

Autumn Ridge  
Subdivision, Part Three  
Developer's Agreement

Prepared by and Return to: Scott C. Peterson, 425 2<sup>nd</sup> St. SE, Ste. 1010, Cedar Rapids, IA 52401 319-366-7795

**DEVELOPER'S AGREEMENT  
AUTUMN RIDGE PART THREE**

THIS AGREEMENT, made by and between the City of North Liberty, Iowa, a municipal corporation, hereinafter referred to as "City," and Autumn Ridge Partners LC, hereinafter referred to as "Developer."

**SECTION 1. REQUEST FOR PLAT APPROVAL.**

Developer has requested that the City approve the final plat, as proposed and attached hereto as Exhibit A and incorporated herein by reference, for a proposed subdivision known as Autumn Ridge Part 3 (referred to herein as the "plat") for the real estate situated in North Liberty, Johnson County, Iowa, legally described as follows:

COMMENCING AT THE NORTH 1/4 CORNER OF SECTION 13, TOWNSHIP 80 NORTH, RANGE 7 WEST OF THE 5TH P.M., IN THE CITY OF NORTH LIBERTY, JOHNSON COUNTY, IOWA; THENCE S89°52'08"E, 1410.54 FEET ALONG THE NORTH LINE OF THE NE 1/4 OF SAID SECTION 13; THENCE S00°42'29"E, 39.63 FEET TO THE SOUTHERN RIGHT OF WAY LINE OF ZELLER STREET, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE CONTINUING S00°42'29"E, 70.86 FEET; THENCE SOUTHEASTERLY 139.91 FEET ALONG A 400.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY WITH CHORD BEARING S10°43'43"E, 139.20 FEET; THENCE S20°44'57"E, 223.40 FEET; THENCE SOUTHEASTERLY 139.91 FEET ALONG A 400.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY WITH CHORD BEARING S10°43'43"E, 139.20 FEET; THENCE S00°42'29"E, 417.55 FEET; THENCE N89°33'32"E, 155.00 FEET TO THE SOUTHEAST CORNER OF LOT 13, AUTUMN RIDGE PART TWO, AS RECORDED IN BOOK 55, PAGE 27 OF THE JOHNSON COUNTY RECORDS; THENCE N00°42'29"W, 418.27 FEET; THENCE NORTHWESTERLY 194.13 FEET ALONG A 555.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY WITH CHORD BEARING N10°43'43"W,

193.14 FEET; THENCE N18°10'11"W, 222.20 FEET TO THE SOUTHWEST CORNER OF LOT 13, JOE ALBERHASKY'S FIRST ADDITION, AS RECORDED IN BOOK 7, PAGE 73 OF THE JOHNSON COUNTY RECORDS; THENCE N00°40'55"W, 150.10 FEET ALONG THE WEST LINE OF SAID LOT 13 TO A POINT ON THE SOUTHERN RIGHT OF WAY LINE OF ZELLER STREET; THENCE N89°52'08"W, 179.81 FEET ALONG SAID SOUTHERN RIGHT OF WAY TO THE POINT OF BEGINNING. SAID LAND CONTAINS 3.63 ACRES.

As part of this request, Developer acknowledges full ownership of the real estate described above.

**SECTION 2. CONDITIONS OF PLAT APPROVAL AND RIGHT TO PROCEED.**

A. The City agrees that it will approve the final plat of this subdivision upon the conditions that:

1. The final plat conforms to the preliminary plat, subject to changes approved by the City;
2. The construction plans have been submitted and approved;
3. The public improvements have been constructed and accepted by the City or, in the event the Developer requests and the City agrees to the construction of the public improvements after final plat approval, the Developer has complied with the security requirements set forth in Section 16.20.020 of the Code of Ordinances and Section 8 of this Agreement; and
4. The Developer enters into and abides by this Agreement.

B. The Developer further agrees that this Agreement shall be a covenant running with the land and shall be binding on the present and future owners of the property.

