\_\_.

**FIRST NATIONAL BANK**

By: \_\_\_\_\_

STATE OF IOWA, STORY COUNTY ss:

On this \_\_\_\_\_ day of \_\_\_\_\_, 2009, 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

**After reviewing the agreement in preparation for the platting of Outlot A into two lots, it was determined that two recent events make it advisable that the obligations under the existing Developer Agreement be revised.**

First, the agreement requires the developer to grant to the City at no cost the land that is necessary for the Grand Avenue Extension within Outlot A. However, our current strategy for funding this road project calls for a substantial infusion of federal funding. It is our understanding that projects funded with federal monies require the City to pay property owners a fair market value for their land based on a current appraisal. Therefore, it appears that the land transfer arrangement in the current agreement would negate the use of federal funding.

Second, as was our long-standing practice, the agreement requires the City to reimburse the developer for the extra thickness of the pavement associated with the widening of South 16<sup>th</sup> Street and the extension of Grand Avenue. A recent change in state law prohibits the City from paying for a portion of a project financed by the private entity. Therefore, even if the City pays the developer for only a small portion of a project for this oversizing, we will still be responsible for administering the contract for the total infrastructure project. Since this would significantly increase our workload, we have attempted to avoid this shift in responsibility by identifying other infrastructure projects that are related to the development for the City to accomplish that are equivalent to the cost of the oversizing. Therefore, we no longer want to reimburse a developer for extra pavement thickness as contemplated in the current agreement.

In order to facilitate the platting of the previously named Outlot A into two lots, responsibilities were revised so that state law requirements are met, the City will be able to receive federal funding for the Grand Avenue Extension project, and modifications will be cost neutral obligation to the City and the Developer.

To accomplish these objectives the proposed agreement, among other obligations, will now require the developer to take the following actions:

- Install a bike path along South 16<sup>th</sup> Street adjacent to Outlot B and Lot 1 of the Grand Aspen 3<sup>rd</sup> Addition and Lot 1 of the Grand Aspen Subdivision prior to final plat approval;
- Install a bike path adjacent to Greenbriar Park within one year of the completion of the park renovation;
- Construct a street lane along South 16<sup>th</sup> Street adjacent to Lot 1 of Grand Aspen 3<sup>rd</sup> Addition prior to final plat approval;
- Construct a street lane along South 16<sup>th</sup> Street that completes the connection to the previously completed improvements at the time the City Council approves funding for the Grand Avenue Extension project or either Outlot B of the Grand Aspen 3<sup>rd</sup> Addition or Outlot B of Aspen Ridge Subdivision is subdivided;
- Pave the existing railroad right-of-way trail 2,525 feet from South 16<sup>th</sup> to the intersection of the future Grand Avenue right-of-way at the time the City

Council approves funding for the Grand Avenue Extension project (or, if the developer so requests, the City will complete the work with reimbursement from the developer);

- Reimburse the City for constructing a bike path along Grand Avenue Extension from its intersection with the former railroad right-of-way to its intersection with South 16<sup>th</sup> Street.

### **ALTERNATIVES:**

1. Approve the attached Developer Agreement for Grand Aspen Subdivision, 3<sup>rd</sup> Addition.
2. Approve the attached Developer Agreement for Grand Aspen Subdivision, 3<sup>rd</sup> Addition with the modified language regarding the termination of the security and timing for the construction of the South 16<sup>th</sup> Street bike path adjacent to Greenbriar Park as proposed by the Developer.
3. Do not approve the attached Developer Agreement and refer the matter back to City staff to negotiate other terms.
4. Do not approve the attached agreement, and require the Developer to adhere to the requirements specified in the December 2003 agreement prior to approval of the final plat for the Grand Aspen Subdivision, 3<sup>rd</sup> Addition.

### **MANAGER'S RECOMMENDED ACTION:**

In attempting to facilitate the platting request from the owners of the Grand Aspen Subdivision, it became evident that the infrastructure requirements specified for the developer in the 2003 agreement would need to be modified. In accordance with this objective, the attached agreement was created and submitted to the property owners for their consideration.

Matt Randall has informed the City staff that while they are in general support of the proposed agreement they do have objections with the following two aspects of the proposed agreement:

- The developers do not want to keep a letter of credit or bond securing their promise to install the various infrastructure components outlined in the document in place indefinitely. They have suggested that this security obligation terminate if the City does not proceed with the Grand Avenue Extension project within the next five years.
- The developers do not want to install the section of bike path adjacent to Greenbriar Park until the Grand Avenue Extension project is initiated by the Council.

**Staff believes that the attached agreement is a fair trade-off of infrastructure requirements that will comply with State bidding laws, preserve the City's strategy for securing federal funding for the Grand Avenue Extension project, require the same level of financial commitment from the developer as expected in the 2003 agreement, and maintain the City policy of requiring that a developer's contractual obligation to the City to complete certain infrastructure projects be secured with a letter of credit or bond.**

**Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby approving the attached agreement with the Randall Corporation regarding the platting of Grand Aspen Subdivision, 3<sup>rd</sup> Addition. Since the developer would like an opportunity to convince the Council to make the two revisions to the proposed contract as identified above, the agreement has not been signed. It is essential, therefore, that any action to approve the preliminary plat for Grand Aspen 3<sup>rd</sup> Addition be conditioned on the developer signing the attached agreement, or a revised agreement approved by the City Council.**