

EXHIBIT "D"

EXEMPT FROM FEES pursuant to
Gov't Code §§ 6103, 27383, and 27388.1
(filing requested/executed by municipality)

RECORDING REQUESTED BY, AND
WHEN RECORDED RETURN TO:

CITY CLERK
CITY OF ESCONDIDO
201 N. BROADWAY
ESCONDIDO, CA 92025

THIS SPACE FOR RECORDER'S USE ONLY

APNs: [240-011-01-00, -240-011-12-00, 240-011-13-00, 240-020-23-00, 240-020-32-00, 240-020-33-00, a portion of 240-020-21-00 and a portion of 240-020-27-00.]

DEVELOPMENT AGREEMENT
for **Northeast Gateway Project 64**

between

City of Escondido

and

Meridian Communities, LLC

February, 2023

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (“**Agreement**”) is entered into by and between the City of Escondido, a California municipal corporation (“**City**”), and [Meridian Communities, LLC, A Delaware Limited Liability Company] (“**Owner**”). (The City and Owner each may be referred to herein as a “**Party**” and collectively as the “**Parties.**”)

RECITALS

WHEREAS, Government Code sections 65864 through 65869.5 and Article 58 of the City's Zoning Code authorize the City to enter into binding development agreements with persons or entities having legal or equitable interests in real property for the purpose of establishing certainty in the development process for both the City and the property owner, and to enable specific terms regarding property development, to be negotiated and agreed upon; and

WHEREAS, this Agreement concerns the [Northeast Gateway Project 64] Project, a proposed Tentative Subdivision Map for a 64-lot single-family residential development, and further related improvements and components described in the Entitlements and this Agreement (“**Project**”); and

WHEREAS, the Project is located on that certain real property totaling approximately acres located in the County of San Diego, State of California, constituting a portion of Planning Area 2 (PA2) of Specific Planning Area #5 (the Northeast Gateway Specific Plan) identified in the Escondido General Plan, having assessor’s parcel numbers (APNs) [240-011-01-00, -240-011-12-00, 240-011-13-00, 240-020-23-00, 240-020-32-00, 240-020-33-00, a portion of 240-020-21-00 and a portion of 240-020-27-00], and as more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (“**Property**”); and

WHEREAS, Owner is the fee simple owner of the Property; and

WHEREAS, the purposes of the Agreement are to eliminate uncertainty in the planning and development for the Project by assuring Owner that it may develop the Property in accordance with existing laws, subject to the terms and conditions contained in this Agreement; assure the orderly installation of necessary improvements and the provision for public services appropriate for the development of the Project; and enable the City to obtain substantial public benefits by virtue of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and conditions set forth herein, and the mutual benefits derived therefrom, the Parties agree as follows:

ARTICLE I

Definitions

1. “**Annual Review**” shall mean the Owner’s demonstration of compliance with the terms of this Agreement provided to the City at least once every 12 months throughout the duration of the Term, as further described in Article V of this Agreement.
2. “**Development Fees**” shall mean any development-related fees as provided in the City’s Fee Guide and referred to as development fees.
3. “**Effective Date**” shall mean the effective date of this Agreement, which shall be the later of (i) the date that is 30 days after the City Council’s adoption of an ordinance approving this Agreement; or (ii) the date that Owner becomes the owner of the Property in fee simple.
4. “**Entitlements**” shall mean all approvals and permits necessary or incidental to the development of the Project or any portion thereof, whether discretionary or ministerial, including but not limited to specific plans and amendments; tentative or final tract map approvals, whether standard or vesting; project plans; grading permits; building permits; demolition permits; specific

alignment plans; planned development permits; staff design review, and this Agreement, and includes all conditions of approval for all Entitlements.

5. “**Exaction**” shall mean any fee, tax, requirement, condition, dedication, restriction, or limitation imposed by the City upon the development of the Property at any time in accordance with the Existing Laws.

6. “**Existing Laws**” shall mean the ordinances, resolutions, codes, rules, regulations, general plan, stormwater regulations, and official policies of the City governing the development of the Property in effect on the Effective Date, including but not limited to the permitted uses of the Property; the density or intensity of use; the design, improvement, and construction standards and specifications for the Project, including the maximum height and size of proposed buildings; and the provisions for reservation and dedication of land for public purposes.

7. “**Fee Guide**” shall mean the Escondido Fee Guide for Developments, attached hereto as Exhibit C.

