

When recorded, return to:

Oakwood Homes of Utah, LLC
Attn: Mike Stewart
206 East Winchester Street
Murray, Utah 84107

Ent 137118 Bk 324 Pg 1299
Date: 12-JAN-2016 10:20:17AM
Fee: \$25.00 Check
Filed By: CB
BRENDA NELSON, Recorder
MORGAN COUNTY
For: OAKWOOD HOMES OF UTAH LLC

**SECOND AMENDMENT TO THE WHISPER RIDGE AT SNOW CANYON
DEVELOPMENT AGREEMENT**

This Second Amendment to the Whisper Ridge at Snow Canyon Development Agreement (this "**Amendment**") is made and entered into as of this 1st day of December, 2015, by and between MORGAN COUNTY, a political subdivision of the State of Utah (the "**County**"), and OAKWOOD HOMES OF UTAH, LLC ("**Oakwood**"). The County and Oakwood may be referred to individually as a "**Party**" or collectively as the "**Parties**."

RECITALS

A. Whisper Ridge at Snow Canyon (the "**Project**") is a residential community located in Morgan County, Utah.

B. The Project was initially approved for development in 2007 pursuant to that certain Whisper Ridge at Stone Canyon Development Agreement dated July 27, 2007 (the "**Development Agreement**"), and recorded on August 6, 2007, as Entry No. 108742.

C. The original "Developer" in 2007 was an entity known as Whisper Ridge Development, LLC, which thereafter ceased development when the Project was taken over by Bank of American Fork (the "**Bank**"). The Bank subsequently sold the Project to Henry Walker Construction of Northern Utah, LLC ("**Henry Walker**").

D. The County and Henry Walker entered into a First Amendment to the Development Agreement (the "**First Amendment**"), which was recorded in the Morgan County Recorder's Office on January 22, 2014, as Entry No. 131288. No other amendments to the Development Agreement have been signed or recorded.

E. Oakwood is now the owner of most, but not all, of the remaining lots in the Project that have not been built out with homes. Oakwood and the County have agreed for Oakwood to perform certain obligations regarding the Project, as set forth below in this Amendment, with the understanding that this Amendment will be recorded against, and run with the land of, Phase 2 of the Project.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the Parties do hereby covenant and agree as follows:

1. Recitals. The above Recitals are incorporated herein by reference.
2. Oakwood Responsibilities. Oakwood agrees to perform and satisfy the following obligations regarding the Project:

- a. Street Islands. Pursuant to a separate agreement, after the County has removed the street island improvements in the Project that are interfering with the County's snow removal services, emergency access and public safety, Oakwood will pay to have new paving and new curb/gutter installed. Landscaping of the remaining center island (the one being reduced in size) will be completed prior to the commencement of the Phase 2 development improvements, with the Developer to determine the appropriate landscaping plan.

- b. Open Space Landscaping. Section 3.1.4 of the Development Agreement provides for certain areas of the Project "*to be preserved as improved open space and/or natural open space . . . as set forth in the Concept Plan.*" Neither Oakwood nor the County have been able to locate the "Concept Plan" referenced in the Development Agreement. Accordingly, the Parties agree that the open space areas to be preserved/improved are the areas designated as "open space" on the approved plats. With respect to such open space areas, Oakwood's obligations are as follows:

Open Space Parcel A: The open space requirements of Parcel A have been completed to the County's satisfaction. Parcel A was originally intended to be public open space; however, the Parties acknowledge that Parcel A is owned by the homeowners association of this Project (the "HOA") and may continue to be owned by the HOA as private open space. Accordingly, the County and Oakwood both acknowledge that the HOA may place "private property - no trespassing" signs in appropriate locations to protect the HOA's rights.

Open Space Parcel B: The trail for Parcel B has already been installed; however, the weeds will be cleared and Oakwood will install native grass to improve the appearance. No sprinkler system is required. Oakwood will reasonably seek to complete this work for the Parcel B trail prior to the commencement of the Phase 2 development improvements.

Open Space Parcel C: For Parcel C, Oakwood will install landscaping similar to what is depicted in the Preliminary Landscape Plan included with the First Amendment for this area; provided, however, that no water feature is required and Oakwood has the right to determine the final landscape materials and design, subject to the County's approval (which approval will not be unreasonably withheld). In addition, Oakwood has the right to construct and install an underground booster/pump station and other necessary utilities in Parcel C. Oakwood will reasonably seek to complete this work for Parcel C upon completion of the Phase 2 development improvements.

Open Space Parcel D: Oakwood has no obligations regarding Parcel D. The original developer agreed to dedicate Parcel D to the HOA, but the dedication was not completed. The original developer (or its principal) owns Parcel D. As a result, Oakwood cannot dedicate it to the County or the HOA. Because Oakwood does not own or control Parcel D, Oakwood has no obligations regarding it.

Open Space Parcel E: Oakwood has no obligations regarding Parcel E.

3. No Other Landscaping/Open Space Responsibilities. Except for the obligations expressly set forth above, no other conditions of approval or requirements regarding landscaping or open space improvements shall be imposed on Oakwood for Phase 2 of the Project.

