

Springville City Corporation
50 South Main
Springville, Utah 84663

ENT 133762:2006 PG 1 of 9
RANDALL A. COVINGTON
UTAH COUNTY RECORDER
2006 Oct 10 11:43 am FEE 0.00 BY SDH
RECORDED FOR SPRINGVILLE CITY CORPORATIO

**RESIDENTIAL DEVELOPMENT AGREEMENT
DEVON GLEN SUBDIVISION – PHASES 2A & 2B**

This **RESIDENTIAL DEVELOPMENT AGREEMENT** is entered into as of the 5th day of September, 2006 by and between Devon Glen L.L.C., (hereinafter referred to as "Developer") located at 308 East 4500 South, Murray, Utah 84107, as Developer of certain real property located in Springville, Utah and more particularly described on Exhibit "A" attached hereto and by reference incorporated herein, on which Developer proposes the development of residential homes entitled Devon Glen Subdivision (hereinafter referred to as the "Project"), and **SPRINGVILLE CITY**, a municipality of the State of Utah (hereinafter referred to as "City") located at 50 South Main, Springville, Utah 84663.

RECITALS

A. Developer owns real property located in Springville City, Utah County, Utah, located at approximately 600 West 300 North, established by the Plat plan in Exhibit "A" that is attached and incorporated by reference ("the Property").

B. Developer is willing to design and develop the Property in a manner that is in harmony with and intended to promote the long-range policies, goals and objectives of the City's general plan, zoning and development regulations, as more fully set forth below. The Project, as currently anticipated, consists of two sub-phases in the form, design, and plan set forth on the approved preliminary plat attached as Exhibit "B" hereto. The City has issued to Developer final plat approval for Phases 2a and 2b of the Project and a copy of the final phases are attached hereto as Exhibit "C."

C. The City, acting pursuant to its authority under Utah Code Annotated, §10-9-101, *et seq.*, and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations has made certain determinations with respect to the proposed Project, and, in the exercise of its legislative discretion, has elected to approve this Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms as more fully set forth below, Developer and the City agree to the following:

TERMS

1. **Definitions.**

When used in this Agreement, each term shall have the meaning set forth below or elsewhere in this Agreement unless such meaning is clearly precluded by the context in which the term is used.

(a) "City" means Springville City, a municipality and political subdivision of the State of Utah.

(b) "Developer" means Devon Glen L.L.C., and/or, as applicable, his successors and assigns.

(c) "Property" means the real property described in Exhibit "A" that is incorporated by reference.

(d) "Existing Land Use Regulations" means those Land Use Regulations in effect as of the date of this Agreement, including any modifications that are approved pursuant to the terms of this Agreement as set forth herein.

(e) "Land Use Regulations" means those laws, statutes, ordinances, resolutions, codes, rules, regulations, official policies and actions of the City, including approvals and permits of every kind and character, governing the use, density and intensity of the uses of land within the City, and the design, improvement, and public works construction standards and specifications applicable to the development of land within the City. The term "Land Use Regulations" does not include regulations relating to the conduct of businesses, professions and occupations generally, such as applications for business licensing, taxes and assessments other than development exactions, regulations for the control and abatement of nuisances, encroachment and other permits and the conveyances of rights and interests that provide for the use of or entry upon public property, and any exercise of the power of eminent domain.

2. **Improvements**

This is a formal agreement between the Developer and the City for public facilities service to be provided to and within the Project (the "Improvements"). Developer understands, acknowledges and agrees that all public facilities including but not limited to water lines, sewer lines, electric lines, storm drain lines, roads, and other facilities necessary to service the Project must be installed at Developer's sole cost and expense before the City will provide service to the Project. Developer agrees to construct the required Improvements in accordance with Springville City Codes and the Springville City Standard Specifications and Drawings.

3. **Materials**

Developer will furnish all materials, supplies, tools, equipment, labor, and other services necessary for construction and completion of the Project as described herein, excluding primary power infrastructure. City will provide all materials, supplies, tools, equipment, labor, and other services necessary for construction and completion of primary power service.

