

RETURNED

APR 15 2018

AMENDED
DEVELOPMENT AGREEMENT
FOR
BLUE SPRUCE ESTATES SUBDIVISION

14-376-0001 thru 0040
14-397-0040 thru 0070
14-493-0070 thru 0071

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into as of the 29th day of January, 2004, by the between CLINTON CITY, a Utah municipal corporation, hereinafter referred to as the "City", and M & D DEVELOPMENT, a Utah Limited Liability company, hereinafter referred to as the "Developer."

Recitals:

- A. Developer owns and is requesting 14.14 acres of land located within Clinton City be developed as a Residential Subdivision, which property is more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof (the "**Property**").
- B. Developer's Project shall be known as Blue Spruce Estates Subdivision, (the "**Project**") within the Residential (R-1-9) Zone of the City, which project is more particularly shown on the preliminary plat attached hereto as **Exhibit "B"** and by this reference made a part hereof (the "**Plat**").
- C. Developer has submitted and received approval of the Preliminary Plat for the Project with the stipulations outlined in this Agreement and other documents maintained at the City.
- D. Developer has indicated that dwellings within the Project will be of substantially similar design and with common features as indicated and attached hereto as **Exhibit "C"** and by this reference made a part hereof (the "**Landscape Plan**").
- E. Persons and entities hereafter developing the Property or any portions of the Project thereon shall accomplish such development in accordance with City's laws, rules and ordinances (except to the extent specific variances have been granted) (collectively the "**City's Laws**"), and the provisions set forth in this Agreement. This Agreement contains certain requirements for design and development of the Property and the Project in addition to those contained in City's Laws.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer hereby agree as follows:

- 1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into this Agreement.
- 2. **Vacant Property.** Developer shall maintain any vacant ground within the Project on which Developer has not commenced development free of debris and hazards to the general health, safety, and welfare of the public and residents of the

area. Except for those portions of the Project where development and construction are actively being pursued by Developer or any agents, contractors, employees, successors or assigns of Developer shall insure that the property is graded so that it is easy for vegetation to be cut. Weeds shall be cut and maintained to a height of no greater than ten (10) inches.

3. Development Plan. Developer shall develop the Project on the Property as described on the approved Preliminary Plat (the "**Development Plan**"). City must approve any change proposed for the Development Plan and said amendments or changes shall be recorded similar to this Agreement before becoming effective. Except for appeals that may be made from any decisions regarding the Project, the Clinton City Council shall receive a recommendation from the Planning Commission before acting upon any requested amendments or changes.

4. Plats and Site Plans. A subdivision plat the Project will be required for final approval by City. The Project receiving final plat approval must be developed in strict accordance with the approved final plat. Once approval has been granted for the final plat no amendments or modifications to the final plat shall be made by Developer without the written approval of City being first obtained. Nothing contained herein shall be construed as granting final plat approval to Developer for any portion of the Project.

5. Development of the Project. The Project shall be developed by Developer and/or Developer's successors and assigns in accordance with all of the requirements contained herein.

a. Full compliance with City Laws and Development Standards: The Project and all portions thereof shall be developed in accordance with City's Laws, the Development Plan and the approved Plat, required final plats and site plans, and this Agreement.

b. Zoning: The property is zoned Residential (R-1-9) and all requirements of the zone apply to this development unless specifically altered by this agreement.

~~c. Association: Every property owner in the Project shall be required to join the Wayment Acres Subdivision homeowners association and shall share equally in responsibilities for maintenance of common areas. Notwithstanding anything contained in this Agreement to the contrary, no unit owners within any phase of the Project shall be required to join any association nor be responsible to any association for any fees or assessments unless and until recordation of the final plat of such phase.~~

d. Phasing of the Project: Developer may develop the Project in various phases in accordance with City's Laws.

e. Final Plats: Developer shall prepare and submit to City, Developer's application for final plat approval for the entire subdivision or each phase thereof within the time limits provided for in City's Laws. The final plat for each phase of the Project shall be reviewed by City planning staff, Planning Commission and City Council as provided by City's Laws. Following approval

of the final plat and upon obtaining of the required signatures thereon, the final plat for the entire subdivision or each phase thereof, along with the appropriate covenants shall be recorded by City in the office of the Davis County Recorder, Developer shall pay all recording fees.

