

WHEN RECORDED, RETURN TO:

City Clerk, City of Maricopa
39700 W Civic Center Plaza South
Maricopa, AZ 85138

DEVELOPMENT AND SETTLEMENT AGREEMENT

THIS DEVELOPMENT AND SETTLEMENT AGREEMENT (“**Agreement**”) is made and entered into as of this 16th day of June, 2015 (the “**Effective Date**”), by and among MERITAGE HOMES OF ARIZONA, INC., an Arizona corporation, Meritage Homes Corporation, a Maryland corporation, and any of their parents or subsidiaries (collectively, “**Meritage**”), and the CITY OF MARICOPA, ARIZONA, an Arizona municipal corporation (“**City**”). The aforementioned entities are collectively referred to herein as the “**Parties.**”

RECITALS

A. Touse Homes, Inc., doing business as Engle Homes (“**Engel**”), entered into that certain Development Agreement with Pinal County on March 26, 2003 (the “**Prior Development Agreement**”), a copy of which is attached hereto as Exhibit A.

B. The Prior Development Agreement encumbered approximately 640 acres of real property commonly referred to as “Rancho El Dorado South (East Side)” (“**Rancho El Dorado**”).

C. Meritage is successor-in-interest to Engle’s rights and obligations under the Prior Development Agreement relating to the development of a portion of Rancho El Dorado, as more particularly described on Exhibit B attached hereto (the “**Property**”).

D. The City is the successor-in-interest to Pinal County under the Prior Development Agreement, as established by the Arizona Court of Appeals’ Decision in *Home Builders Association of Central Arizona v. City of Maricopa*, Case No. 2 CA-CV 2006-0188 (May 18, 2007) (the “**Previous Development Agreement Litigation**”).

E. The Prior Development Agreement had an initial term of ten (10) years with the option of extending the initial term for one additional term of ten (10) years.

F. On March 25, 2013 Meritage sent a letter to the City Clerk requesting an extension pursuant to Section 3 of the Prior Development Agreement and requesting the City agree that it would not assess development impact fees for any lots on the Property during any phase of construction at the Property. In addition, even if the City did not grant an extension of the Prior Development Agreement, Meritage maintains that the ability of the City to assess development impact fees on the Property has been waived by Pinal County entering in to the Prior Development Agreement (“**Dispute**”).

G. On September 17, 2013 the Parties entered into a Tolling Agreement to suspend time deadlines to allow the Parties to enter into discussions to determine if the Dispute could be resolved without adversely affecting each other's legal rights and obligations as they existed at the time of the Tolling Agreement.

H. Since at least 2008, Pinal County has been involved in litigation involving similar development agreements. In 2012, Pinal County began settling some of these cases and some of the cases remain unresolved. This on-going litigation has been costly for those parties involved and is something the Parties hereto want to avoid.

I. The Parties have been involved in negotiations in an effort to reach an amicable resolution of the issues raised in the Dispute. Rather than leave the resolution of the issues that are the subject of the Dispute to an uncertain outcome should these issues be litigated, by entering into this Agreement, the Parties desire to contractually confirm their respective obligations recognizing that the obligations are the result of negotiation and compromise. Accordingly, the Parties desire to resolve the issues set forth in the Dispute and release each other from liability associated with same upon the terms and conditions contained in this Agreement.

J. The City and Meritage understand and acknowledge that this Agreement is also a "Development Agreement" within the meaning of, and entered into pursuant to the terms of, Arizona Revised Statutes § 9-500.05, and that the terms of this Agreement are binding upon the City and Meritage and their successors and assigns and that such terms run with the Property. The City and Meritage agree that entering into this Agreement results in significant direct benefits to the City and Meritage by compromising the Dispute regarding Meritage's entitlement to an extension of the Prior Development Agreement, Meritage's obligation to pay future development impact fees with respect to the development of the Property, and whether or not the Prior Development Agreement was terminated. In addition, the rights, duties, obligations and liabilities under this Agreement are specifically and expressly "bargained for" as part of the Parties' promised performance to each other, and constitute "consideration" as required by *Turken v. Gordon*, 207 P.3d 709 (Ariz. 2010).