4. Lot Owner Responsibilities. The Parties agree that the owners of each Lot in the Project are responsible for the following obligations regarding their respective Lots: (i) maintaining their own landscaping; and (ii) detaining any and all water/storm water on their own Lots to prevent flooding of, or water damage to, adjacent or nearby Lots.

5. Agreement Runs with the Land. Oakwood makes no representation or warranty that it will be the party that develops or improves Phase 2 of the Project; however, Oakwood agrees that the obligations set forth in this Amendment shall run with the land and be binding on the party or entity that does develop Phase 2 in the future if Oakwood decides to sell or convey its holdings in this Project to a different party or entity.

6. Effect of Amendment. Except as expressly modified by this Amendment, the Development Agreement (as amended by the First Amendment) shall remain in full force and effect. In the event of any conflict between this Amendment and the Development Agreement, the provisions of this Amendment shall govern.

7. Representations. Each Party represents and warrants to the other Party as follows:

a. It is authorized to execute this Amendment and perform its obligations under this Amendment, and that such execution and performance shall not constitute a breach or violation of any agreement, law, regulation, court order, or right of any third party;

b. It shall take all actions, and execute all documents, necessary to effectuate the purposes of this Amendment and shall not take any action to frustrate, prevent or otherwise hinder the performance or purpose of this Amendment; and

c. That it is not relying on any claim or representation of any other party, except those expressly set forth herein.

8. Miscellaneous.

a. No change or modification to this Amendment shall be valid or binding upon the Parties unless such change or modification is in writing and is signed by the Parties.

b. This Amendment shall apply to, be binding upon, and inure to the benefit of the Parties and their respective heirs and successors in interest.

c. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties may exchange counterpart signatures by facsimile, scanned email document, or other electronic format that accurately duplicates documents. Any such copied version shall have the same binding effect as an original signature.

d. This Amendment may be recorded against the Phase 2 property owned by Oakwood within the Project, described in Exhibit "A" hereto.

Wherefore, the Parties have duly executed this Amendment effective as the date set forth above.

OAKWOOD HOMES OF UTAH, LLC

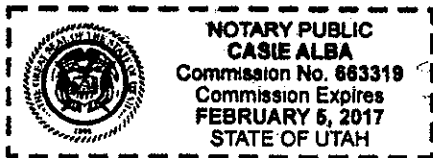
By: [Signature]
Printed Name: Glen K Lent
Title: V.P. of Land

MORGAN COUNTY

By: [Signature]
Printed Name: Rhogan Wilde
Title: Council Chair

STATE OF UTAH)
County of Salt Lake) :ss.

The foregoing instrument was acknowledged before me this 1st day of December, 2015, by Glen Lent as the VP of Land of Oakwood Homes of Utah, LLC.



[Signature]
Notary Public

STATE OF UTAH)
)
) :ss.
County of Morgan)

The foregoing instrument was acknowledged before me this 18 day of December 2015, by logan wilde as the Council Chau of Morgan County.



GINA GRANDPRE
Notary Public
State of Utah
Comm. No. 683181
My Comm. Expires May 27, 2019

Gina Grandpre
Notary Public

EXHIBIT "A"

This Amendment may be recorded against Phase 2 of the Whisper Ridge at Stone Canyon project in Morgan County, Utah.

BOUNDARY DESCRIPTION

A parcel located in the Southwest Quarter of Section 22 and the Northwest Quarter of Section 27, Township 5 North, Range 1 East, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at the South Quarter Corner of said Section 22, and running thence along the Center of Section Line of said Section 27, $S00^{\circ}13'58''W$ 109.98 feet to the Northerly Boundary Line of Whisper Ridge at Stone Canyon Phase 1 PRUD, as recorded in the Morgan County Records Office, Entry No. 108750, Book 251, Pages 698-699; thence, along said Northerly Boundary Line, the following five (5) courses: (1) $N89^{\circ}11'57''W$ 515.44 feet, (2) Northwestarily 11.60 feet along the arc of a 165.50 foot radius curve to the left, chord bears $N09^{\circ}10'55''W$ 11.59 feet, (3) Northwestarily 37.21 feet along the arc of a 134.50 foot radius curve to the right, chord bears $N03^{\circ}15'46''W$ 37.10 feet, (4) $S84^{\circ}21'25''W$ 96.19 feet, (5) $S73^{\circ}21'05''W$ 102.38 feet; thence $N00^{\circ}35'27''E$ 100.44 feet to the South Line of said Section 22; thence, along said South Line, $N89^{\circ}24'33''W$ 607.26 feet; thence $N00^{\circ}35'27''E$ 1963.04 feet; thence $S82^{\circ}00'00''E$ 113.00 feet; thence $S67^{\circ}00'00''E$ 102.00 feet; thence $S79^{\circ}36'39''E$ 374.28 feet; thence $S62^{\circ}24'00''E$ 237.34 feet; thence $S00^{\circ}10'28''E$ 409.59 feet; thence $S89^{\circ}59'47''E$ 515.78 feet to the Center Line of said Section 22; thence, along said Center Line, $S00^{\circ}04'30''W$ 1333.90 feet to the Point of Beginning. (See sheet 2 for Basis of Bearing).

Contains: 51.576 Acres with 50 Lots and 3 Parcels.