

## FAIRWAY CANYON PARK AGREEMENT

This Fairway Canyon Park Agreement (this “Agreement”) is entered into on September 7, 2021 (the “Effective Date”) by and among the City of Beaumont, a municipal corporation (“City”), SDC Fairway Canyon, LLC, a Delaware limited liability company, successor in interest to LB/L – Suncal Oak Valley LLC (“Developer”), and Meritage Homes of California, Inc., a California corporation (“Meritage”), with respect to the facts set forth in the Recitals below. City, Developer, and Meritage are hereinafter sometimes referred to individually as a “Party” and collectively as the “Parties”.

### RECITALS

A. City and Developer entered into that certain Development Agreement between City and Developer (as successor in interest to LB/L – Suncal Oak Valley LLC), dated November 18, 2003 and recorded on December 15, 2003, Official Records of Riverside County, as Doc # 2003-977700 and amended by that certain Administrative Amendment No. 1 to the Development Agreement between the City of Beaumont and SDC Fairway Canyon, LLC, dated as of June 15, 2020 for reference and recorded on July 15, 2020, Official Records of Riverside County, as Doc # 2020-0309850 (“Amendment No. 1”) (said Development Agreement, as amended by Amendment No. 1, the “Development Agreement”) with respect to the real property as described in Exhibit A to the Development Agreement (the “Property”).

B. Under the Development Agreement, the Property is entitled for, and Developer has vested rights to develop up to, a 3,300 residential unit development project on the Property commonly known as “Fairway Canyon” (the “Project”). As set forth in the “Operative Planning Area Summary Table and Estimated Park DIF” attached hereto as **Exhibit “A”** and incorporated herein by this reference (“Summary Table”), Developer and/or merchant builders including Meritage, D.R. Horton Los Angeles Holding Company, Inc., a California corporation (“DR Horton”) and Woodside 05S, LP (“Woodside”) have vested rights to develop 1365 remaining residential units on the Property (the “Remaining Units”).

C. In accordance with the Development Agreement, as of the Effective Date, Developer has completed four (4) parks on the Property (the “Completed Parks”) consisting of all the parks referred to as “completed” in the “Fairway Canyon Parks VTTM 31462 - Valuation and Developer Cost Summary” set forth in **Exhibit “B”** attached hereto and incorporated herein by this reference (“Valuation/Cost Summary”). As of the Effective Date, all of the Completed Parks have been dedicated to and accepted by City except for the park identified in attached **Exhibit “B”** as Mickelson Park (“Mickelson Park”). As also indicated in attached **Exhibit “B”**, as of the Effective Date, the only park within the Project remaining to be completed and dedicated is the park within Planning Area 21B (the “PA 21B Park”, and together with the Completed Parks, the “Parks”).

D. Under provisions of the Development Agreement and City Ordinance No. 1095 (“Ordinance 1095”) deemed applicable by the City, the City has imposed development impact fees for Community Parks (as that term is used in Ordinance 1095) in the current amount of \$2,373.32 per Remaining Unit and development impact fees for Neighborhood Parks (as that term is used in Ordinance 1095) in the amount of \$2,872.11 per Remaining Unit, which are subject to annual and other periodic increases from time to time (collectively, and whether imposed pursuant to the Development Agreement, Ordinance 1095, City Ordinance No. 1099 (“Ordinance 1099”) or otherwise, “Park DIFs”). The Parties desire to clarify and resolve any and all disagreements regarding the City's imposition and collection of Park DIFs. The estimated total Park DIFs for the Property

based on the **Exhibit “A”** Summary Table (i.e., the Remaining Units entitled for development by planning area) is \$7,160,011.95 (the “Estimated Park DIF”), calculated by multiplying the total number of Remaining Units (i.e., 1365 units per Amendment No. 1) by the aggregate total Park DIFs in the amount of \$5,245.43 per unit.

