

PUBLIC ROADWAY PARTICIPATION AGREEMENT

This **PUBLIC ROADWAY PARTICIPATION AGREEMENT** (this “**Agreement**”) is made as of this ____ day of _____, 2024 (the “**Effective Date**”), by and between MERITAGE HOMES OF ARIZONA, INC., an Arizona corporation (“**Meritage**”), and the CITY OF MARICOPA, an Arizona municipal corporation (“**City**”). Meritage and the City are hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

A. Meritage is developing several parcels within the Rancho Mirage Master Planned Community known as Parcel 8, 9, 11, 15, 16, 18 & 21, all of which are legally described on **Exhibit A** attached hereto (collectively, the “**Property**”). The Property is located within the municipal boundaries of the City.

B. Meritage will be constructing half street improvements for two (2) southbound lanes of N. Hartman Road and portions of the west side of the median on the eastern boundary of the Property, which would leave an unimproved northbound lane of Hartman Road.

C. The City desires that, as part of Meritage’s development of the Property and improvements to Hartman Road, Meritage construct the east side of the median on the eastern boundary of the Property and one (1) northbound lane on N. Hartman Road from W. Bowlin Road to W. Honeycutt Road.

D. The execution, delivery and performance by Meritage of this Agreement has been duly authorized by all necessary actions. The Agreement does not and will not violate any provisions of any existing law, rule, regulation, writ, judgment, injunction, decree, determination or award of any court or governmental body, any articles of incorporation, bylaws or similar organizational documents by which Meritage is bound.

E. Meritage and City recognize the impact the Property will have on the City’s road network regionally, and especially the need for the Roadway Improvements (as defined herein).

F. The Parties desire to enter into this Agreement to specify Meritage’s obligations relating to the Roadway Improvements.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements of the Parties contained herein, together with other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. INCORPORATION OF RECITALS. The Parties acknowledge the accuracy of the foregoing Recitals. Each of the foregoing recitals is hereby incorporated into this Agreement by this reference and is made a part hereof.

2. TERM. This Agreement will remain in effect from the Effective Date until Meritage has performed its obligations under this Agreement.

3. ROADWAY IMPROVEMENTS. Meritage and the City agree to the roadway improvements on N. Hartman Road described in Sections 3.1 and 3.2 below as part of developing the Property (collectively, the “**Roadway Improvements**”), with the Roadway Improvements to be completed prior to the City’s acceptance of any improvements of Hartman Road:

3.1 Median. Meritage agrees to construct a median, including irrigation and landscape, along Hartman Road from W. Bowlin Road to Honeycutt Road, all as set forth in the approved improvement plans for such work described in **Exhibit B** attached hereto (the “**Approved Plans**”).

3.2 Additional Hartman Road Improvements. Meritage agrees to construct one (1) northbound lane along N. Hartman Road from W. Bowlin Road to W. Honeycutt Road as set forth in the Approved Plans.

3.3 Agreed Cost. The Roadway Improvements are subject to Title 34 of Arizona Revised Statutes and the City of Maricopa Purchasing Code, as found in Title 3, Chapter 3.65. The City and Meritage have agreed upon a projected project development budget for the Roadway Improvements (the “**Agreed Cost**”) as set forth in **Exhibit C** attached hereto.

3.4 Review of Design and Construction Plans. The City has reviewed and approved the Approved Plans for the Roadway Improvements. If there are any revisions to the Approved Plans after the Roadway Improvements are commenced, the City shall review and approve any revisions to the Approved Plans to ensure such revisions are in accordance with applicable City standards. In addition, the City shall have the right and authority to inspect the ongoing construction of the Roadway Improvements to ensure that such construction is performed in accordance with the Approved Plans and the City standards applicable to such construction. Any revision requested by the City that significantly alters the design or affects any cost of the Roadway Improvements shall be grounds for an adjustment to the Agreed Cost and the funding obligations of the City.

3.5 Construction. Subject to the funding obligations of the City set forth in Section 3.6 below, Meritage shall construct or cause to be constructed the Roadway Improvements and shall bear all the costs and expenses associated with the construction of the Roadway Improvements. The Roadway Improvements shall be constructed in compliance with all applicable City standards in effect at the time of the construction of the Roadway Improvements. Meritage has obtained (or will obtain) all necessary governmental permits needed to plan and construct such Roadway Improvements, and the City agrees and confirms that no other permits or plan reviews are required for the Roadway Improvements. The installation and construction of the Roadway Improvements shall be according to specifications, standards and engineering practices regularly applied by the City to such improvements within the City. Meritage shall construct and install the Roadway Improvements as depicted on the Approved Plans in a good and workmanlike manner in conformity with specifications, standards and engineering regularly applied by the City.

