

COUNCIL ACTION FORM

SUBJECT: GRAND ASPEN SUBDIVISION, 3RD 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. 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, specified 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 16th 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 16th 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 16th 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.

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)

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

THIS AGREEMENT, made and entered into this _____ day of _____, 2009, 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 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, 3rd Addition, Ames, Iowa,

A replat of Outlot A of Grand Aspen Subdivision, 2nd 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. The Developer acknowledges being fully informed as to the right to be paid just compensation for fee simple title to land on the Site included in the area of the aforesaid Grand Avenue street easement shown and described on **Exhibit A**. The Developer does hereby covenant and agree to donate to the City, freely and willingly, fee simple title to land on the Site included in the area of the aforesaid Grand Avenue street easement shown and described on **Exhibit A**. Such donation shall be made by warranty deed and shall occur within thirty (30) days of the City's written notice to the Developer of the City Council's approval of the funding agreement for the extension of Grand Avenue to South 16th Street. In exchange for this donation, the City agrees to construct: a) a bicycle path adjacent to Greenbriar Park, b) a bicycle path by paving the existing granular trail within the former railroad right-of-way from South 16th Street, northeast approximately two thousand five hundred twenty-five feet (2,525'), to the intersection of the future Grand Avenue right-of-way, and c) a bicycle path along Grand Avenue, from its intersection with the former railroad right-of-way to its intersection with South 16th Street.
5. With respect to South 16th Street abutting the south line of the Site and Lot 1 of Grand Aspen Subdivision, the Developer shall, at the sole expense of the Developer and without charge to the City, construct a bicycle path from the west side of Lot 1 of Grand Aspen Subdivision to the west side of Outlot B of Aspen Ridge Subdivision by September 1, 2009, in accordance with plans and specifications approved by the City, which completes the connection of previously completed improvements. Prior to approval of the final plat of Grand Aspen Subdivision, 3rd 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 more than one year.
6. With respect to South 16th Street abutting the south line of Lot 1 of Grand Aspen Subdivision, 3rd Addition, the Developer shall, at the sole expense of the Developer and without charge to the City, construct a street lane from the west side of Lot 1 of Grand Aspen Subdivision, 3rd Addition to the east side of Lot 1 of Grand Aspen Subdivision, 3rd Addition by September 1, 2009, in accordance with plans and specifications approved by the City's Engineer to meet the City's standards for an arterial street. Prior to the approval of the final plat of Grand Aspen Subdivision, 3rd 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. Said improvement guarantee shall have an initial term of not more than one year.
7. With respect to South 16th Street abutting the south line of Outlot B of Grand Aspen Subdivision, 3rd Addition, and Outlot B of Aspen Ridge Subdivision, at such time as when that

portion of Outlot B of Grand Aspen Subdivision, 3rd 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 16th Street, whichever occurs first, the Developer shall, at the sole expense of the Developer and without charge to the City, construct a street lane from the east side of Outlot B of Aspen Ridge Subdivision to the east side of Lot 1 of Grand Aspen Subdivision, 3rd Addition, 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, 3rd 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, 3rd 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.

8. 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, 3rd Addition.
9. 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.
10. 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.
11. 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 16th 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 16th 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.

12. 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.
13. Notwithstanding anything to the contrary herein, no future owners, tenants, and holders of any interest of Lot 1 of Grand Aspen Subdivision, 3rd 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

OWNER

Scott E. Randall

STATE OF IOWA, STORY COUNTY SS:

This instrument was acknowledged before me on _____, 2009, 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 _____, 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 (Grand Aspen Subdivision, 3rd Addition), it was determined two recent events made it advisable that the obligations under the existing Developer Agreement be revised.

First, the existing 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 was 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, based on previous conversations with IDOT officials, it appeared that the land transfer arrangement in the current agreement that calls for the donation of right-of-way for the Grand Avenue Extension 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 16th 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 in the Developer Agreement for Grand Aspen Subdivision, 3rd Addition, that was submitted to the Council on May 26th so that state law requirements would be met, the City would be able to receive federal funding for the Grand Avenue Extension project, and modifications would be cost neutral to the City and the Developer. To accomplish these objectives, the agreement submitted on May 26th proposed, among other obligations, that the developer be responsible to take the following actions:

- Install a bike path along South 16th Street adjacent to Outlot B and Lot 1 of the Grand Aspen 3rd 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 16th Street adjacent to Lot 1 of Grand Aspen 3rd Addition prior to final plat approval;
- Construct a street lane along South 16th 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 3rd Addition or Outlot B of Aspen Ridge Subdivision is subdivided;

- Pave the existing railroad right-of-way trail 2,525 feet from South 16th 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 16th Street.

