

When recorded, return to:

KELLY & BRAMWELL, P. C.  
11576 SOUTH STATE STREET, BLDG. 1002  
DRAPER, UT 84020

### TRI-PARTY DEVELOPMENT AGREEMENT

This Tri-Party Development Agreement (this "Agreement") is made and entered into by and among **Black Sand Development, LLC**, a Utah limited liability company (hereinafter "Black Sand"); **Autumn View Properties Limited Partnership** by its General Partner, **Sunset Mountain Management, LLC**, a Utah limited liability company ("Autumn View"); and **Oakwood Homes of Utah, LLC**, a Delaware limited liability company ("Oakwood"), for the purposes of modifying, clarifying, and confirming the terms of their agreements related to their currently owned and/or under-contract properties located in and/or adjacent to the Vintaro Planned Community in American Fork City, Utah, and Autumn View Properties in American Fork City, Utah.

### RECITALS

WHEREAS, Black Sand owns certain parcels of property located in American Fork, Utah County, Utah ("Black Sand Property").

WHEREAS, some of the parcels comprising the Black Sand Property have been sold or are under contract to be sold to Oakwood.

WHEREAS, Autumn View owns property adjacent to and/or nearby the Black Sand Property (the "Autumn View Property").

WHEREAS, the parties have previously entered into certain agreements and/or granted certain easements to coordinate and facilitate the development and improvement of their respective properties, and have been working with American Fork City to obtain approval of their respective projects.

WHEREAS, the parties have learned that there are certain mutually beneficial and cost cutting ways their respective properties can assist in the development of the others.

WHEREAS, the parties to this Agreement wish to clarify and confirm their agreements to cooperate one with another in regards to certain responsibilities and conditions related to their respective properties.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Affected Properties. Legal descriptions of the parties' properties that are affected by this Agreement are attached hereto collectively as Exhibit "A." This Agreement shall be recorded against the properties described in Exhibit "A."

2. Original Storm Basin Location. The original Storm Drain Detention Basin was designed to be located adjacent to the west side of the right-of-way for the roadway known as 860 East. The parties, together with the City, have determined that that subject Storm Drain Detention Basin will be constructed further to the west as a Temporary Retention/Detention Basin as shown in Exhibit "B" hereto.

3. Termination of Original Storm Basin Easement. Autumn View previously granted a recorded Easement in favor of Black Sand for the original location of the Storm Drain Detention Basin, which Easement was recorded with the Utah County Recorder's Office on March 6, 2015, as Entry No. 18311:2015 (the "Original Easement"). Because the Detention Basin will be constructed in a different location, as and where depicted in Exhibit "B" hereto, the Original Easement shall be terminated and canceled, and Autumn View shall grant a new Easement for the Detention Basin for the location depicted in Exhibit "B" hereto. Autumn View and Black Sand shall execute and record with the Utah County Recorder's Office a "Termination of Easement" instrument, giving record notice of the termination of the Original Easement.

4. Grant of New Storm Basin Easement - Temporary Facility. Concurrently with the execution of this Agreement, Autumn View shall execute and deliver to American Fork City a new Easement for the construction and operation of a storm drain detention basin in the form attached hereto as Exhibit "C" (the "New Easement"). The New Easement shall provide for Oakwood and Autumn View to have the right to construct and maintain a temporary storm drain detention/retention basin (the "New Basin") with a minimum storage capacity of 73,022 cubic feet of water. Autumn View is responsible for payment of all costs and expenses associated with construction of the New Basin. Oakwood and Autumn View agree that Autumn View may construct the New Basin; provided, however, that if the New Basin is not completed by June 15, 2016, Oakwood shall have the right to complete the New Basin, in which event Autumn View shall reimburse all costs incurred by Oakwood plus a \$25,000 penalty for not constructing the New Basin itself. The New Basin will be constructed in accordance with the approved construction drawings attached as Exhibit "B."

5. Permanent Storm Basin Facility. The parties agree that when Autumn View (or its affiliates, including, without limitation, Patterson Construction) or a third-party begins planning and development of the Autumn View property, a permanent storm drain detention facility will be designed and constructed to replace the temporary facility referenced in Section 4 above (at no cost to Oakwood or Black Sand). The permanent storm drain detention facility will be engineered, designed and constructed to accommodate the storm drain water capacities defined in section 4 of this Agreement. The permanent storm basin facility shall be designed and constructed to connect to the storm drain stub line as and where located on the southeast side of Oakwood's project.