3.6 Funding Obligation. Within sixty (60) days of the Effective Date, the City will pay to Meritage the Agreed Cost for the completion of the Roadway Improvements. Unless revisions to the scope of work or revisions to the Approved Plans are requested by the City, the

City's funding obligation shall be fixed at One Million Twenty-Three Thousand One Hundred Seventy and 52/100 Dollars (\$1,023,170.52), which is the Agreed Cost.

3.7 Acceptance. Upon completion of the installation and construction of the Roadway Improvements, Meritage shall convey the completed Roadway Improvements to the City, lien and debt free. The Roadway Improvements shall be inspected following the normal City inspection processes, including completion of the typical "Final Walk Punch List" repairs and loading the typical close-out documents into the City online portal evidencing that the project shall be deemed completed and accepted ("**Final Acceptance**"). After Final Acceptance of the Roadway Improvements, the City thereafter shall maintain, repair and operate such Roadway Improvements at its own cost, except as provided in Section 3.8. Meritage, at no cost to City, shall dedicate, convey or obtain as applicable all rights-of-way, rights of entry, easements and/or other use rights, wherever located on the Property, as useful or necessary for the construction, installation, operation and maintenance of the Roadway Improvements as required by the City.

3.8 Warranty. Meritage shall warrant to the City the construction of the Roadway Improvements against defective workmanship and/or materials for one (1) year from the date of the Final Acceptance (the "**Meritage's Warranty**"). Meritage's Warranty shall survive the termination of this Agreement.

3.9 City's Obligation. The City shall own and maintain the Roadway Improvements following completion and Final Acceptance thereof, subject to Meritage's Warranty obligations as provided in this Agreement. The City shall give written notice to Meritage of any warranty claims within thirty (30) days prior to the expiration of Meritage's Warranty; any claims received after such date shall not be effective and Meritage shall have no obligation with respect thereto.

3.10 Encroachment Permits. Meritage, its agents, and employees, shall have the additional right, upon receipt from the City of an appropriate encroachment permit, to enter and remain upon and cross over any City easements or rights-of-way to the extent reasonably necessary to facilitate such construction of such Roadway Improvements, or to perform necessary maintenance or repairs of such Roadway Improvements. Meritage's use of such easements and rights-of-way, pursuant to the encroachment permit, shall not impede or adversely affect the City's use and enjoyment thereof.

3.11 Restoration of Property. Meritage shall restore such City easements and rights-of-way, used pursuant to the encroachment permit, to their condition prior to Meritage's entry upon completion of such construction, repair, or maintenance. Meritage, its agents, and employees, also shall have the right, upon receipt from the City of an appropriate encroachment permit, to enter and remain upon and cross over any City easements or rights-of-way to the extent reasonably necessary to install and maintain landscaping material within the portion of the City right-of-way not used for vehicular travel.

3.12 Necessary Easements, Rights of Entry, or Other Use. It shall be a condition precedent to the obligation of Meritage to construct the Roadway Improvements herein specified or otherwise required, that City shall have obtained any and all easements, rights of entry, and/or other use rights on or about all real property other than the Property upon, through or under which will be installed all or any portion of said Roadway Improvements, as useful or necessary for

Meritage to enter and to properly perform all activities incident to Meritage's construction obligations hereunder (collectively, the "**Easements**").

3.13 No Obligation to Develop. If Meritage does not develop its interest in the Property, nothing contained herein shall be deemed to obligate Meritage to perform any act herein or complete any part or all of the Roadway Improvements in accordance with this Agreement. However, Meritage acknowledges that the obligations of Meritage contained herein are obligations that must be complied with in connection with the development of the Property, whether by Meritage or any successors or assigns thereof.

4. COOPERATION AND ALTERNATIVE DISPUTE RESOLUTION.

4.1 Appointment of Representatives. To further the cooperation of the Parties in implementing this Agreement, the City and Meritage shall each designate and appoint a representative to act as a liaison between the City and its various departments and Meritage. The initial representative for the City shall be the City Engineer and the initial representative for Meritage shall be the project manager, as identified by Meritage from time to time. The representatives shall be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Roadway Improvements.