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained and herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, covenant and agree for themselves and their successors and assigns as follows:

AGREEMENT

1. Recitals; Definitions. The Recitals set forth above are true, correct and complete and are incorporated into this Agreement. Except as otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed thereto in the Prior Development Agreement.

2. Termination of Prior Development Agreement and Term.

(a) The Prior Development Agreement shall be deemed to have terminated on March 26, 2013 (the "**Expiration Date**") and shall not be extended for an additional ten (10) year term. Any title insurer may rely on this paragraph when issuing any commitment to insure or when

issuing a title insurance policy in connection with the sale or conveyance of any portion of the Property, and accordingly, not show the Prior Development Agreement as an exception to title. Notwithstanding the termination of the Prior Development Agreement, the permitted uses for the Property and the densities and intensities of such uses in the Development Plan (and Meritage's right, consistent with and subject to the conditions of the Development Plan to transfer density up to 10%, as outlined in Section 3308 of the Pinal County Zoning Ordinance as of August 30, 2000 (a copy of which is attached hereto as Exhibit C), from one residential parcel to another, as long as the maximum number of dwelling units provided for in the Development Plan does not increase), are "vested rights", subject to the provisions of Section 11 of the Prior Development Agreement, as set forth on Exhibit A as applied to a municipality (collectively, "**Applicable Laws**"). Furthermore, with respect to any building permit issued before the Expiration Date, the Prior Development Agreement and the right to develop such lot or parcel under the Prior Development Agreement and any protected development right established therein remains valid until such building permit expires, but in no event for longer than one (1) year from the effective date of this Agreement. Upon expiration of the building permit, only principal structures for which footings or foundations have been completed may be finished under the protected development right established in the Prior Development Agreement.

(b) The initial term of this Agreement shall be for ten (10) years from the Effective Date ("**Termination Date**").

3. Fees. Notwithstanding the termination of the Prior Development Agreement, and in order to settle all claims among the Parties pursuant to this Agreement, including (without limitation) the release of the City pursuant to Section 7 of this Agreement, the Parties hereby agree that with respect to the Property, except for the Adjusted Fee and City Fees (as defined below), no additional surcharge or development fees or impact fees or exactions or impositions of any kind whatsoever (collectively "Fees") shall be chargeable to Meritage (or their successors and assigns) by the City in any phase of the development of the Property from the Expiration Date through the Termination Date. Meritage, however, shall pay a per lot fee in the amount of \$1,691.55 ("Adjusted Fee"). As of the Effective Date, Meritage has paid under protest the \$4,833.00 per-lot development impact fee on 101 lots and the \$5,514 per-lot development impact fee on 45 lots for which permits were obtained after the Expiration Date totaling \$736,263.00 (the "Paid Fees"). The Parties agree that Meritage shall be reimbursed a portion of the Paid Fees in the amount of \$489,296.70 ("Reimbursement Amount") before the Termination Date of this Agreement, which amount represents the difference between the Paid Fees and the Adjusted Fee for these 140 lots referenced above. The City shall reimburse Meritage in (1) a lump sum cash payment in the amount of \$244,648.35 within thirty (30) days of the Effective Date; and (2) the balance of the Reimbursement Amount in the amount of \$244,648.35 shall be reimbursed to Meritage in the form of a credit. (i) Meritage shall receive a credit in the amount of 100% of the Adjusted Fee (\$1,691.55) for each lot built within the Property for which building permits are requested by Meritage during the term of this Agreement until the Reimbursement Amount is exhausted; and (ii) Meritage will receive a credit in the amount of 100% of any City fees required to develop and construct the remaining lots located within the Property, including, but not limited to, permit fees and plan review fees (the "City Fees") until the Reimbursement Amount is exhausted. During the term of this Agreement, after receiving the full Reimbursement Amount as provided herein, Meritage shall be required to pay the full Adjusted Fee and all City Fees related to the Property. In the event the term of this Agreement

expires prior to Meritage receiving the full Reimbursement Amount, the City shall refund to Meritage in cash the amount of any Reimbursement Amount still owed.

