

PARKS IMPROVEMENT AGREEMENT

DATE OF AGREEMENT: _____, 20__

NAME OF SUBDIVIDER: Meritage Homes of California, Inc.
(Referred to as "SUBDIVIDER").

NAME OF SUBDIVISION: Tract Map No. 37506-3

No. of Lots: 145 residential lots, 12 non-residential
(Referred to as "SUBDIVISION")
For complete legal description see Exhibit "B" attached hereto.

TENTATIVE MAP RESOLUTION OF APPROVAL NO.: 2745 (TM No: 37506)
(Referred to as "Resolution of Approval")

IMPROVEMENT PLANS APPROVED
ON: TBD
(Referred to as Improvement Plans)

ESTIMATED TOTAL COST OF IMPROVEMENTS: \$ 1,617,319

SURETY:
BOND
NOS: 024280699

SURETY: Liberty Mutual Insurance Company

-OR-

IRREVOCABLE STAND-BY LETTER OF CREDIT NO. _____

FINANCIAL INSTITUTION: _____

-OR-

CASH/CERTIFICATE OF DEPOSIT, AGREEMENT DATED: _____

FINANCIAL INSTITUTION: _____

This Agreement is made and entered into by and between the City of Palm Desert, a municipal corporation of the State of California, hereinafter referred to as "CITY", and the SUBDIVIDER.

RECITALS

- A. SUBDIVIDER has presented to CITY for approval and recordation, a final subdivision map of a proposed SUBDIVISION pursuant to provisions of the Subdivision Map Act of the State of California and the CITY's ordinances and regulations relating to the filing, approval and recordation of subdivision maps. The Subdivision Map Act and the CITY's ordinances and regulations relating to the filing, approval and recordation of subdivision maps are collectively referred to in this Agreement as the "Subdivision Laws."
- B. A tentative map of the SUBDIVISION has been approved, subject to the Subdivision Laws and to the requirements and conditions contained in the Resolution of Approval. The Resolution of Approval is on file in the Office of the City Clerk and is incorporated into this Agreement by reference.
- C. The Subdivision Laws establish as a condition precedent to the approval of a final map that SUBDIVIDER must have complied with the Resolution of Approval and must have either (a) completed, in compliance with CITY standards, all of the improvements and land development work required by the Subdivision Laws or the Resolution of Approval or (b) have entered into a secured agreement with CITY to complete the improvements and land development within a period of time specified by CITY. The public improvement work (excluding park improvements and grading) required by the Resolution of Approval and the Subdivision Laws is subject to a separate secured agreement between SUBDIVIDER and CITY (i.e., Subdivision Improvement Agreement), and the required grading work is subject to a separate secured agreement between SUBDIVIDER and CITY (i.e., Grading Only Agreement).

- D. In consideration of the approval of a final map for the SUBDIVISION by the City Council, SUBDIVIDER desires to enter into this Agreement, whereby SUBDIVIDER promises to install and complete, at SUBDIVIDER's own expense, all of the parks improvement work required by the Subdivision Laws, the Resolution of Approval, and the Improvement Plans in connection with the proposed SUBDIVISION. SUBDIVIDER has secured this Agreement by improvement security required by the Subdivision Laws and approved by the City Attorney.
- E. Complete Improvement Plans for the construction, installation, and completion of the parks improvements have been prepared by SUBDIVIDER and approved by the City Engineer. As used in this Agreement, "City Engineer" means the City Engineer of CITY, or if there is no City Engineer, then such other CITY official then performing the functions of the City Engineer. The Improvement Plans numbered as referenced previously in this Agreement are on file in the Office of the City Engineer and are incorporated into this Agreement by this reference. All references in this Agreement to the Improvement Plans shall include reference to any specifications for the improvements as approved by the City Engineer.
- F. An estimate of the cost for construction of the parks improvements and performing land development work in connection with the improvements according to the Improvement Plans has been made and has been approved by the City Engineer. The estimated amount is stated on Page 1 of this Agreement. The basis for the estimate is attached as Exhibit "A" to this Agreement.
- G. CITY has adopted standards for the construction and installation of parks improvements within the CITY. The Improvement Plans have been prepared in conformance with CITY standards in effect on the date of the Resolution of Approval.