f. Subdivision Escrow Agreement, Subdivision Improvement Agreement: Developer shall create, establish, and enter into a Subdivision Escrow Agreement and Subdivision Improvement Agreement with City for the entire subdivision or each phase thereof in accordance with City Laws.

g. City's Right of Review: Subject to the terms of this Agreement, City has the right to approve the final plat and/or site plan for each phase of the Project together with any proposed changes therein in accordance with City Law and this agreement. City shall review Developer's application for final plat and/or site plan approval and related documents in accordance with the established procedures of City governing such reviews. Review shall be conducted for the purpose of determining whether plats, site plans and other documents submitted by Developer comply with the requirements of City and the terms of this Agreement and requirements set forth during approval of prior phases. If City determines that the plats, site plans or other documents do not comply, City will advise Developer in writing of the changes necessary to comply. All plats and site plans approved by City shall comply in all respects with City's Laws, unless modified by this Agreement.

h. Development Regulations/Vesting: The Property shall be developed in accordance with City's Laws which are in effect on the date of this Agreement, together with the requirements set forth in this Agreement and the approval process of the Plat, except when future modifications are required under circumstances constituting a compelling public interest by federal, state, county and/or City laws and regulations promulgated to protect the public's health, safety, and welfare or when City agrees, in writing, to grant modifications at the request of Developer. If local, state or federal law precludes compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended only as necessary to comply with such local, state and federal laws and the remainder of this Agreement shall remain in full force and effect to the extent that performance of the remaining provisions would not be inconsistent with the intent of this Agreement. Notwithstanding the above, all development on the Property or any portion thereof shall be subject to and shall comply with any future amendments or changes to the International Building Codes and other construction codes adopted by the State, American Association of State Highway Transportation Official Standards, and the American Waterworks Association Standards if and to the extent adopted by City and applicable to the Project. The parties agree that City is restricted in its authority to limit its police power by contract and that the limitations, reservations, and exceptions set forth herein are intended to reserve to City all of its police power that cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to City all such power and authority that cannot be restricted by contract.

i. Conditions, Covenants and Restrictions:

i. Prior to the recording of any final plat for the Project or any portion thereof, Developer shall prepare and submit to City for review and approval conditions, covenants and restrictions to provide standards equal to or greater than those outlined in this Agreement and to include but not be limited to the following:

(1) No building, structure or wall shall be erected, placed or altered on any lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the ~~Architectural Control Committee as to quality of workmanship and materials, harmony of the exterior with existing structures, and as to location with respect to placement on lot, topography and finish grade elevation~~ City.

~~(2) Rules for establishment and maintaining the Architectural Control Committee shall be established in the Conditions, Covenants and Restrictions (CC&R's) for the Project.~~

(3) Minimum architectural standards are to be not less than:

- ~~a. The CC&R's shall outline the benefits of the common area within the development in such a way that homeowners will know that the City will not take over maintenance of these areas at any future date.~~
- b. Only single-family dwellings and accessory buildings, as allowed by the Clinton City Zoning Ordinance shall be allowed within the Project.
- c. The exterior front and side elevations of any dwelling within the Project shall consist of 100% brick, rock (synthetic permissible) or other cementous material or a combination of these materials.
- d. Detached garages within the Project shall be aesthetically similar to the dwelling on the lot in materials and color of construction.
- e. The remaining side of the structures shall be, at a minimum vinyl siding or other low maintenance material.
- f. All eaves, soffits, and fascia shall be aluminum.
- g. Fencing around the project shall be as established during the approval process however a six-foot vinyl fence shall be placed between the landscaped common area and adjacent yards along 1800 North.
- h. All dwellings and accessory buildings shall have a minimum roof pitch of 5/12.
- i. Landscaping shall be as outlined in the approved landscaping plan.