C. The Developer may not grade or otherwise disturb the earth, remove trees, construct sanitary sewer mains, storm sewer mains, water mains, streets, utilities, public or private improvements or any buildings until the following conditions have been satisfied:

1. This Agreement has been fully executed by the Developer, filed with the City Clerk, and approved by the City Council.
2. The Developer has complied with the erosion control and grading provisions set forth in Section 5 of this agreement;

3. All permits required by local, state, and federal law have been applied for and issued by the appropriate authority; and

4. Contingent upon the permitting requirements set forth in Paragraph 3 of this section being met, all necessary construction permits have been applied for and issued by the City.

### **SECTION 3. DEVELOPMENT REQUIREMENTS AND PROPERTY IMPROVEMENTS.**

A. Development Standards. The subdivision shall be developed according to the preliminary and final subdivision plats as approved by the City and according to the plans and specifications as approved by the City. All plans shall be approved before the commencement of any work in accordance with the subdivision plat. There shall be no variance from the subdivision plats, or from the construction plans and specifications, unless approved in writing by the City.

B. Public Improvement Standards. All improvements and facilities described in this Agreement shall be constructed and installed by the Developer according to the plans, specifications, ordinances and standards of the City and in accordance with all applicable federal and state laws and regulations. All required inspections shall be performed by the City Engineer or designate. Said inspections shall consist of inspection of the work in progress but shall not relieve or release the Developer from its responsibility to construct said improvements and facilities pursuant to the agreed upon plans and specifications. These improvements and facilities include but are not limited to public water system; sanitary sewer system; storm sewer and drainageway system; site grading; underground utilities; setting for lot and block monuments; and surveying and staking.

C. Standard Requirements. Further, the Developer agrees that:

1. All streets shown on the plat will be constructed of concrete paving with concrete curb and gutter as shown on the approved construction plans and will be dedicated to the City.

2. The Developer shall provide for the installation of all electric lines, street lights, gas mains, telephone lines and other utility facilities that are necessary at the Developer's sole cost. Developer further agrees that all utilities shall be installed underground.

3. Any decorative street lighting must be approved by the City and installed at the Developer's sole cost.

4. At such time as building construction occurs on a lot, but in no event later than five (5) years from the date the subdivision plat is recorded, the Developer shall install

sidewalks in said subdivision abutting said lots per the widths approved on the preliminary plat, in accordance with the plans and specifications of the City, and subject to inspections by the City Engineer or designate, unless otherwise shown on the plat or otherwise specified in this agreement.

5. The Developer shall submit a storm water management plan that will identify the drainage of this development and specify the manner in which storm water, drainage and runoff will be accommodated. The Developer agrees to dispose of all storm water through the approved storm water and drainageway system as set forth in the storm water management plan. The design and construction of the storm water detention basin, if required by the City for this development, shall be in compliance with the City's current storm water management ordinances and policies. The Developer shall have a duty to continue the drainage across the property, and, in no event, shall the Developer create an undue hardship on the adjoining property owners in the manner in which storm water runoff and drainage is managed.

6. The Developer shall provide water, sewer, utility and drainage easements as shown on the plat.

7. The City shall vacate and release all utility easements in favor of the City which will not be used to provide services to the area included within the final plat. The final plat shall include appropriate utility easements for those services.

D. Additional Requirements. Further, the Developer agrees that:

1. A homeowners association ("Autumn Ridge Homeowners Association") has been created and shall, at a minimum, own and be responsible for all outlots and common areas within the boundaries of the Autumn Ridge Preliminary Plat, including but not limited to ownership and maintenance of the stormwater management facilities.

2. This subdivision will be served by the stormwater management facilities established pursuant to the parties' Stormwater Management Facilities Maintenance Agreement and Easement, which was required for approval of Autumn Ridge Part One, North Liberty, Johnson County, Iowa, and recorded thereafter.

E. Developer's Obligations. Nothing in this Agreement shall be construed to impose a requirement on the City to install the original public improvements at issue herein, nor shall the Developer be deemed to be acting as the City's agent during the original construction and installation of the above-described improvements. The parties agree that the obligation to install the above-described public improvements herein shall be in accordance with the plans and specifications drafted by the Developer and subject to the approval of the City. Furthermore, the

obligations shall remain on the Developer until completion by the Developer and until acceptance by the City, as provided by law.