NOW, THEREFORE, in consideration of the approval and recordation by the City Council of the final map of the SUBDIVISION, SUBDIVIDER and CITY agree as follows:

1. SUBDIVIDER's Obligation to Construct Improvements.

SUBDIVIDER shall:

- a. Comply with all the requirements of the Resolution of Approval, and any amendments thereto, and with the provisions of the Subdivision Laws.
- b. Commence and complete at SUBDIVIDER's own expense, the parks improvement work in Tract Map 37506-3, required by the Resolution of Approval in conformance with approved Improvement Plans within the time frames provided by Section 22, unless a time extension is granted by the CITY as authorized in Section (22); provided however, that the improvements shall not be deemed to be completed until accepted by City Council as provided in Section (17) herein.
- c. Furnish the necessary materials for completion of the parks improvements in conformity with the Improvement Plans.
- d. Acquire, or pay the cost of acquisition by CITY, and dedicate all rights-of-way, easements and other interests in real property for construction and installation of the public improvements, free and clear of all liens and encumbrances. The SUBDIVIDER's obligations with regard to acquisition by CITY of off-site rights-of-way, easements and other interests in real property shall be subject to a separate agreement between SUBDIVIDER and CITY. SUBDIVIDER shall also be responsible for obtaining any public or private sanitary sewer, domestic water, drainage, and/or utility easements or authorization to accommodate the SUBDIVISION.

2. Acquisition and Dedication of Easements or Rights-of-Way. If any of the parks improvements contemplated by this Agreement are to be constructed or installed on land not owned by CITY or SUBDIVIDER, no construction or installation shall be commenced before:

- a. The offer of dedication to CITY of appropriate rights-of-way, easements or other interests in real property, and appropriate authorization from the property owner to allow construction or installation of the improvements or work, or
- b. The dedication to, and acceptance by, CITY of appropriate rights-of-way, easements or other interests in real property, as determined by the City Engineer, or
- c. The issuance by a court of competent jurisdiction pursuant to the State Eminent Domain Law of an order of possession. SUBDIVIDER shall comply in all respects with the order of possession.

Nothing in this Section (2) shall be construed as authorizing or granting an extension of time to SUBDIVIDER.

3. Security. SUBDIVIDER shall at all times guarantee SUBDIVIDER's performance by furnishing to CITY, and maintaining, good and sufficient security as required by the Subdivision Laws on forms approved by CITY for the purposes and in the amounts as follows:
 - a. to assure faithful performance of this Agreement in regard to said parks improvements in an amount of 100% of the estimated cost of the parks improvements; and
 - b. to secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor and materials for the parks improvements required to be constructed and installed pursuant to this Agreement in an amount of 100% of the estimated cost of the parks improvements and conforming to the requirements of Section 25 of this Agreement (concerning prevailing wages) and Section 9554 of the California Civil Code (to the extent that a subject contract involves an expenditure in an amount subject to, and a

contractor deemed to be a direct contractor under, Section 9550 of the California Civil Code), and which amount of such security shall be increased automatically by the SUBDIVIDER upon an increase in the cost of construction of the parks improvements or any of them, such that the payment bond(s) at all times shall be in an amount not less than 100% of the sum of the total amount payable pursuant to any construction contract(s) relating to the parks improvements and the estimated cost of any improvements not yet subject to a construction contract, and if the SUBDIVIDER fails to so increase the amount of the security in connection with such an increase in construction costs of the parks improvements, the SUBDIVIDER shall provide the additional security within thirty (30) days after receiving demand from the City Engineer therefor; and

- c. to guarantee or warranty the parks improvements work done pursuant to this Agreement for a period of one year following acceptance thereof by CITY against any defective work or labor done or defective materials furnished in the additional amount of 10% of the estimated cost of the improvements; and

The securities required by this Agreement shall be kept on file with the City Clerk. The terms of the security documents referenced on page 1 of this Agreement are incorporated into this Agreement by this reference. If any security is replaced by another approved security, the replacement shall: 1) comply with all the requirements for security in this Agreement; 2) be provided to the City Engineer to be filed with the City Clerk and, upon filing, 3) shall be deemed to have been made a part of and incorporated into this Agreement. Upon provision of a replacement security with the City Engineer and filing of a replacement security with the City Clerk, the former security may be released.