It is should be emphasized that the City Council's action to approve the Preliminary Plat for Grand Aspen Subdivision, 3rd Addition, on May 26, 2009 was conditioned on the Developer signing the agreement proposed by the City staff. You will recall that Mr. Randall had expressed concerns with the proposed agreement since it required a letter of credit to be secured for bike path improvements for an unspecified period of time. More recently, Mr. Randall has indicated that he cannot complete the street widening and bike path improvements prior to the approval of the Final Plat as required by the May 26th agreement. Because of these concerns, the agreement has not been signed by the developer and, consequently, the Preliminary Plat has not been approved.

Mr. Randall asked to work with staff to eliminate his two areas of concern. Towards this end, staff and the developer first met with IDOT officials who now indicate that as long as the property owners acknowledge that they are entitled to just compensation for their property and receive some other form of fair compensation for their land, a donation of property to the City is now possible. Second, the Developer has agreed to install the extra street lane adjacent to Lot 1 of the Grand Aspen Subdivision, 3rd Addition, and to construct the bike path from the west side of Lot 1 Grand Aspen Subdivision (Ames Christian School) to the west side of Outlot B of Aspen Ridge Subdivision by September 1, 2009. The developer will provide letter(s) of credit prior to the approval of the Final Plat to secure this promise.

As previously agreed to, the completion of the widening of the north side of S. 16th Street along Outlot B of the Grand Aspen Subdivision, 3rd Addition, and Outlot B of the Aspen Ridge Subdivision will not occur until the City proceeds to fund the Grand Avenue Extension Project or either of the two outlots described above are further subdivided. The Developer will provide a letter of credit prior to the approval of the Final Plat to secure this promise.

In exchange for the value of the land that will be donated to the City in Outlot B of the Grand Aspen Subdivision, 3rd Addition, the City will now agree to construct (a) a bicycle path adjacent to Greenbriar Park, (b) the bicycle path by paving the existing granular trail within the former railroad right-of-way from South 16th

Street, northeast approximately two thousand five hundred twenty-five feet (2,525') to the intersection of the future Grand Avenue right-of-way, and (c) a bicycle path along Grand Avenue, from its intersection with the former railroad right-of-way to its intersection with South 16th Street.

ALTERNATIVES:

1. Approve the attached Developer Agreement for Grand Aspen Subdivision, 3rd Addition. This action will allow for the approval of the Preliminary Plat for the Grand Aspen Subdivision, 3rd Addition as long as the Developer executes this document.
2. Do not approve the attached Developer Agreement and refer the matter back to City staff to negotiate other terms.
3. 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, 3rd Addition.

MANAGER'S RECOMMENDED ACTION:

Along with other obligations specified in the attached agreement, the Developer will:

- donate the right-of-way for the extension of Grand Ave. as shown on Exhibit 1 of the attached agreement;
- construct a bike path from the west side of Lot 1 of Grand Aspen Subdivision (Ames Christian School) to the west side of Outlot B of the Aspen Ridge Subdivision by September 1, 2009 and will provide a letter of credit for this work prior to the approval of the Final Plat;
- construct a street lane (widening) adjacent to Lot 1 of Grand Aspen Subdivision, 3rd Addition by September 1, 2009 and will provide a letter of credit for this work by September 1, 2009; and
- construct a street lane (widening) from the east side of Outlot B of the Aspen Ridge Subdivision to the east side of Lot 1 of Grand Aspen Subdivision, 3rd Addition at such time as the City Council approves funding for the Grand Ave. Extension Project or either Outlot B of Grand Aspen, 3rd Addition, or Outlot B of Aspen Ridge Subdivision is subdivided and will provide a letter of credit for this work prior to the approval of the Final Plat.

Under this agreement, the City will:

- construct a bike path adjacent to Greenbriar Park;
- pave the existing granular trail from S. 16th Street to the intersection of the future Grand Ave. right-of-way; and
- construct a bike path along Grand Ave. from its intersection with the former railroad right-of-way to its intersection with S. 16th Street.

The City staff believes that this new agreement reflects a fair trade-off in responsibilities as compared to the December 2003 agreement, is consistent with State bidding law, preserves the City's strategy for securing federal funding for the Grand Avenue Extension Project, and satisfies the two concerns expressed by the Developer regarding the previously proposed agreement.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative #1 and approve the attached agreement with the Randall Corporation regarding the platting of the Grand Aspen Subdivision, 3rd Addition. Any subsequent action by the Council to approve a Preliminary Plat for this Addition should be conditioned on the Developer executing the attached agreement.