4. **Commencement**

Developer will not commence the Improvements on the Project until all authority required by Springville City Code is received. Upon the City Council's final subdivision plat approval for a phase of the Project and the City's approval of construction of the Improvements for such phase, Developer shall have one (1) year to complete Improvements for such approved phase. If the Improvements are not completed within such one (1) year periods, a public hearing will be scheduled and the City Council may declare the performance guarantee forfeited if the improvements or corrections are not complete.

5. **Inspections**

Developer is responsible to request all inspections necessary under the Springville City Code. Developer understands and agrees that failure to request a proper inspection may result in the removal of Improvements at the sole cost and expense of Developer. City shall perform inspections as soon as possible following the applicable request in accordance with its inspection policy.

6. **Ownership**

Developer shall retain ownership of Improvements constructed for the Project and shall remain solely responsible for all necessary maintenance, repairs and replacements of the Improvements prior to final approval of the work by the City. Upon completion of the required Improvements and after acceptance of the Improvements by the City, Developer shall assign and convey to the City all of Developer's right, title and interest in the Improvements, and Developer shall have no further interest in the Improvements. Developer shall be responsible to repair or replace defective or damaged Improvements during the guarantee period (as set forth in Section 8 below). Thereafter, the City shall be responsible to maintain, repair and replace the Improvements.

7. **Connecting to Improvements**

Developer agrees that connections to the Improvements that occur before: (1) The City accepts those Improvements and (2) Developer assigns and conveys such Improvements to the City, are made at the Developer's risk. The City shall not issue use and occupancy permits for residential units within the phase until such time as Developer assigns and/or conveys such Improvements to the City.

8. **Bonds**

Developer acknowledges and agrees that a bond is required for the Project. Developer will furnish to City a Performance Bond in an amount required by Springville City but not to exceed one hundred twenty five percent (125%) of the engineer's estimate price for faithful completion of the Improvements. The engineer's estimated price is attached as Exhibit "D". If the Project is developed in phases, the performance bond shall be furnished with respect to each plat in the amount for the Improvements in such plat at the time of recordation of each such plat. The Bond may be released with respect to each plat in accordance with current City policy with the exception of a durability retainage. A retainage of not less than ten percent (10%) of the Bond shall be held to guarantee the durability of the Improvements in each plat for two (2) years after the acceptance by the City of the Improvements with respect to each plat.

9. **Reimbursable Improvements**

The City requires larger size Improvements than are necessary to service the Project only.

- (a) *Water.* Developer has determined that a water line of eight inches (8") in diameter is sufficient to provide water service to the Property. City has determined that a water line of ten inches (10") should be installed for portion of the Project. The parties agree that the cost of upsizing portions of the water line to the size specified herein is Thirteen Thousand One Hundred Fifty Dollars (\$13,150.00).
- (b) *Payment.* Any amounts set forth herein shall be paid to Developer by City within thirty (30) days after final acceptance of the Water line by the City. If the Developer does not complete the line and receive final approval of the Improvement within one (1) year of the execution of this Agreement, City will not be responsible to pay any upsizing costs to Developer.

10. **Line Extension**

The parties hereto acknowledge and agree that certain off-site extensions of utilities may be needed in order for the Development to proceed. Developer desires to commence the Project prior to the time City would otherwise install these improvements. Therefore, Developer agrees to install off-site extension of utilities at Developer's sole cost. Developer will dedicate these utilities to the City as part of the Project after they have been installed and inspected.

11. **Water Shares**

Developer agrees to provide City with one share of Springville Irrigation Company first class water right, or its equivalent, for each acre developed prior to recording of any plat. Developer shall tender to the City 10.77 shares or equivalent for Phase 2a of the Project and 16.67 shares or equivalent for Phase 2b. The total amount of water shares to be tendered with the development of the Project is 54.58 shares, or its equivalent.

12. **Electrical Extension Fees**

Developer agrees to pay an electrical extension fee as calculated by Springville City and attached as Exhibit "E."

13. **Impact Fees**

Developer acknowledges that the City is currently considering adoption of, or revision to, water, sewer, park road, storm drain and public safety impact fees ("Impact Fees"). At the time that Developer obtains building permits for residential units within the Project, Developer agrees to pay any Impact Fees in accordance with then applicable City ordinances either by direct payment or by credit/offset for amounts otherwise reimbursable to Developer pursuant to Section 9 above.