4. Alterations to Improvement Plans.
 - a. Any changes, alterations or additions to the Improvement Plans not exceeding ten percent (10%) of the original estimated cost of the improvements, which are mutually agreed upon by CITY and SUBDIVIDER, shall not relieve the improvement security given for faithful performance of this Agreement. In the event such changes, alterations, or additions exceed 10% of the original estimated cost of the improvement, SUBDIVIDER shall provide improvement security for faithful performance as required by Section (3) of this Agreement for one hundred percent (100%) of the total estimated cost of the improvements as changed, altered, or amended, minus any completed partial releases allowed by Section (6) of this Agreement.
 - b. Any changes, alterations or additions to the Improvement Plans, which are mutually agreed upon by CITY and SUBDIVIDER, shall not relieve the security given to secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor and materials for the improvements required to be constructed and installed pursuant to this Agreement. In the event of any changes, alterations, or additions that increase the estimated cost of the improvement above the original estimated cost of the improvement, SUBDIVIDER shall provide security to secure payment to any contractor, subcontractor, persons renting equipment, or furnishing labor and materials for the improvements required to be constructed and installed pursuant to this Agreement as required by Section (3) of this Agreement for one hundred percent (100%) of the total estimated cost of the improvements as changed, altered, or amended, minus any completed partial releases allowed by Section (6) of this Agreement.

- c. The SUBDIVIDER shall construct the improvements in accordance with CITY standards in effect at the time of adoption of the Resolution of Approval. CITY reserves the right to modify the standards applicable to the SUBDIVISION and this Agreement, when necessary to protect the public safety or welfare or comply with applicable state or federal law or CITY zoning ordinances. If SUBDIVIDER requests and is granted an extension of time for completion of the improvements, CITY may apply the standards in effect at the time of the extension.

5. Inspection. SUBDIVIDER shall at all times maintain proper facilities and safe access for inspection of the parks improvements by CITY inspectors. Upon completion of the work, SUBDIVIDER may request a final inspection by the City Engineer, or the City Engineer's authorized representative. If the City Engineer, or the designated representative, determines that the work has been completed in accordance with this Agreement, then the City Engineer shall certify the completion of the parks improvements to the City Council. No improvements shall be finally accepted by the City Council unless all aspects of the work have been inspected and completed in accordance with the Improvement Plans. When applicable law requires an inspection to be made by City at a particular stage of the work of constructing and installing such improvements, CITY shall be given timely notice of SUBDIVIDER's readiness for such inspection and SUBDIVIDER shall not proceed with additional work until the inspection has been made and the work approved. SUBDIVIDER shall bear all costs of inspection and certification. No improvements shall be deemed completed until accepted by the City Council pursuant to Section (17) herein.

6. Release of Securities. The securities required by this Agreement shall be released as following:
 - a. Security given for faithful performance of any act, obligation, work or agreement shall be released upon the final completion and

acceptance of the act or work, subject to the provisions of subsection (b) hereof.

- b. The City Engineer may release a portion of the security given for faithful performance of improvement work as the improvement progresses upon application thereof by the SUBDIVIDER; provided, however, that no such release shall be for an amount less than twenty-five percent (25%) of the total improvement security given for faithful performance of the improvement work and that the security shall not be reduced to an amount less than fifty percent (50%) of the total improvement security given for faithful performance until final completion and acceptance of the improvement work. In no event shall the City Engineer authorize a release of the improvement security which would reduce such security to an amount below that required to guarantee the completion of the improvement work and any other obligation imposed by this Agreement.

- c. Security given to secure payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment shall, at the date that is the latest of (i) six (6) months after completion and acceptance of the work, (ii) fifteen (15) days following the expiration of the applicable statutory period in which any person may bring suit against the surety(ies) on a payment bond as set forth in Sections 8609 or 9558 of the California Civil Code, or (iii) fifteen (15) days following the expiration of the applicable statutory period in which any person may record a lien pursuant to Sections 8412 or 8414 of the California Civil Code, be reduced to an amount equal to no less than 125% of the total claimed by all claimants for whom liens or suit have been filed and of which notice has been given to the CITY, plus an amount reasonably determined by the City Engineer to be required to

assure the performance of any other obligations secured by the Security. The balance of the security shall be released upon the settlement of all claims and obligations for which the security was given.

- d. No security given for the guarantee or warranty of work shall be released until the expiration of the warranty period and until any claims filed during the warranty period have been settled. As provided in Section (10), the warranty period shall not commence until formal final acceptance of all the work and improvements by the City Council.
- e. CITY may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees.