6. Roadway. Autumn View will construct a 30-foot wide secondary access road through Autumn View's property that will connect the southeast roadway out of Oakwood's project (known as "South Point") to 860 East. If Autumn View designs an access road with a different alignment than the previously granted easement that was recorded March 6, 2015 (Entry No. 18309:2015), Black Sand agrees to vacate said easement and Autumn View shall record the new alignment with American Fork City. Autumn View shall complete the access road by June 15, 2016; provided, however, that if the access road is not completed by June 15, 2016, Oakwood shall have the right to complete the access road, in which event Autumn View shall reimburse all costs incurred by Oakwood plus a \$25,000 penalty for not constructing the access road itself. If Oakwood has to complete the roadway, Autumn View and Black Sand consent to Oakwood's use of the easement granted by Autumn View to Black Sand, recorded on March 6, 2015, as Entry No. 18309:2015 and they agree to dedicate said easement property to the City if and when the City requires a public dedication of the same. The roadway described in this provision will be constructed in accordance with the designs shown on the construction drawings attached hereto as Exhibit "B."

7. Reimbursements. If Oakwood constructs the temporary storm drain detention facility (referenced in Section 4 above) and/or the roadway (referenced in Section 6 above) Oakwood shall be reimbursed from the escrowed funds held by Bartlett Title and receive the penalty payments from such escrowed funds as well, and Black Sand shall have the right to recover all such costs and penalties directly from Autumn View pursuant to a separate reimbursement agreement between Black Sand and Autumn View. Neither Black Sand nor Oakwood will have any reimbursement obligations relating to construction of the permanent storm drain facility referenced in Section 5 above.

8. Agreement to Formalize and Record. Each party shall prepare, execute and deliver to the other party(ies) such documents, including easement(s) and/or rights of way dedications, as are required to properly and validly document, implement, validate, execute and record the provisions of this Agreement.

9. Governing Law. In the event that any claim, action, or other legal proceeding shall be brought hereunder by either party, it shall be brought in and evaluated according to the laws of the State of Utah.

10. Attorney Fees. In any action to interpret or enforce this Agreement, or any action relating to or resulting from an alleged breach of this Agreement requiring enforcement through or with the assistance of legal counsel, which actually results in legal fees and or costs, the prevailing party shall be entitled to an award of the actual legal fees and costs incurred.

11. No Third-Party Beneficiary Interests. Nothing contained in this Development Agreement is intended to benefit any person or entity other than the parties to this Development Agreement and/or their respective successors and assigns; and no representation or warranty is intended for the benefit of, or to be relied upon by, any person or entity which is not a party to this Development Agreement and/or their respective successors and assigns.

12. Binding Effect. This Agreement shall run with the land and shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns. This Agreement shall be recorded against the parties' properties that are affected by this Agreement.

WHEREFORE, the parties have executed the foregoing to be effective the date first appearing above.

Black Sand Development, LLC,  
a Utah limited liability company

Oakwood Homes of Utah,  
a Delaware limited liability company

By: *David Johnston*  
David Johnston, Managing Member

By: *Mike Stewart*  
Mike Stewart, President of Utah Division

Autumn View Properties Limited Partnership

By: Sunset Mountain Management, LLC  
Its: General Partner

*James K. Patterson*  
James K. Patterson, Co-Manager of Sunset Mountain Management, LLC



*Kent P. Smith* 4-27-2017

*(Notary Verifications are on the Following Pages)*

**NOTARY ACKNOWLEDGEMENT**

STATE OF UTAH )

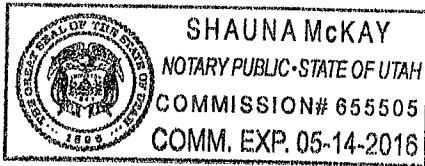
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COUNTY OF Utah )

On the 25<sup>th</sup> day of April, 2016, personally appeared before me, a notary public for and in the above-named jurisdiction, David Johnson, the Managing Member of Black Sand Development, LLC whose identity is personally known to me or who proved to me on the basis of satisfactory evidence, and each of whom duly acknowledged that he is the signer of the within instrument and that the execution thereof was the act and deed of Black Sand Development, LLC.