4.2 Default. Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement and, if the breach is not cured within thirty (30) days after written notice thereof from the other party (the "**Cure Period**"), shall constitute a default under this Agreement; provided, however, that if the failure is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then the Party shall have such additional time as may be necessary to perform or comply so long as the Party commences performance or compliance within said thirty (30)-day period and diligently proceeds to complete such performance or fulfill such obligation. Any notice of a breach shall specify the nature of the alleged breach in the manner in which said breach may be satisfactorily cured, if possible.

5. NOTICES AND FILINGS.

5.1 Manner of Serving. Any notice or other communication required or permitted to be given under this agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. mail, registered or certified, return receipt requested, to the address set forth below, or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

The City: City Manager
 City of Maricopa
 Attn: Ben Bitter
 39700 West Civic Center Plaza
 Maricopa, Arizona 85138
 benjamin.bitter@maricopa-az.gov

City Attorney

City of Maricopa
Attn: Denis Fitzgibbons
1115 E. Cottonwood Lane, Suite 150
Casa Grande, AZ 85122
denis@fitzgibbonslaw.com

If to Meritage: Meritage Homes of Arizona, Inc.
18655 N. Claret Drive, Suite 400
Scottsdale, AZ 85255
Attention: Troy Hill
troy.hill@meritagehomes.com

Meritage Homes of Arizona, Inc.
18655 N. Claret Drive, Suite 400
Scottsdale, AZ 85255
Attention: Vice President Regional Counsel
tim.clements@meritagehomes.com

or to such other addresses as either party hereto may from time to time designate in writing and delivery in a like manner.

5.2 Mailing Effective. Any notice or other communication directed to a Party to this Agreement shall become effective upon the earliest of the following:

- (a) actual receipt by the party;
- (b) delivery to the addressed of the party; or
- (c) if given by certified or registered U.S. Mail, return receipt requested, 72 hours after deposit with the United States Postal Service, addressed to the Party.

6. GENERAL.

6.1 Waiver. No delay in exercising any right or remedy shall constitute a waiver. No waiver by the City or Meritage of any breach of a covenant or condition of this Agreement shall be construed as a waiver of any proceeding or succeeding breach of the same or any other covenant or condition of this Agreement. No waiver shall be effective unless in writing and signed by the granting party.

6.2 Further Acts. Each Party agrees in good faith to execute such further or additional instruments and documents and to take such further acts as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement. However, Meritage acknowledges that City is limited in its actions by law and ordinances.

6.3 Successors and Assigns. This Agreement cannot be assigned by either Party without written consent of the other Party. Such consent shall not be unreasonably withheld. Meritage's rights and obligations hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof and only by a written instrument, recorded in the Official

Records of Pinal County, Arizona, expressly assigning such rights and obligations, except as otherwise provided. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns for the Parties hereto.

6.4 No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between Meritage and the City. No term or provision of this Agreement shall be for the benefit of any person or entity not a party hereto and no such other person or entity shall have any right or cause of action hereunder.

6.5 Indemnification. Meritage shall indemnify, protect, defend and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense to the extent arising out of the exercise of this Agreement by Meritage.

6.6 Amendment. No change or addition is to be made this Agreement except by written amendment executed by the Parties hereto. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Pinal County, Arizona.

6.7 Assignment. The rights and obligations of Meritage under this Agreement may be transferred or assigned, in whole or in part, by a written instrument, to any subsequent owner or person (each, a "**Transferee**") having an interest in all or any portion of the Property ("**Transferred Property**"), pursuant to which the Transferee expressly accepts and assumes the rights and obligations of Meritage which are assigned by Meritage to such Transferee with respect to such Transferred Property. Upon the conveyance or other disposition (other than in trust pursuant to the granting of a deed of trust related solely to financing of the Property) (a "**Transfer**") of any portion of the Transferred Property, the Transferee shall be deemed to be a party to this Agreement with respect to such Transferred Property, and the prior owner shall have no further obligations under this Agreement regarding the Transferred Property arising from and after the date of Transfer of such Transferred Property. An assignment of rights may be on a non-exclusive basis. Such Transfer does not relieve Meritage of its obligations unless the City approves a termination of Meritage's obligations in a written agreement.

6.8 Authority. Each of the Parties represents and warrants to the other that the persons executing this Agreement on behalf of the respective Parties are authorized and empowered to bind the Party on whose behalf each such individual is signing.