- 7. Injury to Public Improvements, Public Property or Public Utilities Facilities. SUBDIVIDER shall replace or repair or have replaced or repaired, as the case may be, all public improvements, public utilities facilities and surveying or subdivision monument which are destroyed or damaged as a result of any work under this Agreement. SUBDIVIDER shall bear the entire cost of replacement or repairs of any and all public or public utility property damaged or destroyed by reason of any work done under this Agreement, whether such property is owned by the United States or any agency thereof, or the State of California, or any agency or political subdivision thereof, or by CITY or any public or private utility corporation or by any combination of such owners. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the City Engineer.
- 8. Permits. SUBDIVIDER shall, at SUBDIVIDER's expense, obtain all necessary permits and licenses for the construction and installation of the improvements, give all necessary notices and pay all fees and taxes required by law.

9. Default of SUBDIVIDER.

- a. Default of SUBDIVIDER shall include, but not be limited to,
- (1) SUBDIVIDER's failure to timely commence construction of this Agreement;
 - (2) SUBDIVIDER's failure to timely complete construction of the improvements;
 - (3) SUBDIVIDER's failure to timely cure any defect in the improvements;
 - (4) SUBDIVIDER's failure to perform substantial construction work for a period of twenty (20) calendar days after commencement of the work;
 - (5) SUBDIVIDER's insolvency, appointment of a receiver, or the filing of any petition in bankruptcy either voluntary or involuntary which SUBDIVIDER fails to discharge within thirty (30) days; the commencement of a foreclosure action against the SUBDIVISION or a portion thereof, or any conveyance in lieu or in avoidance of foreclosure; or
 - (6) SUBDIVIDER's failure to perform any other obligation under this Agreement.

b. CITY reserves to itself all remedies available to it at law or in equity for breach of SUBDIVIDER's obligations under this Agreement. CITY shall have the right, subject to this Section, to draw upon or utilize the appropriate security to mitigate CITY's damages in event of default by SUBDIVIDER. The right of CITY to draw upon or utilize the security is additional to and not in lieu of any other remedy available to CITY. It is specifically recognized that the estimated costs and security amounts may not reflect the actual cost of construction or installation of the improvements and, therefore, CITY's damages for

SUBDIVIDER's default shall be measured by the cost of completing the required improvements. The sums provided by the improvement security may be used by CITY for the completion of the parks improvements in accordance with the improvement plans and specifications contained herein.

In the event of SUBDIVIDER's default under this Agreement, SUBDIVIDER authorizes CITY to perform such obligation twenty (20) days after mailing written notice of default to SUBDIVIDER and to SUBDIVIDER's surety, and agrees to pay the entire cost of such performance by CITY.

CITY may take over the work and prosecute the same to completion, by contract or by any other method CITY may deem advisable, for the account and at the expense of SUBDIVIDER, and SUBDIVIDER's surety shall be liable to CITY for any excess cost or damages occasioned CITY thereby. In such event, CITY, without liability for so doing, may take possession of, and utilize in completing the work, such materials, appliances, plants and other property belonging to SUBDIVIDER as may be on the site of the work and necessary for performance of the work.

- c. Failure of SUBDIVIDER to comply with the terms of this Agreement shall constitute consent to the filing by CITY of notice of violation against all the lots in the SUBDIVISION, or to rescind the approval or otherwise revert the SUBDIVISION to acreage. The remedy provided by this subsection (c) is in addition to and not in lieu of other remedies available to CITY. SUBDIVIDER agrees that the choice of remedy or remedies for SUBDIVIDER's breach shall be in the discretion of CITY.
- d. In the event that SUBDIVIDER fails to perform any obligation hereunder, SUBDIVIDER agrees to pay all costs and expenses incurred by CITY in securing performance of such obligations,

including but not limited to fees and charges of architects, engineers, attorneys, other professionals, and court costs.

e. The failure of CITY to take an enforcement action with respect to a default, or to declare a breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of SUBDIVIDER.