After the Reimbursement Amount is fully exhausted as set forth above, the Adjusted Fee shall be payable when Meritage (or its successors and assigns) requests a building permit for construction of the dwelling unit on a residential lot within the Property. The Adjusted Fee will be deposited in the City's general fund to be used as determined in the sole and absolute discretion of the City. Meritage (or its successors and assigns) may prepay any or all of the Adjusted Fee ("Prepaid Adjusted Fee") after receiving the full Reimbursement Amount. Prior to the Termination Date, Meritage shall pay the City the Adjusted Fee as required by the foregoing provisions of this Section 3. After the Termination Date, Meritage (or its successors and assigns) shall pay to the City all then applicable and lawfully and properly assessed development impact fees or exactions or impositions of any kind whatsoever chargeable by the City with respect to the development of the Property which were not paid as a Prepaid Adjusted Fee. Notwithstanding anything herein to the contrary, Meritage shall pay the City all usual and customary taxes associated with the construction of a residential home and subdivision.

4. Road Fees Paid Under Prior Development Agreement. Pursuant to Section 17 of the Prior Development Agreement, various roadway improvements to Smith-Enke Road were to be constructed by Engle and funded by a \$950 per lot roadway improvement fee payable for each residential lot encumbered by the Prior Development Agreement (the "**Road Fees**"). On April 2, 2013, the City, Meritage and Engle entered into a Termination of Road Fee Escrow Account Agreement (i) terminating any obligation on the part of Meritage to deposit the Road Fee into an escrow managed by Engle and (ii) transferring all remaining Road Fees to the City (excluding certain Road Fees paid by Meritage). Since the Expiration Date, Meritage has paid the City's current development impact fees that include a separate transportation fee. Consequently, the Parties acknowledge and agree that no further Road Fees are due by Meritage, and no further Road Fees will be credited under this Agreement. Meritage, in its capacity as the developer and as successor to Engle, waives and releases any interest in the Road Fees set forth in and collected under the Prior Development Agreement. For that portion of the Property that constitutes the right-of-way necessary for Smith-Enke Road, Honeycutt Road and, Porter Road and that is not the subject of a final plat approved by the City ("Right-of-Way Property"), Meritage shall dedicate the Right-of-Way Property to the City upon the earlier of (i) recordation of a final plat that includes the Right-of-Way Property, or (ii) within thirty (30) days of the date on which Meritage notifies the City in writing of its intent to undertake construction of the Smith-Enke Improvements, Honeycutt Improvements and Porter Road improvements.

5. Public Infrastructure Facilities and Services. Except as otherwise expressly provided for herein, Meritage shall be responsible solely for the infrastructure facilities and services required pursuant to the Development Plan and the Prior Development Agreement, but shall otherwise have no obligation to design, construct, or install any additional infrastructure facilities, services or improvements. The full scope of Meritage's remaining infrastructure improvements are set forth on Exhibit D attached hereto, and Meritage's completion of the items shown thereon in accordance with the plans and specifications shall be deemed Meritage's full and final completion of all required infrastructure improvements pertaining to the Property. The limitation on the scope of future improvements set forth in this Section 5 is a material consideration for Meritage's willingness

to enter into this Agreement. The City agrees that it will cooperate, expedite to the extent practicable, and act in good faith with respect to the processing, acceptance, permitting, and approval of all infrastructure and other improvements constructed by Meritage and/or its agents, subcontractors, and successors and assigns under this Agreement and this Section 5.

6. Release of City. Meritage hereby fully, finally and forever releases and discharges the City together with its present and former members, officers, directors, elected officials, appointed officials, agents and employees (collectively, the “**City Releasees**”), for, from and against any and all claims, demands, actions, causes of action, liabilities, suits, debts, accounts, bonds, covenants, contracts, controversies, torts, agreements, promises and judgments, whatsoever in law or in equity (collectively, “**Claims**”), that Meritage may have had, now have or which they may have for or by reason of any manner, cause or thing whatsoever, relating to the allegations in the Dispute and specifically relating to Claims involving the City’s alleged failure to extend the Prior Development Agreement up and through and including the Effective Date. The release set forth above shall not extend to any Claims arising after the Effective Date to the extent based on acts or omissions of the City Releasees occurring after the Effective Date, except that such release is specifically intended by the Parties to include the transactions leading up to the execution of this Agreement, but not any obligations, duties or agreements under this Agreement or first arising after the Effective Date. This Agreement and the covenants contained in this Section 6 are contractual, and not a mere recital, and the Parties hereto acknowledge and agree that no liability whatsoever is admitted on the part of any Party.