6.9 Arbitration. In the event that there is a dispute hereunder which the Parties cannot resolve between themselves, the Parties agree to attempt to settle the dispute by nonbinding arbitration before commencement of litigation. The arbitration shall be held under the rules of the American Arbitration Association. The matter in dispute shall be submitted to an arbitrator mutually selected by Meritage and the City. In the event that the Parties cannot agree upon the selection of an arbitrator within seven (7) days, then within three (3) days thereafter, the City and

Meritage shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent arbitrator. The cost of any such arbitration shall be divided equally between the City and Meritage. The results of the arbitration shall be nonbinding on the Parties, and any Party shall be free to initiate litigation subsequent to the final decision of the arbitrator.

6.10 Israel Boycott Provision. Each Party to this Agreement certifies to the other Parties that it is not currently engaged in and agrees for the duration of the contract not to engage in a boycott of Israel as defined in A.R.S. § 35-393.

6.11 Conflicts of Interest. The Parties acknowledge that this Agreement is subject to cancellation pursuant to § 38-511, Arizona Revised Statutes, as amended.

6.12 Severability. If a court of competent jurisdiction declares any provision of this Agreement void or unenforceable such provisions shall be severed from this Agreement, which shall otherwise remain in full force and effect.

6.13 Governing Law. The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action

6.14 Construction of Agreement. This Agreement has been arrived at by negotiation and shall not be construed against either Party or against the Party who prepared the last draft.

6.15 Survival and Expiration. All agreements, representations, indemnities and warranties made in the Agreement shall survive the termination of this Agreement only as expressly set forth in this Agreement. Otherwise, the Agreement shall expire upon completion.

[signatures appear on the following page]

IN WITNESS WHEREOF, the Parties have executed this Agreement.

MERITAGE HOMES OF ARIZONA, INC.,
an Arizona CORPORATION

By: _____

Name: _____

Title: _____

CITY OF MARICOPA, an Arizona municipal
corporation

By: _____

Benjamin Bitter, City Manager

ATTEST:

Vanessa Bueras, MMC
City Clerk

APPROVED AS TO FORM:

Denis M. Fitzgibbons
City Attorney

EXHIBIT A
PROPERTY

The Land referred to herein below is situated in the County of Pinal, State of Arizona, and is described as follows:

PARCEL 8:

LOTS 1 THROUGH 72 AND TRACTS A THROUGH D OF AMENDED FINAL PLAT OF RANCHO MIRAGE ESTATES PHASE 2 PARCEL 8, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, IN CABINET H OF MAPS, SLIDE 079 OF OFFICIAL RECORDS.

PARCEL 9:

LOTS 1 THROUGH 106 AND TRACTS 'A' THROUGH 'C' AND 'E', OF RANCHO MIRAGE ESTATES PHASE 2 PARCEL 9, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, IN CABINET G OF MAPS, SLIDE 161 AND AFFIDAVIT OF CORRECTION RECORDED AS 2007-068722 OF OFFICIAL RECORDS.

EXCEPT A PORTION OF TRACT B, AS SHOWN ON THE FINAL PLAT OF "RANCHO MIRAGE ESTATES PHASE 2, PARCEL 9", RECORDED IN CABINET G, SLIDE 161, PINAL COUNTY RECORDS, LOCATED WITHIN THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 4 SOUTH, RANGE 4 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT A BRASS CAP IN A HAND HOLE, FOUND AND ACCEPTED AS THE MONUMENT FOR THE SOUTHEAST CORNER OF SAID SECTION, FROM WHICH A BRASS CAP (FLUSH), FOUND AND ACCEPTED AS THE MONUMENT FOR THE SOUTH QUARTER CORNER OF SAID SECTION, BEARS NORTH 89 DEGREES 56 MINUTES 27 SECONDS WEST A DISTANCE OF 2650.81 FEET;

THENCE ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER, NORTH 89 DEGREES 56 MINUTES 27 SECONDS WEST A DISTANCE OF 654.80 FEET;

THENCE DEPARTING SAID SOUTH LINE, NORTH 00 DEGREES 03 MINUTES 33 SECONDS EAST A DISTANCE OF 55.00 FEET TO THE SOUTHEAST CORNER OF SAID TRACT D AND THE NORTH RIGHT-OF-WAY OF BOWLIN ROAD, SAID CORNER ALSO BEING THE POINT OF BEGINNING;