E. Based on the **Exhibit “B”** Valuation/Cost Summary, the City desires to refund to DR Horton all Park DIFs already paid prior to the Effective Date for thirty-eight (38) residential dwelling units within Tract Nos. 31462-21 and 31462-22 of the Project (the “DR Horton Refund”), which City and Developer currently mutually agree to be the sum of \$199,326.34 and any additional Park DIFs that are paid to City by DR Horton prior to or upon the Effective Date in which case the amount of the DR Horton Refund shall be adjusted accordingly.

F. Based on the **Exhibit “B”** Valuation/Cost Summary, the City further desires to refund to Woodside all Park DIFs already paid prior to the Effective Date for sixty-one (61) residential dwelling units within Tract Nos. 37697 and 37698 of the Project (the “Woodside Refund”), which City and Developer currently mutually agree to be the sum of \$319,971.23 and any additional Park DIFs that are paid to City by Woodside prior to or upon the Effective Date, in which case the amount of the Woodside Refund shall be adjusted accordingly.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises contained herein, City and Developer hereby agree as follows:

### ARTICLE I PRIOR CONSTRUCTION OF IMPROVEMENTS

1.1 Recitals Incorporated. The foregoing recitals are true and correct and are part of this Agreement for all purposes.

1.2 Prior Construction. Developer has completed all of the Completed Parks and has dedicated and conveyed the Completed Parks identified in **Exhibit “B”** to the City, with the exception of Mickelson Park. If Developer has not done so on or before the Effective Date, Developer shall dedicate and convey Mickelson Park to City, and City shall process acceptance of such dedication and conveyance from Developer, within thirty (30) days following the Effective Date.

### ARTICLE 2 COMPLETION, CITY ACCEPTANCE, CONVEYANCE AND MAINTENANCE

2.1 Completion. Developer has completed all parks and improvements for the Project, except for the PA 21B Park, which shall be completed by Meritage in accordance with plans and specifications to be prepared by Meritage and subject to approval by City. Other than the PA 21B Park, the City has approved the Parks and improvements after inspection. As to the PA 21B Park, Meritage shall request a walk-through inspection by the City promptly following completion of the PA 21B Park. Subject to City staffing schedules, within thirty (30) business days following the date

of receipt of Meritage's written notice of completion, the City shall conduct a final inspection of the PA 21B Park ("Final Inspection"). At the Final Inspection, Meritage shall demonstrate to City the operation of any system included as part of the PA 21B Park, and instruct City personnel in the operation, adjustment, and maintenance of any equipment or systems included in the PA 21B Park. Developer certifies, and City acknowledges, all work related to Mickelson Park has been completed in compliance with California prevailing wages laws governing public projects. Meritage certifies all work related to the 21B Park will be completed in compliance with California prevailing wages laws governing public projects.

2.2 Final Inspection and Acceptance by City Council. If, during the Final Inspection, City determines that the PA 21B Park has not been completed in accordance with the approved plans for the PA 21B Park, the City shall prepare a punch list of all items to be completed by Meritage and, subject to City staffing schedules, shall provide such punch list to Meritage within thirty (30) business days following the Final Inspection. Upon completion of the punch list work to the satisfaction of City, the City shall deliver a certificate of final completion to Meritage ("Final Completion"). Parks proposed for dedication shall be submitted to and are subject to formal acceptance by the Beaumont City Council ("Acceptance"). Acceptance shall not occur at the City staff level. With the exception of the PA 21B Park, which has not yet been constructed, and Mickelson Park, which has been completed but not yet been accepted by and conveyed to the City, all Parks within the Project have already been completed by Developer and dedicated and conveyed to the City.

2.3 Release of Liens. Upon Final Completion, Meritage shall provide, in form satisfactory to the City, evidence that all of the costs of the PA 21B Park have been fully paid, including any and all lien claims. Upon request of the City, Meritage shall provide lien releases under California Civil Code Section 3262(d) to assure that payment of any outstanding claims of Meritage's contractors, subcontractors, and suppliers have been paid.