7. Release of Meritage. City hereby fully, finally and forever releases and discharges Meritage together with their present and former members, partners, officers, directors, and employees (collectively, the “**Meritage Releasees**”), for, from and against any and all Claims that the City may have had, now has or which it may have for or by reason of any manner, cause or thing whatsoever, relating to Meritage’s performance under the Prior Development Agreement and the allegations in the Dispute up and through and including the Effective Date. The release set forth above shall not extend to any Claims arising after the Effective Date to the extent based on acts or omissions of the Meritage Releasees occurring after the Effective Date, except that such release is specifically intended by the Parties to include the transactions leading up to the execution of this Agreement, but not any obligations, duties or agreements under this Agreement or first arising after the Effective Date. This Agreement and the covenants contained in this Section 7 are contractual, and not a mere recital, and the Parties hereto acknowledge and agree that no liability whatsoever is admitted on the part of any Party.

8. Knowing Waiver; Compromise of Disputed Claims. The Parties acknowledge and agree that each has consulted with and received the advice of counsel, or has had the opportunity to consult with and receive the advice of counsel, and that each Party is executing this Agreement after independent investigation and without fraud, duress or undue influence. The execution of this Agreement is not to be construed as an admission of liability on the part of Meritage or City. This Agreement represents a compromise of disputed claims. The City and Meritage acknowledge and agree that Meritage, including parties related to Meritage, may own or control other property that is subject to other development agreements, but which is not covered by or considered a part of this Agreement. The consideration, compromises, and waivers in this Agreement reflect the unique facts and circumstances related to this dispute and, as such, pertain only to the Property. By entering into

this Agreement, the Parties have no intention or desire to settle, compromise, bind or limit the respective Parties' rights and obligations under any other development agreement or property, beyond what is expressly set forth in this Agreement. As such, the terms of this Agreement are evidence of settlement and compromise pertaining to the Property and the Prior Development Agreement only and cannot be used as precedent or evidence in any subsequent proceedings arising from any dispute concerning the interpretation of another development agreement related to different property.

9. Time is of the Essence. Time is of the essence of this Agreement in each and every provision hereof.

10. Calculation of Time. In the event the last day permitted for any performance under this Agreement falls on a Friday, Saturday, Sunday or legal holiday, the time for performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

11. Further Assurances. The Parties agree to enter into and execute such other and further agreements and perform any further or additional acts or give any further or additional assurances, as may be reasonably necessary, to effectuate the terms and intentions of this Agreement.

12. Attorneys' Fees. Each Party shall bear its own respective legal fees and costs arising out of this Agreement. If any legal action or proceeding is brought for the enforcement of or for a declaration of rights and duties under this Agreement because of an alleged dispute, breach, or default arising out of this Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorneys' fees, expert witness fees, litigation related costs, court costs and other costs or expense incurred in that action or proceeding, in addition to any other relief to which such Party may be entitled.

13. Notices. Any notice, demand or communication under or in connection with this Agreement shall be in writing and shall be given at the address specified below or at such other address any such Party specifies in writing in accordance with the provisions of this paragraph. Such notice shall be deemed given upon personal delivery.

If to Meritage: Meritage Homes of Arizona, Inc.
8800 E. Raintree Drive
Suite 300
Scottsdale, AZ 85260
Attention: Scott J. Shelley, Vice President-Litigation Counsel

With a copy Meritage Homes Corporation
of any default 8800 E. Raintree Drive Suite 300
Notice to: Scottsdale, Arizona 85260
Attention: General Counsel

If to City: City Clerk, City of Maricopa
39700 W Civic Center Plaza South
Maricopa, AZ 85138

With a copy to: Denis Fitzgibbons, City Attorney
Fitzgibbons Law Offices, PLC
1115 E Cottonwood Lane, Suite 150
Casa Grande, AZ 85130

14. Entire Agreement. This Agreement and the exhibits listed below constitute the entire agreement between the Parties with respect to the subject matter of this Agreement, and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings, or understandings, either oral or written, between them concerning the subject matter of this Agreement. No subsequent agreement between the Parties shall be binding upon the Parties unless in writing and signed by all of the Parties or the Party to be bound. Any amendment to this Agreement shall be recorded in the official records of the Pinal County Recorder, Pinal County, Arizona within ten (10) days after the execution of such amendment.