- j. The developer shall provide a front yard, from the front of the house out to the curb, landscaping package, including sprinklers to be installed prior to occupancy or as soon there after if weather is a factor but no less than 9-months after occupancy.
- k. Mailboxes shall be common in design and installed by the developer. Mailboxes shall be constructed two in a common stand and located at the property line thus serving two dwellings with one stand, cul-de-sacs shall be served by a common mailbox that serves all lots in the cul-de-sac.
- l. Except the area outlined in Exhibit "C", the landscape plan Developer shall install two trees in the park strip (park strip trees) per street frontage on each lot. The City shall approve the species of the tree; tree size shall be 2" caliper at planting.
- m. Street profile shall be modified from the city standard with a 6-foot park strip, based upon review and approval.
- n. The minimum permitted dwelling size, finished living area excluding any garage, carport, porch or similar area shall be as follows:
 - (1). In a one-story slab on grade or crawl space dwelling the finished square footage shall not be less than 1500 square feet.
 - (2). In a rambler type dwelling, with a basement the above grade finished square footage shall not be less than 1200 square feet.
 - (3). In a two-story dwelling, the ground story level shall not be less than 950 square feet of finished area and the combined area of the ground story level and story above the ground-story shall total not be less than 1500 square feet of finished area.
 - (4). In a multi-level dwelling, the combined finished square footage above ground level shall not be less than 1300 square feet. The overall footprint of occupiable space shall not be less than 950 square feet. This is not to include any area at or below the garage level, the garage, or other designated storage area as required by the ordinances.

(4) Maintenance Requirements

- a. ~~All landscaping as outlined in Exhibit "C", the landscape plan shall be maintained by the homeowners association and in the event of removal, death or destruction of any landscaping the association shall replace vegetation with like species and size~~

~~as stipulated in the landscaping plan. In the event that the homeowner's association does not maintain or re-landscape as required the City, after written notice to the homeowner's association or homeowners within the association may, at its sole discretion re-landscape and in order to recoup costs, lean the respective properties within the homeowner's association for the equal portion of the cost of re-landscaping, materials, labor, plus reasonable administrative and legal fees.~~

b. All park strip trees outside of the area indicated in Exhibit "C", the landscape plan shall be maintained by the homeowners whose lot has the frontage associated with the trees. In the event of removal, death or destruction of any landscaping the homeowner shall replace the park strip trees with like species, size shall be two-inch caliper or larger. In the event that the homeowner does not re-landscape as required the City, after written notice to the homeowner, may at its sole discretion, re-landscape and lean the respective property for the cost of landscaping, materials, labor, plus reasonable administrative and legal fees.

~~e. The homeowner's association shall maintain all fencing, play areas, and common area appurtenances. All common area fencing, play areas and common area appurtenances shall be maintained in a manner to keep them serviceable and safe and shall be replaced with like items when removal due to age or wear and tear is necessary. In the event that the homeowner's association does not maintain fencing, play areas, and common area appurtenances as required the City, after written notice to the homeowner's association or homeowners within the association may, at its sole discretion accomplish necessary maintenance and in order to recoup costs, lean the respective properties within the homeowner's association for the equal portion of the cost of maintenance materials, labor, plus reasonable administrative and legal fees.~~

d. Construction Standards and Requirements: All construction shall be conducted and completed in keeping with the architectural requirements outlined in this agreement, State and City building codes, City's Laws and the terms of this Agreement.

6. City Obligations: Subject to Developer complying with all of City's Laws and the provisions of this Agreement, City agrees to maintain the public improvements/utilities within the development once dedicated to City following satisfactory construction and warrantee thereof by Developer or its assigns and acceptance of the same by City. The City also agrees to provide standard municipal services to the Project including police and fire protection subject to the payment of all fees and charges levied by City.

7. **Attorneys Fees:** In the event of any lawsuit between the parties hereto arising out of or related to this Agreement, or any of the documents provided for herein, the prevailing party or parties shall be entitled in addition to the remedies and damages, if any, awarded in such proceeding, to recover their costs and reasonable attorneys fees.