#### **SECTION 4. PUBLIC UTILITIES.**

Developer agrees that it will obtain any necessary concurrence of utility or other easements from appropriate utility companies. Developer agrees that it will provide for the continuation of all required water, sanitary sewer and storm drainage facilities. The Developer agrees that it will connect and use existing public water supplies in accordance with the North Liberty Municipal Code and that the Developer will provide a plan outlining the drainage of the land and indicating the manner in which the drainage will be accommodated and will connect to the existing storm water sewer systems when available in accordance with the plan approved by the City Engineer.

#### **SECTION 5. EROSION CONTROL AND GRADING.**

A. Erosion Control. Before any grading or utility construction is commenced or building permits are issued, the Developer shall design and implement an erosion control plan which shall be reviewed and approved by the City. All areas disturbed by the excavation and backfilling operations shall be reseeded forthwith after the completion of the work in that area. All seeded areas shall be fertilized, mulched and disc anchored as necessary for seed retention. The parties recognize that time is of the essence in controlling erosion. If the Developer does not comply with the erosion control plan or any supplementary instructions received from the City, the City may take such action as it deems appropriate to control erosion and assess the costs of such action to the Developer or to the property, or both. The City will endeavor to notify the Developer in advance of any proposed action, but failure of the City to do so will not affect the Developer's and City's rights or obligations hereunder.

B. Grading. No grading of any nature may occur on this property until a grading plan is implemented by the Developer and approved by the City. Within ninety (90) days after the completion of any grading, the Developer shall provide the City with an "as-constructed" grading plan and a certification by registered land surveyor or engineer that all ponds, swales and ditches, if any, have been constructed in accordance with the plans approved by the City.

#### **SECTION 6. PHASED DEVELOPMENT.**

If the plat is a phase of a multi-phased preliminary plat, the City may refuse to approve final plats of subsequent phases if the Developer has breached this Agreement and the breach has not been remedied. Development of subsequent phases will not be allowed to proceed until Developer's Agreements for such phases are approved by the City.

#### **SECTION 7. MISCELLANEOUS.**

A. The Developer represents and states that the plat complies with all City, state and federal laws and regulations, including but not limited to subdivision ordinances, zoning ordinances and environmental regulations. The City may, at its option, refuse to allow construction or development work in the subdivision until the Developer complies with the appropriate law or regulation. Upon the City's demand, the Developer shall cease work until there is compliance.

B. Third parties shall have no recourse against the City under this Agreement.

C. Breach of the terms of this Agreement by the Developer shall be grounds for denial of building permits, occupancy permits or other permits.

D. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Agreement is for any reason held invalid, such decision shall not affect the validity of the remaining portion of this Agreement.

E. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers must be in writing, signed by both parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Agreement shall not be a waiver or a release.

F. The Developer may not assign this Agreement or the obligations imposed by this Agreement without the written permission of the City Council or as otherwise provided in this Agreement.

G. The Developer's obligations under this Agreement shall continue in full force and effect even if the Developer sells a portion of the subdivision, the entire platted area, or any part thereof.

H. No building or occupancy permits will be issued until all public improvements have been constructed in accordance with applicable standards and formally accepted by the City.

I. The Developer shall take out and maintain a public liability and property damage insurance policy covering personal injury, including death, and claims for property damage which may arise out of the Developer's work or the work of its subcontractors or by one directly or indirectly employed by any of them.

J. The Developer shall record any restrictive or protective covenants for the subdivision. A copy of the recorded restrictive or protective covenants will be provided to the City.

K. The Developer shall record the original copy of this agreement, with all requisite signatures, at the time the other final plat documents are recorded as required by law.

## **SECTION 8. PUBLIC IMPROVEMENTS AND ASSESSMENT WAIVER.**

A. If all the public improvements and facilities as provided in this agreement are not installed and accepted by the City prior to approval of the final plat, the Developer is required to either deposit in escrow or file a surety bond with the City in the amount equal to the estimated costs of the public improvements and facilities plus ten percent prior to the approval of the final plat, as set forth in Section 16.20.020 of the Code of Ordinances.