10. Warranty. With respect to any equipment required to be installed pursuant to the Improvement Plans, SUBDIVIDER shall provide such equipment warranties as specified by the Improvement Plans, or if not specified therein, as approved by the City Engineer as consistent with industry standards for the type and quality of equipment specified in the Improvement Plans or, or if not specified therein, of comparable equipment on City-constructed parks. SUBDIVIDER shall guarantee or warranty the work done pursuant to this Agreement for a period of one year after final formal acceptance of the SUBDIVISION by the City Council against any defective work or labor done or defective materials furnished. If within the warranty period any work or improvement or part of any work or improvement done, furnished, installed, or constructed by SUBDIVIDER fails to fulfill any of the requirements of this Agreement or the improvement plans and specifications referred to herein, SUBDIVIDER shall without delay and without any cost to CITY, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should SUBDIVIDER fail to act promptly or in accordance with this requirement, SUBDIVIDER hereby authorizes CITY, at CITY's option, to perform the work twenty (20) days after mailing written notice of default to SUBDIVIDER and to SUBDIVIDER's surety, and agrees to pay the cost of such work by CITY. Should CITY determine that an urgency requires repairs or replacements to be made before SUBDIVIDER can be notified, CITY may, in its sole discretion, make the necessary repairs or

replacement or perform the necessary work and SUBDIVIDER shall pay to CITY the cost of such repairs.

11. SUBDIVIDER Not Agent of CITY. Neither SUBDIVIDER nor any of SUBDIVIDER's agents, contractors or subcontractors are or shall be considered to be agents of CITY in connection with the performance of SUBDIVIDER'S obligations under this Agreement.
12. Injury to Work. Until such time as the improvements are accepted by CITY, SUBDIVIDER shall be responsible for and bear the risk of loss to any of the improvements constructed or installed. Until such time as all improvements required by this Agreement are fully completed and accepted by CITY, SUBDIVIDER will be responsible for the care, maintenance of, and any damage to such improvements. CITY shall not, nor shall any officer or employee thereof, be liable or responsible for any accident, loss or damage, regardless of cause, happening or occurring to the work or improvements specified in this Agreement prior to the completion and acceptance of the work or improvements. All such risks shall be the responsibility of and are hereby assumed by SUBDIVIDER.
13. Environmental Warranty. Prior to the acceptance of any dedications or improvements by CITY, SUBDIVIDER shall certify and warrant that neither the property to be dedicated nor SUBDIVIDER is in violation of any environmental law and neither the property to be dedicated nor the SUBDIVIDER is subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with environmental law. Neither SUBDIVIDER nor any third party will use, generate, manufacture, produce, or release, on, under, or about the property to be dedicated, any hazardous substance except in compliance with all applicable environmental laws. SUBDIVIDER has not caused or permitted the release of, and has no knowledge of the release or presence of, any hazardous substance on the property to be dedicated or

the migration of any hazardous substance from or to any other property adjacent to, or in the vicinity of, the property to be dedicated. SUBDIVIDER's prior and present use of the property to be dedicated has not resulted in the release of any hazardous substance on the property to be dedicated. SUBDIVIDER shall give prompt written notice to CITY at the address set forth herein of:

- a. Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any hazardous substance on the property to be dedicated or the migration thereof from or to any other property adjacent to, or in the vicinity of, the property to be dedicated;
 - b. Any claims made or threatened by any third party against CITY or the property to be dedicated relating to any loss or injury resulting from any hazardous substance; and,
 - c. SUBDIVIDER's discovery of any occurrence or condition on any property adjoining in the vicinity of the property to be dedicated that could cause the property to be dedicated or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which is it is intended, transferability or suit under any environmental law.
14. Other Agreements. Nothing contained in this Agreement shall preclude CITY from expending monies pursuant to agreements concurrently or previously executed between the parties, or from entering into agreements with other subdividers for the apportionment of costs of water and sewer mains, or other improvements, pursuant to the provisions of the CITY ordinances providing therefore, nor shall anything in this Agreement commit CITY to any such apportionment.
15. SUBDIVIDER'S Obligation to Warn Public During Construction. Until formal final acceptance of the improvements, SUBDIVIDER shall give

good and adequate warning to the public of each and every dangerous condition existent in said improvements, and will take all reasonable actions to protect the public from such dangerous condition.