8. **Termination:** Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the Project, including all phases thereof, is not completed within five (5) years from the date of this Agreement or in the event Developer does not comply with City's Laws and the provisions of this Agreement, City shall have the right, but not the obligation at the sole discretion of City, to terminate this Agreement and/or to not approve additional phases for the Project. City may effect such termination by giving written notice of intent to terminate to Developer set forth herein. Whereupon, Developer shall have sixty (60) days during which Developer shall be given an opportunity to correct any alleged deficiencies and to take appropriate steps to complete the Project. If Developer fails to satisfy the concerns of City with regard to such matters, City shall be released from any further obligations under this Agreement and the same shall be terminated.

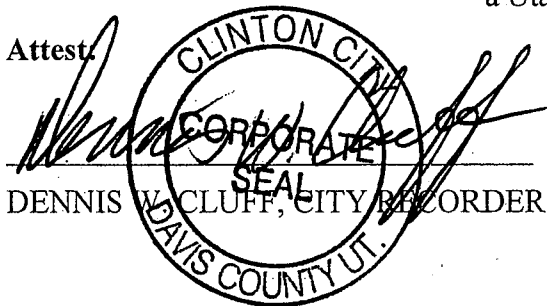
9. **Amendment:** This Agreement may be amended only in writing signed by the parties hereto or in the event that the developer has completed the Project, the appropriately elected officers of the homeowner's association and the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

City:

CLINTON CITY CORPORATION
a Utah municipal corporation

Attest:



MAYOR L. MITCH ADAMS

Home Owners Association Representative

Denise Hadfield
2022 N 2530 W, Clinton, UT 84015

EXHIBIT "A"

**PROPERTY DESCRIPTION
BLUESPRUCE ESTATES SUBDIVISION**

A part of the Northwest Quarter of Section 28, Township 5 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at the Center of said Section 28: Thence North $89^{\circ}57'46''$ West along said line 666.32 Feet; Thence North $00^{\circ}01'46''$ East 1323.32 Feet; Thence South $89^{\circ}58'33''$ East 528.05 Feet; Thence South $59^{\circ}58'46''$ East 160.02 Feet to the West boundary line of the Bridges Phase 2 and 1; Thence South $00^{\circ}02'39''$ West along said West line 1243.47 Feet to the Point of Beginning.

Contains 20.12 acres

RESOLUTION No. 10-18

A RESOLUTION AMENDING THE 2004 BLUE SPRUCE ESTATES
SUBDIVISION DEVELOPMENT AGREEMENT BY REMOVING THE
HOA AND COMMON AREA REQUIREMENTS.

WHEREAS, Clinton City entered into a Development Agreement with M&D
Developers, LLC for Blue Spruce Estates Subdivision on January 29, 2004; and,

WHEREAS, this Development Agreement included the establishment of a HOA and a
landscaped area along 1800 North; and,

WHEREAS, the property owners of this subdivision and HOA wish to rescind the HOA
and landscape requirements from the Development Agreement; and,

WHEREAS, the HOA has been non-functional for many years; and,

WHEREAS, the landscaped area is located on an easement on private property, whose
two property owners wish to incorporate the landscaped area within their back yards; and,

WHEREAS, Clinton City agrees this action would be the best way to preclude an un-
maintained landscaped area adjacent to 1800 North.

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF
CLINTON, DAVIS COUNTY, UTAH** as follows:

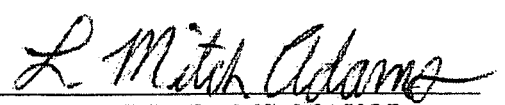
1. That the 2004 Blue Spruce Estates Subdivision Development Agreement is hereby
amended and approved by the City in the form marked Exhibit "A", attached
hereto, and by reference made a part of this Resolution.
2. That the Mayor and City Recorder are authorized and directed to execute this
Amendment on behalf of the City.
3. The City will allow a personnel gate on each of the three affected properties to
access the park strip and sidewalk on 1800 N.
4. This Resolution shall take effect immediately upon passage, adoption and signing.

Adopted by the Clinton City Council this 13th day of March, 2018

**CLINTON CITY
A MUNICIPAL CORPORATION**

ATTEST:


DENNIS W. CLUFF, RECORDER


L. MITCH ADAMS, MAYOR

Posted: 3/14/18