B. In the event the Developer, its assigns or successors in interest, should sell or convey lots in said subdivision without having constructed the public improvements and facilities as provided in this Agreement or without the City having accepted all public improvements and facilities; or the Developer, its assigns or successors in interest in said subdivision, shall fail to construct sidewalks as set forth in Section 3(C)(4), the City shall have the right to install and construct said improvements, facilities and sidewalks. Unless City is fully reimbursed for these costs from the escrowed money or surety bond held by the City, the costs of said public improvements, facilities and sidewalks shall be a lien and charge against all of the lots adjacent to or in front of the improvements, facilities and sidewalks that are constructed and any lots which may be assessed for public improvements, facilities and sidewalks under the provisions of Chapters 364 and 384 of the Iowa Code. It is further provided that this requirement to construct said public improvements, facilities and sidewalks is and shall remain a lien from the date of execution until properly released as hereinafter provided.

C. The Developer acknowledges and agrees that all lots of the subdivision are specifically benefited by the public improvements, facilities and sidewalks, and the cost of such public improvements, facilities and sidewalks need not meet the requirements of notice, benefit or value as provided by the law of the State of Iowa for assessing such improvements and facilities. The City agrees when such public improvements, facilities and sidewalks have been installed to the satisfaction of the City, it will file in the office of the County Recorder of Johnson County, Iowa, a good and sufficient release to the various lots in said subdivision so that this Agreement will not constitute a cloud upon the title to the lots in the subdivision.

## **SECTION 9. ENGINEERING ADMINISTRATION AND CONSTRUCTION OBSERVATION.**

A. The Developer shall submit to the City, for approval by the City Engineer, plans and specifications for the construction of improvements in the subdivision which have been prepared by a registered professional civil engineer. The Developer shall obtain approval of the construction plans and all necessary permits from the appropriate city, state and federal agencies before proceeding with construction. In addition, the Developer shall cause to have its engineer provide adequate field inspection personnel to ensure that an acceptable level of quality control is maintained.

B. The Developer shall pay all costs of engineering administration, which will include review of the Developer's final construction plans and specifications, monitoring of construction, and consultation with the Developer and its engineer on the status, progress or other issues regarding the project. The Developer shall pay for the reasonable construction observation performed by the City staff or consulting City Engineer. Construction observation will consist of examination of proposed public utilities, street construction and other infrastructure improvements. The engineering administrative fee and construction observation fees to be paid by the Developer shall be determined by the City, in part based on the standard hourly fee schedule in effect between the City Engineer and the City on file at City Hall and in part based on standard fees for other staff members that perform the duties noted above. The City shall provide the appropriate supporting documentation for these fees upon request by the Developer.

#### **SECTION 10. RELEASE.**

The City agrees that when the improvements and facilities required by this Agreement have been installed to the satisfaction of the City, it will promptly issue a release to the Developer, its assigns or successors in interest, for recording in the Johnson County Recorder's Office so that this Agreement will no longer constitute a cloud on the title of the lots in said subdivision.

#### **SECTION 11. DEVELOPER'S OBLIGATION AND DEFAULT.**

A. The Developer agrees and is fully obligated to perform as provided in this Agreement. The Developer is liable and responsible for each and every obligation agreed to be undertaken pursuant to this Agreement. Failure of the Developer, its employees, agents or assigns, to perform is not a defense for the Developer against any action to be taken by the City.

B. In the event of default by the Developer regarding any work to be performed by the Developer under this Agreement, the City may, at its option, perform the work and bill the Developer for said work. The Developer shall promptly reimburse the City for any expense incurred by the City, provided the Developer, except in an emergency as determined by the City, is first given written notice of the work in default, and has not cured such default within fourteen (14) days of such notice. This Agreement is an authorization for the City to act, and it shall not be necessary for the City to seek a court order for permission to enter upon the property. When the City does any such work, the City may, in addition to its other remedies, assess the cost in whole or in part against all of the property located in the subdivision.

#### **SECTION 12. AUTHORIZATION TO ENTER PREMISES.**

Developer grants the City, its agents, employees, officers and contractors, authorization to enter the subdivision area to perform all work and inspections deemed appropriate and necessary by the City in conjunction with this development.