THENCE ALONG SAID NORTH RIGHT-OF-WAY, NORTH 89 DEGREES 56 MINUTES 27 SECONDS WEST A DISTANCE OF 234.97 FEET TO THE SOUTHERLY PROLONGATION OF THE EAST LINE OF LOT 35 OF SAID "FINAL PLAT OF RANCHO MIRAGE ESTATES PHASE 2, PARCEL 9";

THENCE DEPARTING SAID RIGHT-OF-WAY AND ALONG SAID EAST LINE, NORTH 00 DEGREES 07 MINUTES 24 SECONDS EAST A DISTANCE OF 143.85 FEET;

THENCE DEPARTING SAID EAST LINE, NORTH 45 DEGREES 22 MINUTES 01 SECONDS EAST A DISTANCE OF 43.66 FEET TO A POINT ON THE WEST LINE OF SAID TRACT D;

THENCE ALONG SAID WEST LINE, NORTH 00 DEGREES 48 MINUTES 34 SECONDS EAST A DISTANCE OF 141.57 FEET TO THE NORTHWEST CORNER OF SAID TRACT D;

THENCE ALONG THE NORTH LINE OF SAID TRACT D, SOUTH 89 DEGREES 52 MINUTES 36 SECONDS EAST A DISTANCE OF 285.62 FEET TO THE NORTHEAST CORNER OF SAID TRACT D;

THENCE ALONG THE EASTERLY LINE OF SAID TRACT D, SOUTH 00 DEGREES 07 MINUTES 24 SECONDS WEST A DISTANCE OF 173.22 FEET;

THENCE CONTINUING ALONG SAID EASTERLY LINE, SOUTH 36 DEGREES 09 MINUTES 29 SECONDS WEST A DISTANCE OF 141.10 FEET;

THENCE CONTINUING ALONG SAID EASTERLY LINE, SOUTH 00 DEGREES 48 MINUTES 34 SECONDS WEST A DISTANCE OF 28.58 FEET TO THE POINT OF BEGINNING, AS SET FORTH IN DEED RECORDED AS 2008-086597.

PARCEL 11:

LOTS 1 THROUGH 104 AND TRACTS 'A' THROUGH 'I', OF RANCHO MIRAGE ESTATES PHASE 2 PARCEL 11, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, IN CABINET G OF MAPS, SLIDE 162 AND AFFIDAVIT OF CORRECTION RECORDED AS 2007-068723 OF OFFICIAL RECORDS.

PARCEL 15:

LOTS 1 THROUGH 141 AND TRACTS 'A' THROUGH 'I', OF RANCHO MIRAGE ESTATES PHASE 2 PARCEL 15, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, IN CABINET G OF MAPS, SLIDE 164.

PARCEL 16:

LOTS 1 THROUGH 149 AND TRACTS 'A' THROUGH 'G', OF RANCHO MIRAGE ESTATES PHASE 2 PARCEL 16, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, IN CABINET G OF MAPS, SLIDE 165 AND AFFIDAVIT OF CORRECTION RECORDED AS 2007-068725 OF OFFICIAL RECORDS.

PARCEL 18:

LOTS 1 THROUGH 106 AND TRACTS 'A' THROUGH 'H', OF RANCHO MIRAGE ESTATES PHASE 2 PARCEL 18, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, IN CABINET G OF MAPS, SLIDE 167 AND AFFIDAVIT OF CORRECTION RECORDED AS 2007-068727 OF OFFICIAL RECORDS.

PARCEL 21:

LOTS 1 THROUGH 63 AND TRACTS 'A' THROUGH 'F', OF RANCHO MIRAGE ESTATES PHASE 2 PARCEL 21, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, IN CABINET G OF MAPS, SLIDE 168 AND AFFIDAVIT OF CORRECTION RECORDED AS 2007-068728 OF OFFICIAL RECORDS.

EXHIBIT B
ROADWAY IMPROVEMENTS

Those certain improvements as more particularly described in the following Approved Plans:

Rancho Mirage Ph2 - Offsite Hartman Rd w-Median - Signing & Striping Plans

Rancho Mirage Ph2 - Offsite Hartman Rd w-Median - Paving Plans

Rancho Mirage Ph2 - Offsite Hartman Rd w-Median - Landscape Construction Docs

Rancho Mirage Ph2 - Offsite Hartman Rd w-Median - Street Light Plans

EXHIBIT C
AGREED COST