14. **Recording Fees**

Developer agrees to pay recording fees of Thirty Dollars (\$30.00) per Vellum and an additional One Dollar (\$1.00) per lot within the Project.

15. **Copies**

Standard photocopies made by the City shall be charged to the Developer at Twenty Cents (\$0.20) per sheet. The City further requires a large (24"x36") and one small (11"x17") copy of the recorded plat. Developer may also request additional copies for Developer's own use. Copies are Four Dollars (\$4.00) for large copies and Two Dollars (\$2.00) for small copies.

16. **Conditions, Covenants and Restrictions (CC&R's)**

CC&R's shall be provided by the Developer. Recording fees are including in the recording fees for Plat A set forth in paragraph 14 above.

17. **Landscaping**

Developer agrees to complete all landscaping within the dedicated open spaces and in accordance with Springville City code and specifications. The landscaping and irrigation system will be installed prior to final inspection with respect to each plat. A landscaping plan has been attached as Exhibit "F."

18. **Street Trees**

Developer agrees to provide street trees in accordance with the approved landscaping plan for Phases 1, 2A and 2B. In lieu of the Developer installing, maintaining and providing a warranty on the trees, Developer desires to pay \$295.00 per street tree shown on the approved landscape plan. Upon payment, Springville City will be responsible to purchase, install and maintain street trees for the first two years after planting. Street trees will be planted during the appropriate planting season after at least 80% of each neighborhood is built.

19. **Point Source Delivery Fee**

In order to access the irrigation company infrastructures for storm drain purposes. Developer agrees to pay a Point Source Delivery fee in the amount of \$2,000.00 per acre of residential development for Phase 2b. This fee shall be forwarded to the irrigation company for improvements necessary to accept Development's storm drain flows into their canal and drainage system. While Developer disagrees with the fee, all amounts set forth herein have been paid to the irrigation company.

20. **Phasing**

The Project shall be completed in a total of two sub-phases being called Devon Glen Phase 2a and 2b. Developer agrees to install all Improvements as set forth on the plat for Phase 2a within one (1) year of this Agreement. Within twelve (12) months of this Agreement,

Developer must submit a completed application to commence the next subsequent plat (Phase 2b).

21. **Westfields Overlay Zone Participation/Minimum Requirements**

In accordance with City ordinance, the following are minimum standards for single-family detached dwellings developed in the Westfields.

- (a) The same elevation may not be used on the adjacent two lots on either side of the subject property or the five lots across the street from the subject property on any block length.
- (b) No garage shall occupy more than 40% of the total building frontage. This measurement does not apply to garages facing on a carriage way, or setback at least 20 feet from the front of the house or that are side loaded.
- (c) In any lot with street frontage of 60' or less that includes a carriage way, all required parking shall be accessed from the carriage way. The required parking shall be setback a minimum of five feet from the rear property line.
- (d) Front loaded garages on lots with street frontage of 60' or less must be setback a minimum of 20' from the required front setback of the house.
- (e) Single-family detached houses may have a roof pitch of no less than 5/12.
- (f) All walls which face a public street must contain at least 25% of the wall space in windows or doors.
- (g) Primary entrances shall face the public street and sidewalk.
- (h) Windows shall not be flush with exterior walls. They shall be recessed or treated with a trim.
- (i) The use of materials must be consistent on the front and side for houses on interior lots and all sides of the house for corner lots.

Developer has received a density bonus in connection with this Westfields Overlay Zone Development. The density bonus is nine point zero five percent (9.05%). In return for participating in the Westfields Overlay Zone, Developer has agreed to provide certain amenities above the minimum requirements of the code. These amenities are:

- (a) **Linear Park Space** - A seven percent (7%) bonus is awarded for linear park space along Hobble Creek. This park space comprises 5.44 acres and will be fully developed in accordance with the Landscape Plan in Exhibit F.

(b) Upgraded Building Materials - A two point zero five percent (2.05%) bonus will be awarded for upgraded building materials. In order to receive this bonus, Developer has agreed to place 25% of the gross facade of the homes installed in brick or stone. This will be placed on a minimum of 41% of the homes within the Development.