16. Vesting of Ownership. Upon formal final acceptance of the work by CITY and recordation of the Resolution of Acceptance of Public Improvements, ownership of the improvements constructed pursuant to this Agreement shall vest in CITY.
17. Final Acceptance of Work. Acceptance of the work on behalf of CITY shall be made by the City Council upon recommendation of the City Engineer after final completion and inspection of all improvements. The City Council shall act upon the Engineer's recommendation within sixty (60) days from the date the City Engineer certifies that the work has been finally completed, as provided in Section (6). Such acceptance shall not constitute a waiver of defects by CITY.
18. Indemnity/Hold Harmless. CITY or any officer or employee thereof shall not be liable for any injury to persons or property occasioned by reason of the acts or omissions of SUBDIVIDER, its agents, or employees, contractors and subcontractors in the performance of this Agreement. SUBDIVIDER further agrees to protect, defend, indemnify and hold harmless CITY, its officials, boards and commissions, and members thereof agents and employees from any and all claims, demands, causes of action, liability or loss of any sort, because of, or arising out of, acts or omissions of SUBDIVIDER, its agents, employees, contractors and subcontractors in the performance of this Agreement, except for such claims, demands, causes of action, liability, or loss arising out of the sole active negligence of the CITY, its officials, boards, commissions, the members thereof, agents, and employees, including all claims, demands, causes of action, liability, or loss because of, or arising out of, in whole or in part, the design or construction of the improvements. This

indemnification and agreement to hold harmless shall extend to injuries to persons and damages or taking of property resulting from the design or construction of said SUBDIVISION, and the public improvements as provided herein, and in addition, to adjacent property owners as a consequence of the diversion of waters from the design and construction of public drainage systems, streets and other public improvements. Acceptance by CITY of the improvements shall not constitute an assumption by CITY of any responsibility for any damage or taking covered by this Section. CITY shall not be responsible for the design or construction of the property to be dedicated or the improvements pursuant to the approved improvement plans or map, regardless of any negligent action or inaction taken by CITY in approving the plans or map, unless the particular improvement design was specifically required by CITY over written objection by SUBDIVIDER submitted to the City Engineer before approval of the particular improvement design, which objection indicated that the particular improvement design was dangerous or defective and suggested an alternative safe and feasible design.

After acceptance of the improvements, the SUBDIVIDER shall remain obligated to eliminate any defect in design or dangerous condition caused by the design or construction defect; however, SUBDIVIDER shall not be responsible for routine maintenance. Provisions of this Section shall remain in full force and effect for ten (10) years following the acceptance by CITY of the improvements. It is the intent of this Section that SUBDIVIDER shall be responsible for all liability for design and construction of the improvements installed or work done pursuant to this Agreement and that CITY shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in approving, reviewing, checking, or inspecting any work or construction. The improvement security shall not be required to cover the provisions of this Section.

In the event of any administrative, legal or equitable action instituted by a third party challenging the validity of any of the procedures leading to the adoption of the Resolution of Approval, the project approvals set forth therein or

the project approvals themselves, or the terms of those approvals, including the failure to include specific terms, SUBDIVIDER and CITY each shall have the right, in their sole discretion, to elect whether or not to defend such action. SUBDIVIDER, at its sole expense, shall defend, indemnify, and hold harmless the CITY (including its agents, officers, and employees) from any such action, claim, damages, or proceeding of whatever nature with counsel chosen by the CITY, subject to SUBDIVIDER's approval of counsel, which shall not be unreasonably denied, and at SUBDIVIDER's sole expense. If the CITY is aware of such an action or proceeding, it shall promptly notify SUBDIVIDER and cooperate in the defense. SUBDIVIDER, upon such notification, shall deposit sufficient funds in the judgment of the CITY's Finance Director to cover the expense of defending such action without any offset or claim against said deposit to assure that the CITY expends no CITY funds. If both parties to this Agreement elect to defend, the parties hereby agree to affirmatively cooperate in defending the said action and to execute a joint defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under the applicable law. As part of the cooperation in defending an action, CITY and SUBDIVIDER shall coordinate their defense in order to make the most efficient use of legal counsel and to share and protect information. SUBDIVIDER and CITY shall each have sole discretion to terminate its defense at any time. CITY shall not settle any third party litigation arising from the Resolution of Approval, or the project approvals set forth therein, without SUBDIVIDER's consent, which consent shall not be unreasonably withheld, conditioned or delayed unless SUBDIVIDER materially breaches this indemnification requirement.

SUBDIVIDER shall reimburse CITY for all costs and expenses (including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs) incurred by CITY in enforcing the provisions of this Section.