2.4 Indemnification by Developer. Developer, with respect to Mickelson Park, and Meritage, with respect to the PA 21B Park, agrees and covenants to, and shall fully indemnify, defend and hold harmless City and its elective and appointive boards, commissions, officers, employees and agents, from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees), causes of action, claims, or judgments (collectively, "Claims") based on any claim that Mickelson Park and the PA 21B Park, respectively, are subject to the prevailing wage laws or arising by reason of any death, bodily injury, personal injury, property damage or violation of any law or regulation to the extent arising from any actions or omissions in connection with the design, construction, operation, maintenance or repair of such Park by any of the following: Developer or Meritage (as applicable), any of Developer's or Meritage's (as applicable) engineers, architects, contractors or subcontractors, or any other person or entity employed by or acting on behalf of or as the authorized agent for Developer or Meritage (as applicable), or any of Developer's or Meritage's (as applicable) engineers, architects, contractors or subcontractors. Provided, however, that the indemnity, defense and hold harmless obligations of Developer and Meritage under the preceding sentence shall apply only to Claims first notified in writing by City to Developer or Meritage, as applicable, prior to expiration of the applicable Warranty Period (as defined in Section 2.5 below). Provided further, however, that Developer and Meritage shall not be liable hereunder to indemnify, defend or hold harmless City and its elective and appointive boards, commissions,

officers, employees and agents against Claims to the extent arising from the sole negligence, active negligence or willful misconduct of City in its functions of design review, approval, construction inspection or other acts or omissions of City in connection with any Park; provided further, that nothing in this Agreement shall be construed as a waiver by City, Developer or Meritage of any immunity or defense it may have relating to any such Claim, including without limitation immunity or defenses relating to design review and/or approval and/or construction inspection.

2.5 Warranty. Developer hereby warrants Mickelson Park as to the materials and workmanship for one (1) year following Acceptance of Mickelson Park. Meritage hereby warrants the PA 21B Park as to the materials and workmanship for one (1) year following Acceptance of the PA 21B Park. Each such one (1) year warranty period is herein referred to as a “Warranty Period”. The provisions contained herein shall not be deemed to limit any rights Developer or Meritage has or may have to seek damages or other relief based upon any act or omission of any contractor involved in the construction or design of the Parks. Notwithstanding the foregoing, Developer's and Meritage's (as applicable) warranty excludes remedies for damage or defect caused by ordinary wear and tear under normal usage, abuse, neglect, modifications not performed by Developer or Meritage (as applicable) or its agents, vandalism, or acts of God. Nothing herein shall be construed to limit any other warranties City may have from the manufacturer of any materials used in the Parks, but the warranty contained in this Section 2.5 shall be the exclusive warranty of Developer and Meritage, and all other express or implied warranties are expressly disclaimed. Should any failure of such Parks or any portion thereof occur within the applicable Warranty Period, Developer or Meritage (as applicable) shall promptly cause the needed repairs to be made without any expense or cost to City. City is hereby authorized to make repairs if Developer or Meritage (as applicable) fails to make, or undertake with due diligence, the necessary repairs after it is given written notice of such failure; provided that City shall provide Developer or Meritage (as applicable) with an opportunity to meet and confer regarding such warranty work and the Developer or Meritage (as applicable) shall be given a reasonable opportunity to perform such warranty work within a time frame and on conditions which are reasonable under the circumstances, prior to City making any temporary or permanent repairs or replacements during the Warranty Period. In case of emergency when delay would cause serious hazard to the public, City may make the necessary repairs without prior notice to Developer or Meritage (as applicable). In all cases of failure of a Park improvement or portion thereof within the Warranty Period where City has taken action in accordance with this Section, Developer or Meritage (as applicable) shall reimburse City for any and all costs or expenses, direct and indirect, incurred by City, after City provides Developer or Meritage (as applicable) with documentation reasonably substantiating the costs incurred by City pursuant to this Section. Subject to the preceding provisions of this Section, City shall maintain the Parks from and following City acceptance of the Parks pursuant to Section 2.2.