22. Variations Approved

No variations have been approved for this Development.

23. Streets and Bridges

(a) In conjunction with the approval of the development, Developer agreed to install two inches asphalt at a width of 24 feet from the Development to 400 South in order to accommodate the increased traffic from the Development. Due to subsequent development and discussions with other developers, Developer agrees to pay Twenty Four Thousand Seven Hundred Seventy Eight Dollars (\$24,778.00) for the remaining portion of necessary improvements. Payment of the above amount will satisfy all obligations Developer for the approval requirement of installing asphalt on 950 West.

(b) Developer agrees to pay one-half of the cost of the installation of a bridge across Hobble Creek in Phase 2b of the Development. The agreed upon amount for the Developers portion of the bridge cost is One Hundred Twenty Five Thousand Dollars (\$125,000). The City will retain the fees and complete the construction of the bridge when development occurs on the north side of Hobble Creek.

24. Notices

Any notice which is required or which may be given pursuant to this Agreement is sufficient if in writing and sent to a party by certified or registered mail, postage prepaid, addressed as shown below:

Developer:

Devon Glen, LLC
308 East 4500 South Suite 200
Murray, UT 84107

City:

Mayor
Springville City
50 South Main Street

A party may change the address for notice to it by giving a notice pursuant to this paragraph.

25. Indemnity

Developer agrees to indemnify and hold City harmless, including reasonable attorney fees, for any all claims, demands, actions or liability whatsoever resulting from any negligent or defective construction of any Improvements constructed by the Developer or its assigns during

construction, and from completion of construction until a time two (2) years after the acceptance of the Improvements by the City. Developer further agrees to indemnify the City, including reasonable attorney fees, from any and all claims, demands, actions, or liability whatsoever resulting from liens or claims on the Improvements by any persons providing materials and/or services related to such Improvements.

26. **Documents**

Developer agrees to provide City with a copy of relevant records and documents relating to the Improvements as requested by the City.

27. **Insurance**

Developer agrees to obtain and maintain general public liability insurance and property damage insurance with the City named as an additional insured, at the rate of One Million Dollars (\$1,000,000) for each occurrence and Two Million Dollars (\$2,000,000) aggregate throughout the construction period.

28. **Other Laws**

Developer may be responsible to fulfill other federal, state and local laws, including, but not limited to Workers Compensation and Occupational Safety and Health Administration regulations. Developer agrees to comply with all laws during construction of the Project and Improvements.

29. **Future Action**

Nothing in the Agreement shall limit the future exercise of the police power by City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances, and regulations after the date of this Agreement; provided, however, that subject to Developer's performance of its obligations hereunder, Developer shall have the vested right to develop the Project.

30. **Assignment**

Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of City, which shall not be unreasonably withheld.

31. **Entire Agreement**

This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto.

32. **Attorney Fees**

If this Agreement or any of the exhibits hereto are breached, the party at fault agrees to pay the attorney fees and all costs of enforcement of the non-breaching party.

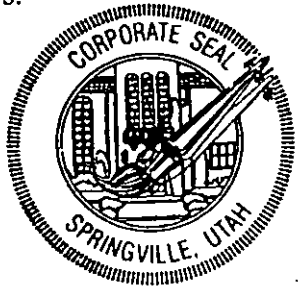
33. **Severability**

Should any portion or paragraph of this Agreement be declared invalid or unenforceable, the remaining portions or paragraphs of the Agreement shall remain valid and enforceable.

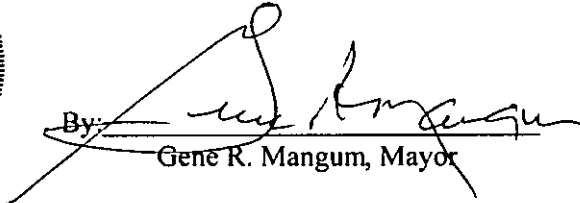
34. **Modification**

Modification of this Agreement shall only be effective if agreed upon, in writing, and approved by the City Council and the Developer.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers.




SPRINGVILLE CITY

By: 
Gene R. Mangum, Mayor

Attest:


CITY RECORDER

DEVELOPER


By: Michael Brodsky

By: _____

Its: _____