19. Personal Nature of SUBDIVIDER'S Obligations. All of SUBDIVIDER's

obligations under this Agreement are and shall remain the personal obligations of SUBDIVIDER notwithstanding a transfer of all or any part of the property within the SUBDIVISION subject to this Agreement, and SUBDIVIDER shall not be entitled to assign its obligations under this Agreement to any transferee of all or any part of the property within the SUBDIVISION or to any other third party without the express written consent of CITY. If the CITY does consent to a transfer of this Agreement and the transferee assumes all of SUBDIVIDER's obligations so transferred, SUBDIVIDER shall be released of its transferred obligations hereunder, all as more specifically provided in an agreement to be entered into in connection with such transfer and in form and substance acceptable to the City Attorney.

20. Sale or Disposition of SUBDIVISION. Seller or other SUBDIVIDER may request a novation of this Agreement and a substitution of security. Upon approval of the novation and substitution of securities, the SUBDIVIDER may request a release or reduction of the securities required by this Agreement. Nothing in the novation shall relieve the SUBDIVIDER of the obligations under Section (18) for the work or improvement done by SUBDIVIDER.
21. Time of the Essence. Time is of the essence in the performance of this Agreement.
22. Time for Commencement of Work; Time Extensions. SUBDIVIDER shall commence substantial construction of the improvements required by this Agreement not later than the issuance of the 100th Certificate of Occupancy by the City's Building Department for Tract 37506-3, and the improvements shall be completed within 12 months. In the event good cause exists as determined by the City Engineer and Public Works Director, the time for commencement of construction or completion of the improvements hereunder may be extended for a period or periods not

exceeding a total of two (2) additional years. The extension shall be executed in writing by the City Engineer and Public Works Director. Any such extension may be granted without notice to SUBDIVIDER's surety and shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement. The City Engineer shall be the sole and final judge as to whether or not good cause has been shown to entitle SUBDIVIDER to an extension. Delay, other than delay in the commencement of work, resulting from an act of CITY, act of God, or by storm or inclement weather, strikes, boycotts or similar political actions which prevents the conducting of work, which SUBDIVIDER could not have reasonably foreseen and, furthermore, were not caused by or contributed to by SUBDIVIDER, shall constitute good cause for and extension of the time for completion. As a condition of such extension, the City Engineer may require SUBDIVIDER to furnish new security guaranteeing performance of this Agreement as extended in an increased amount as necessary to compensate for any increase in construction costs as determined by the City Engineer.

23. No Vesting of Rights. Performance by SUBDIVIDER of this Agreement shall not be construed to vest SUBDIVIDER's rights with respect to any change in any zoning or building law or ordinance.

24. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid and addressed as provided in this Section. Notice shall be effective on the date it is delivered in person, or, if mailed, on the date of deposit in the United States mail. Notices shall be addressed as follows unless a written change of address is filed with the City:

Notice to CITY:

City of Palm Desert
73-510 Fred Waring Drive
Palm Desert, California 92260
Attn: Public Works Director

Notice to SUBDIVIDER:

Meritage Homes of California, Inc.
5 Peters Canyon Road, Suite 310
Irvine, CA 92606
Attn: Efrem Joelson

Notice to SURETY:

25. Compliance With Laws; Labor Code Provisions. SUBDIVIDER, its agents, employees, contractors and subcontractors shall comply with all federal, state and local laws in the performance of the improvements and land development work required by this Agreement.

The CITY hereby states pursuant to Section 1781 of the California Labor Code ("Labor Code") that the construction by the SUBDIVIDER of any public improvements required by the Conditions of Approval (as defined hereinbelow) is "public work" (as defined in, and within the meaning of, Section 1720 of the Labor Code) to which Section 1771 of the Labor Code applies. While acknowledging but without expressing any concurrence with the position stated in the foregoing sentence, the SUBDIVIDER hereby agrees that it shall (i) require the construction of all park public improvements required by the Conditions of Approval to be performed as