**SECTION 13. FEES.**

The Developer agrees to record this Agreement and to pay all necessary recording and filing fees that accrue as a result of any work that is performed under this Agreement or made necessary as a result of this subdivision project. A copy of this recorded Agreement will be provided to the City.

**SECTION 14. TIME OF PERFORMANCE.**

Developer shall install all required public improvements within two (2) years from the date of City approval of this Agreement. In the event that the Developer fails to install the required public improvements within the above-referenced time, authorization to proceed with the development shall cease, and the Developer shall be required to seek reauthorization and approval of this development. Developer may, however, request an extension of time from the City. If an extension is granted, it may be conditioned upon updating any security posted by the Developer or requiring the Developer to provide security to reflect cost increases and extended completion date.

**SECTION 15. NOTICES.**

Required notices to the Developer shall be in writing and shall either be hand delivered to the Developer, its agents or employees, or mailed to the Developer by registered mail at the following address:

Autumn Ridge Partners, LC  
Attn: Joseph T. (Jody) Braverman  
755 Mormon Trek Boulevard  
Iowa City, IA 52244-1907

Notices to the City shall be in writing and shall be either hand delivered to the City Administrator or mailed to the City by registered mail in care of the City Administrator at the following address:

North Liberty City Administrator  
P.O. Box 77  
North Liberty, IA 52317

Notices mailed in conformance with this section shall be deemed properly given.

**SECTION 16. SUCCESSORS AND ASSIGNS.**

This Agreement shall be a covenant running with the land and inure to the benefit of and be binding upon the parties, their successors and assigns.

DATED as of this \_\_\_\_ day of \_\_\_\_\_, 2011.

CITY OF NORTH LIBERTY, IOWA

DEVELOPER, AUTUMN RIDGE PARTNERS, LC

BY: Southgate Development Services, L.L.C., Manager

By: \_\_\_\_\_  
Thomas A. Salm, Mayor

By: \_\_\_\_\_  
Joseph T. Braverman, President

ATTEST: \_\_\_\_\_  
Tracey Mulcahey, City Clerk

STATE OF IOWA                    )  
  ) ss:  
JOHNSON COUNTY                )

On this \_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned, a Notary Public in and for the State of Iowa, personally appeared Thomas A. Salm and Tracey Mulcahey, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of North Liberty, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the municipal corporation; and that the instrument was signed and sealed on behalf of the municipal corporation by the authority of its City Council, as contained in Resolution No. \_\_\_\_\_ of the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2011; and that Thomas A. Salm and Tracey Mulcahey acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

STATE OF IOWA                    )  
  ) ss:  
JOHNSON COUNTY                )

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 2011, by Joseph T. Braverman, as President of Southgate Development Services L.L.C., and as Manager of Autumn Ridge Partners LC.

\_\_\_\_\_  
Notary Public in and for the State of Iowa

EXHIBIT A

Proposed Final Plat – Subject to Council approval

Resolution No. 11-153

**RESOLUTION APPROVING THE DEVELOPER'S AGREEMENT BETWEEN THE CITY OF NORTH LIBERTY AND AUTUMN RIDGE PARTNERS, LC THAT ESTABLISHES THE TERMS AND CONDITIONS UNDER WHICH AUTUMN RIDGE, PART THREE WILL BE DEVELOPED IN THE CITY OF NORTH LIBERTY, IOWA.**

WHEREAS, the terms and conditions for the development of Autumn Ridge, Part Three have been set forth in a Developer's Agreement between the City of North Liberty and Autumn Ridge Partners, LC, and

NOW, THEREFORE, BE IT RESOLVED by the City of North Liberty, Iowa, that the Developer's Agreement between the City of North Liberty and Autumn Ridge Partners, LC is approved for Autumn Ridge, Part Three North Liberty, Iowa.

Passed and approved this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF NORTH LIBERTY**

By: \_\_\_\_\_  
Thomas A. Salm, Mayor

ATTEST:

\_\_\_\_\_  
Tracey Mulcahey, City Clerk