### ARTICLE 3

#### RECONCILIATION OF ESTIMATED PARK DIF, PARK COSTS AND VALUATIONS

3.1 Reconciliation. For avoidance of doubt, City and Developer acknowledge and agree that the Park costs incurred by Developer for the Parks as shown in **Exhibit “B”** exceed the Estimated Park DIF that the City asserts is payable under the Development Agreement and Ordinance 1095 for the Project. The Parties acknowledge and agree that Developer, Meritage, DR Horton, Woodside, and any other purchaser or developer of any Remaining Units (collectively

“Remaining Unit Owners”) shall have no obligation at any time to pay, and City shall not at any time collect, any Park DIFs in connection with the build-out of the Remaining Units under the Development Agreement, Ordinance 1095, Ordinance 1099, or otherwise. Subject to and without limiting the preceding sentence, as also set forth in **Exhibit “B”**, the value of the land dedicated or to be dedicated by Developer and Meritage is \$7,180,250.00. Developer has determined and after inspection the City has confirmed and agrees that, as set forth in **Exhibit “B”**, the total value of the improvements for the Completed Parks (including Mickelson Park) exceeds \$8,558,000.00. City further acknowledges and agrees that, based on the value of the Park improvements, any Remaining Units are not subject to the payment of Park DIFs under the Development Agreement, Ordinance 1095, Ordinance 1099, or otherwise. Notwithstanding the above, Meritage shall remain obligated to complete, submit for inspection, and dedicate the PA 21B Park.

3.2 Refunds and Limitation on City Liability. Not later than thirty (30) business days after the Effective Date, City shall remit and pay the full amount of the DR Horton Refund to DR Horton and the Woodside Refund to Woodside, including any additional Park DIFs that are paid to City by DR Horton and/or Woodside prior to or upon the Effective Date. DR Horton and Woodside are hereby deemed express third party beneficiaries of City's obligations under this Agreement, including the City's obligation to pay them the DR Horton Refund and the Woodside Refund, respectively. Except as expressly set forth in this Agreement, no other credit or reimbursement shall be available to any Remaining Unit Owners with respect to Park DIFs or expenditures for Parks.

#### **ARTICLE 4 ASSIGNMENT**

Developer and Meritage may assign all or any of their respective rights under this Agreement to any affiliate or lender (for purposes of security) of such Party or to any other Remaining Unit Owner. Any other assignment shall be subject to approval by the City Council.

#### **ARTICLE 5 MISCELLANEOUS**

5.1 Entire Agreement. This Agreement represents the entire agreement of the parties relating to the subject matter of this Agreement. No oral or written statement, representation, or agreement not included within this Agreement shall be of any force or effect whatsoever, and shall be deemed to have been superseded by the terms hereof. Nothing in this Agreement shall be deemed to modify or amend any provision of the Development Agreement or any rights or obligations of the parties thereunder.

5.2 Attorneys' Fees. The prevailing party in any proceedings, judicial or otherwise, brought to enforce the terms of this Agreement, shall be entitled to reasonable attorney fees and costs in prosecuting or defending such proceedings.

5.3 Notices. Any demand upon or notice required or permitted to be given by one party to the other party shall be in writing. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one party to the other party shall be effective (a) on personal delivery, (b) on the second business day after mailing by certified or registered United States Mail, return receipt requested or (c) on the succeeding business day after mailing by Express

Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, addressed to the party at the address shown below:

If to City:  
City Manager  
City of Beaumont  
550 East Sixth Street  
Beaumont, Ca 92223

If to Developer:  
SDC Fairway Canyon, LLC  
c/o Argent Management LLC  
4131 S. Main Street  
Santa Ana, CA 92707  
Attention: Robert J. Starkman

If to Meritage:  
Meritage Homes of California, Inc.  
5 Peter's Canyon, Suite 310  
Irvine, CA 92606  
Attention: Raphael Dibianco and Timothy Huynh

5.4 Enforced Delay. Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or default are due to war, acts of terrorism, insurrection, strikes, walkouts, riots, energy shortages, energy rationing, floods, drought, rain, earthquakes, fires, casualties, pandemics, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation, or similar bases for excused performance.