“public work” to which Section 1771 of the Labor Code applies, and (ii) in furtherance of Section 1781(a)(2)(C) of the Labor Code, comply with all payment bonding requirements of the CITY with respect to such public improvements, including but not limited to the provision by the SUBDIVIDER to the CITY of a payment bond with respect to each subject construction contract (A) securing with respect to such contract the payment of claims of laborers (including but not limited to the payment of prevailing wages as required by this Section 25), material suppliers, and other persons as provided by law, (B) conforming with the requirements of Section 9554 of the California Civil Code (to the extent that a subject contract involves an expenditure in an amount subject to, and a contractor deemed to be a direct contractor under, Section 9550 of the California Civil Code), and (C) naming the CITY as an obligee unto which the SUBDIVIDER, as principal, and the surety are bound. In the event a contractor to whom the SUBDIVIDER awards a subject construction contract provides a payment bond meeting the foregoing requirements and also naming the SUBDIVIDER as an additional obligee unto which the contractor, as principal, and the surety are bound, such contractor’s payment bond shall be deemed as the provision by the SUBDIVIDER of a payment bond hereunder.

As used in this Agreement, “Conditions of Approval” means, with respect to any portion of the property within the SUBDIVISION, the conditions of approval of all land use entitlements approved by the CITY or any other governmental agency, including but not limited to the Resolution of Approval, and the conditions of this Agreement and any development agreement, which conditions must be satisfied in order to develop such property.

Without limiting the foregoing, with respect to improvements to be constructed by SUBDIVIDER or under the direction of SUBDIVIDER hereunder, SUBDIVIDER shall require the contractor and subcontractors

to pay prevailing wages and to comply with all applicable prevailing wage laws pursuant to California Labor Code Sections 1720 et seq. and implementing regulations of the California Department of Industrial Relations. SUBDIVIDER shall indemnify, defend, protect and hold harmless City, its agents, elected officials, officers, employees and independent consultants from and against any third party claim, cause of action, administrative or judicial proceeding or enforcement action of any kind arising out of or resulting from SUBDIVIDER or its contractors and subcontractors' alleged or actual failure to comply with prevailing wage laws.

In addition, the SUBDIVIDER agrees to require any person or entity to whom the SUBDIVIDER sells the property within the SUBDIVISION to comply with this Section 25.

Notwithstanding the foregoing, the CITY and the SUBDIVIDER agree that (x) this Agreement is not intended to be a public works contract; (y) the subject public improvements are of local and not state-wide concern, and (z) the foregoing shall not in any way imply or be construed to mean that this Agreement or the subject public improvements constitute a public work for any purpose other than to assure compliance with the Labor Code.

26. Severability. The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the agreement shall remain in full force and effect unless amended or modified by the mutual consent of the parties.
27. Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, limit, exemplify, or aid in the interpretation, construction or meaning of any provisions of this Agreement.

28. Litigation or Arbitration. In the event that suit or arbitration is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to litigation costs and reasonable attorneys' fees.
29. Incorporation of Recitals. The recitals to this Agreement are hereby incorporated into in the terms of this Agreement.
30. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter. All modifications, amendments, or waivers of the terms of this Agreement must be in writing and signed by the appropriate representatives of the parties.
31. Interpretation. This Agreement shall be interpreted in accordance with the laws of the State of California.
32. Jurisdiction. Jurisdiction of all disputes over the terms of this Agreement shall be in the County of Riverside, State of California.

[signature page follows]

IN WITNESS WHEREOF, this Agreement is executed by the parties as of the date hereinabove first written; by CITY, by and through its Mayor.

SUBDIVIDER:
MERITAGE HOMES OF CALIFORNIA, INC.,
a California Corporation

CITY OF PALM DESERT

By:  _____

By: _____

Name: Nicholas Emsiek

KARINA QUINTANILLA, MAYOR

Title: Division President

(Proper Notarization of SUBDIVIDER's signature is required and shall be attached)

By:  _____

Name: Elliot Mann

Title: West Region President

(Proper Notarization of SUBDIVIDER's signature is required and shall be attached)

ATTEST:

ANTHONY J. MEJIA, CITY CLERK

APPROVED AS TO FORM:

ISRA SHAH, CITY ATTORNEY

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of Orange }

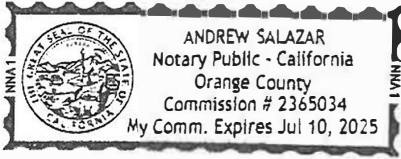
On October 31, 2024 before me, Andrew Salazar, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Elliot Ma n n
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Partner – Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer is Representing: _____

EXHIBIT A
ESTIMATED COST OF WORK PURSUANT TO PARKS IMPROVEMENT PLANS

[see attached]

**EXHIBIT B
LEGAL DESCRIPTION**