- (a) Exhibit A: Prior Development Agreement
- (b) Exhibit B: Property
- (c) Exhibit C: Pinal County Code Section 3308
- (d) Exhibit D: Public Infrastructure Obligations

15. Severability. If any clause or provision of this Agreement is determined to be unconstitutional, illegal, invalid, or unenforceable under any present or future law, such clause or provision shall be ineffective, but the remainder of this Agreement will not be affected thereby; provided, however, if a court of competent jurisdiction finally determines that the Adjusted Fee are unconstitutional, illegal, invalid, or unenforceable under any present or future law, this Agreement shall be void *ab initio* and, to the extent applicable, the Prior Development Agreement and Tolling Agreement shall be the operative agreements among the parties. Notwithstanding the foregoing, Meritage may elect in writing to increase the Adjusted Fee to the minimum extent necessary to comply with then applicable federal, state and municipal laws, taking into account all of the benefits of this Agreement accruing to the City. If any provision of this Agreement is challenged by a person or entity not a party to this Agreement, the parties will cooperate to assist in the defense to such challenge in order to reduce costs and efficiently defend the enforceability of this Agreement. The Parties acknowledge that the defense of this Agreement mutually benefits both Parties because the Agreement settles the Dispute, which would have caused the Parties to spend a significant amount on litigation costs.

16. Construction. The Parties acknowledge that each Party and its counsel have reviewed and approved this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

17. Counterpart Execution. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument and all of which combined shall constitute one and the same instrument.

18. Public Lot Provisions. The provisions of this Agreement shall be for the benefit of, and shall be a burden upon the Property and they shall be covenants running with the Property, without the necessity of an assignment of this Agreement with the conveyance of any part of the Property. However, this Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot with a residential dwelling unit constructed thereon, which has been finally subdivided and individually (and not in “bulk”) sold to the end purchaser or user thereof or as to any tract or parcel of land that is dedicated or conveyed to any governmental authority, utility provider, irrigation district or property owners association (collectively, a “**Public Lot**”), and thereupon such Public Lot shall be released from and no longer be subject to or burdened by the provisions of this Agreement.

19. Waivers. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding upon any Party unless executed in writing by the Party to be bound. Any Party may waive any provisions of this Agreement intended for its benefit; provided, however, such waiver shall in no way excuse the other Party(ies) from the performance of any of its other obligations under this Agreement.

20. Headings. Paragraph or other headings contained in this Agreement are for reference purposes only and are not intended to affect in any way the meaning or interpretation of this Agreement.

21. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Arizona. This Agreement is subject to the provisions of A.R.S. §38-511.

22. Recordation. This Agreement shall be recorded in the official records of the Pinal County Recorder, Pinal County, Arizona, not later than ten (10) days after the execution date of this Agreement by all Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first above written.

CITY OF MARICOPA, ARIZONA, an
Arizona municipal corporation

By: _____
Christian Price, Mayor

ATTEST:

Vanessa Bueras, City Clerk

APPROVED AS TO FORM:

Denis Fitzgibbons, City Attorney

STATE OF ARIZONA)
) ss
County of Pinal)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015 by Christian Price, the Mayor of the City of Maricopa, Arizona, an Arizona municipal corporation, on behalf of the corporation.

Notary Public

My Commission expires:

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first above written.

MERITAGE HOMES OF ARIZONA, INC.,
an Arizona corporation

By: _____
Name: _____
Title: _____

STATE OF ARIZONA)
) ss
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015 by _____, the _____ of Meritage Homes of Arizona, Inc., an Arizona corporation, on behalf of the corporation.

Notary Public

My Commission expires:

Exhibit A

Prior Development Agreement

Exhibit B

Property

Exhibit C

Pinal County Code Section 3308

Exhibit D

Public Infrastructure Obligations