5.5 Relationship Between Parties. The Parties agree that (a) the relationship between them is, is intended to be and shall at all times remain, in connection with the transactions contemplated by this Agreement, that of a private developer as to Developer and Meritage, and that of a public agency as to the City and (b) no Party is intended to be or shall be construed as a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of any other Party or any of its affiliates and no Party intends to ever assume such status.

5.6 Governing Law. This Agreement is entered into and is to be performed in Riverside County, California and shall be construed and interpreted in accordance with the laws of the State of California.

5.7 Counterparts. This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

5.8 Severability. If any portion of this Agreement shall become illegal, null, void or against public policy for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

5.9 Authority to Bind. Each person signing this Agreement warrants that it is authorized to bind its respective Party on whose behalf they sign.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

**CITY OF BEAUMONT**

**SDC FAIRWAY CANYON, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**MERITAGE HOMES OF  
CALIFORNIA, INC.,** a California  
corporation

By:  \_\_\_\_\_

Name: Aaron Talarico

Title: VP Forward Planning

Dated: 8.30.21

**Exhibit "A"**

**Operative Planning Area Summary Table and Estimated Park DIF**

<b>PLANNING AREA</b>	<b>TRACT NO.</b>	<b>PA ACRES</b>	<b>NUMBER OF DWELLING UNITS</b>
18	VTTM31462	47.13	189
20A	VTTM31462	37.65	127
20B	VTTM31462	24.46	125
20C	VTTM31462	47.59	164
22	VTTM31462		0
22A		17.19	67
22B		13.76	55
22C		11.80	55
22D		11.25	54
26A	31462-21	33.65	167
26C	31462-22	20.48	101
25			
25A	37698	22.09	126
25B	37697	13.11	73
25C	37696	13.58	62
<b>Totals</b>		<b>313.74</b>	<b>1,365</b>

Neighborhood Park Fee	1,365	\$2,872.11	\$3,920,430.15
Community Park Fee	1,365	\$2,373.32	\$3,239,581.80
<b>ESTIMATED PARK DIF</b>	1,365	\$5,245.43	\$7,160,011.95



**Exhibit "B"**

<b>FAIRWAY CANYON PARKS VTTM 31462 – VALUATION AND DEVELOPER COST SUMMARY</b>				
<b>PLANNING AREA</b>	<b>NET PARK ACRES (Approx.)</b>	<b>STATUS</b>	<b>OWNERSHIP</b>	<b>DEVELOPER IMPROVEMENT COSTS (Approx.)</b>
24	5.36	Trevino Park, Completed	ACCEPTED; CITY	\$ 1,167,000
13	3.62	Palmer Park, Completed	ACCEPTED; CITY	\$ 788,000
5	18.30	Nicklaus Park, Completed	ACCEPTED; CITY	\$ 4,000,000
17	6.68	Mickelson Park, Completed	NOT ACCEPTED (TO BE ACCEPTED PURSUANT TO FAIRWAY CANYONS PARK AGREEMENT); DEVELOPER	\$ 2,603,000
21B	7.07	Not Designed or Completed, lot is not recorded	MERITAGE	TBD
TOTAL	41.03			\$ 8,558,000

<b>NET PARK ACRES</b>	<b>CITY PER ACRE LAND VALUE</b>	<b>TOTAL LAND VALUE</b>	<b>TOTAL DEVELOPER PARK IMPROVEMENT COSTS</b>
41.03	\$175,000	\$7,180,250.00	\$8,558,000