NOTARY PUBLIC

SEAL:



Shauna McKay

**NOTARY ACKNOWLEDGEMENT**

STATE OF UTAH )

:ss

COUNTY OF Salt Lake )

On the 27<sup>th</sup> day of April, 2016, personally appeared before me, a notary public for and in the above-named jurisdiction, Mike Stewart, President of Utah Division of Oakwood Homes of Utah, LLC whose identity is personally known to me or who proved to me on the basis of satisfactory evidence, and each of whom duly acknowledged that he is the signer of the within instrument and that the execution thereof was the act and deed of Oakwood Homes of Utah, LLC

NOTARY PUBLIC

SEAL:



Rachel M. Morris

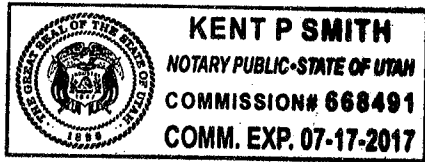
**NOTARY ACKNOWLEDGEMENT**

STATE OF UTAH                    )  
  :SS  
COUNTY OF \_\_\_\_\_ )

On the 27<sup>th</sup> day of April, 2016, personally appeared before me, a notary public for and in the above-named jurisdiction, James K. Patterson, the Co-Manager of Sunset Mountain Management, LLC, who is the General Partner of Autumn View Properties Limited Partnership, whose identity is personally known to me or who proved to me on the basis of satisfactory evidence, and each of whom duly acknowledged that he is the signer of the within instrument and that the execution thereof was the act and deed of Autumn View Properties Limited Partnership.

NOTARY PUBLIC

SEAL:



*Kent P Smith*

**EXHIBIT A**  
**(Property Descriptions)**

## Exhibit "A"

Oakwood Homes of Utah LLC property:

### LEGAL DESCRIPTION:

WARRANTY DEED - ENTRY 41931:2003

A PART OF AN ENTIRE TRACT OF LAND SITUATED IN THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN. THE BOUNDARY OF SAID TRACT IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH IS 1254.19 FEET WEST AND 13.89 FEET NORTH FROM THE EAST QUARTER CORNER OF SAID SECTION 24; THENCE S2°22'08"W 956.82 FEET TO A POINT IN A FENCE LINE; THENCE N89°51'41"W 831.88 FEET ALONG SAID FENCE LINE TO A CEDAR FENCE POST; THENCE N00°06'16"W 375.54 FEET ALONG A FENCE LINE; THENCE N00°48'16"E 442.14 FEET ALONG SAID FENCE TO THE SOUTH BOUNDARY LINE OF THE JOHN L. HANSEN PROPERTY, ENTRY NO. 7393 BOOK 2585 PAGE 291 RECORDED IN THE UTAH COUNTY RECORDERS OFFICE; THENCE EAST 478.66 FEET ALONG SAID SOUTH BOUNDARY LINE TO THE SOUTHEAST CORNER OF SAID PROPERTY, THENCE NORTH 163.94 FEET ALONG THE EAST BOUNDARY LINE OF SAID PROPERTY.; THENCE S70°30'00"E 32.73 FEET; THENCE S5°00'00"E 7.52 FEET TO A POINT IN AN EXTENDED FENCE LINE; THENCE S88°50'43"E 355.90 FEET ALONG SAID FENCE LINE TO THE POINT OF BEGINNING.

CONTAINING 17.198 ACRES, MORE OR LESS.

**Autumn View Properties Limited Partnership's property:**

Two 5.732 acre parcels described as follows:

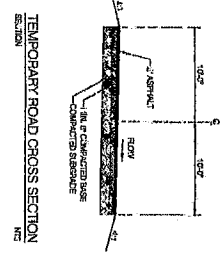
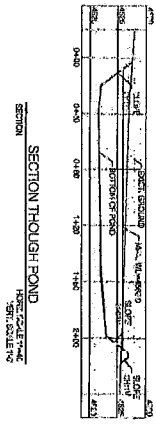
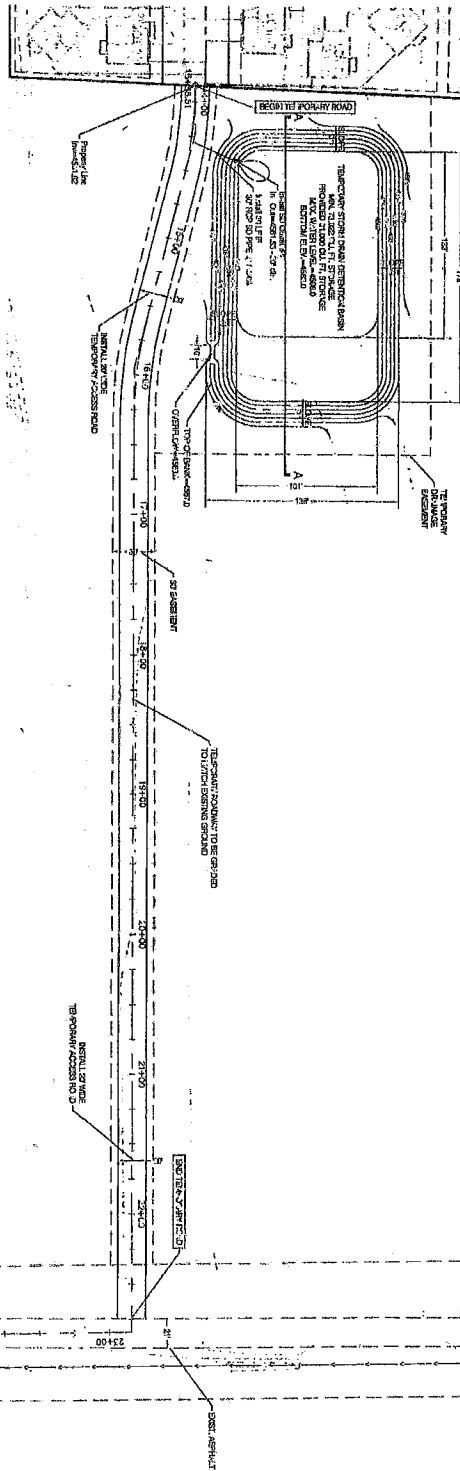
Beginning at a point West 434.28 feet and South 681.1 feet from the East Quarter Corner of Section 24, Township 5S, Range 1 East, Salt lake Base and Meridian; thence South 265.09 feet; thence North 89° 51' 41" West 859.54 feet; thence North 02° 22' 08" East 320.21 feet; thence South 86° 09' 05" East 848.22 feet to the point of beginning. Area is 5.732 Acres.

And,

Beginning at a point West 434.28 feet and South 416.01 feet from the East Quarter Corner of Section 24, Township 5S, Range 1 East, Salt lake Base and Meridian; thence South 265.09 feet; thence North 86° 09' 05" West 848.22 feet; thence North 02° 22' 08" East 328.6 feet; thence South 81° 47' 20" East 841.35 feet to the point of beginning. Area is 5.732 Acres.



**EXHIBIT B**  
**(Approved Construction Drawings)**

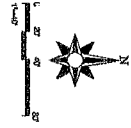
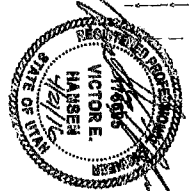


**GENERAL NOTES:**

- The Temporary Storage Basin shown on these plans is for construction convenience only. The final design, location, and construction of the basin shall be determined by the City Engineer.
- The site, temporary, access road shall be constructed per the requirements of the City Engineer.

APPROVED BY: CITY ENGINEER  
DATE: 4/26/2016

**APPROVED**



SHEET  
**C-01**

TITLE  
**OFFSITE DRAINAGE PLAN**

PROJECT NO.: 54325-28  
DATE: 4/14/2017  
DRAWN BY: [Signature]  
CHECKED BY: [Signature]  
SCALE: AS SHOWN  
APP'D: [Signature]  
DATE: 4/26/2016

PROJECT NAME:  
**SOUTH POINT - OFFSITE  
A PLANNED COMMUNITY  
AMERICAN FORK, UTAH**

**H&H**  
ENGINEERING & SURVEYING, INC.  
250 EAST MAIN STREET, SUITE 8  
AMERICAN FORK, UTAH 84603  
TEL: (801) 798-2400  
FAX: (801) 798-8488

NO.	DATE	DESCRIPTION
7	01-09-15	REVISED DRAINAGE PLAN
6	02-10-15	REVISED STORM DRAIN
5	05-02-15	REVISED STORM DRAIN
4	01-08-15	TRC #1 Final Comments
3	10-02-14	TRC #3 Comments
2	10-08-14	TRC #2 Comments
1	8-28-14	TRC #1 Comments

**EXHIBIT C**  
**(New Easement)**