8. “**Future Exaction**” shall mean any Exaction imposed after the Effective Date, whether by ordinance, initiative, resolution, rule, regulation, policy, order, or otherwise.

9. “**Future Laws**” shall mean all ordinances, resolutions, codes, rules, regulations, and official policies implemented by the City after the Effective Date, whether by ordinance, initiative, resolution, rule, regulation, policy, order, or otherwise. Future Laws includes changes to the Existing Laws.

10. “**General Fees**” shall mean all general development fees that the City may levy pursuant to the Mitigation Fee Act, Government Code section 66000 et seq., including but not limited to application fees, processing fees, utility connection fees, inspection fees, capital facilities fees,

development impact fees, traffic impact fees, park fees, and such other similar fees as may be enacted from time to time and generally applied throughout the City, excluding Development Fees.

11. “**Minor Modifications**” shall mean minor modifications regarding the performance of this Agreement that are consistent with the Entitlements and have minimal impacts to the City's operations in terms of timing, performance, or value.

12. “**Operating Memorandum**” shall mean an addendum to this Agreement to document changes or adjustments in the performance of this Agreement, as further described in Article III, Section 7.

13. “**Public Benefits**” shall mean the consideration given by Owner to the City in return for the City's performance of all applicable terms and conditions of this Agreement, as further described in Exhibit B, attached hereto and incorporated herein by this reference.

14. “**State or Federal Law**” shall mean any state or federal law enacted after the Effective Date of this Agreement.

ARTICLE II

General Provisions

1. **Term of Agreement**. The term of this Agreement shall commence on the Effective Date and shall continue for 10 years (“**Term**”). After the expiration of the Term, this Agreement shall be deemed terminated and of no further force or effect. Owner shall have 30 days from the Effective Date to sign this Agreement or this Agreement shall automatically terminate. This Agreement shall terminate with respect to any lot when a certificate of occupancy has been issued for all buildings on the lot, and such lot shall be released and no longer subject to the Agreement without requiring the execution or recordation of any further document. In the event of litigation challenging this Agreement or the Project, the Term is automatically extended for the duration of

such litigation and resumes upon final disposition of such challenge and any appeal thereof upholding the validity of this Agreement or the Project. In the event that a referendum petition concerning this Agreement or Project is duly filed in such a manner that the ordinance approving this Agreement or the Project is suspended, then the Term is deemed to commence upon City Council's certification of the results of the referendum election affirming this Agreement or the Project.

2. **Assignment**. The rights and obligations of Owner under this Agreement may be assigned by Owner, in whole or in part, to any party acquiring an interest in the Property, after receiving written approval from the City Manager, which shall not be unreasonably withheld, conditioned, or delayed ("**Assignment**"). Owner shall provide 30 days' advance written notice to the City of any requested Assignment, and the City shall respond or execute any written consent requested by Owner within said 30-day period.

Any Assignment must be in writing and expressly provide that (1) the Assignment shall be subject to this Agreement, and (2) the assignee assumes all of Owner's rights and obligations with respect to the Property, or portion thereof, assigned. The City shall have the right to ensure that the proposed assignee has the financial capability to complete and fulfill any outstanding requirements relating to the Public Benefits. Owner and the assignee shall execute an Assignment and Assumption of Development Agreement, which shall be in a form approved by the City Attorney and which shall be recorded against the Property in the Official Records of San Diego County.

During the Term, any assignee shall have all rights, benefits, and obligations of Owner under this Agreement with respect to the portion of the Property assigned. Following an

Assignment, Owner shall be released from its obligations with respect to the assigned Property unless otherwise agreed to in writing.

3. **Amendment of Agreement.** This Agreement may be amended, or canceled in whole or in part, by mutual written consent of the Parties in accordance with Article 58, Chapter 33 of the Escondido Municipal Code; Government Code sections 65867 – 65868.5, and any other applicable law. Any amendment to this Agreement must be recorded in the Official Records of San Diego County. Minor Modifications in the manner of performance, including but not limited to changes that relate to the form or timing of payment of Public Benefits or the design of the Project, shall not constitute an amendment to this Agreement and may be accomplished through an Operating Memorandum.

4. **Enforcement.** Unless amended or terminated as provided herein, this Agreement is enforceable by either Party or its successors and assigns, notwithstanding any Future Laws that alter or amend the Existing Laws.

5. **Indemnification, Hold Harmless, Duty to Defend.**

a. Owner (including Owner's agents, employees, contractors, and subcontractors, if any) shall indemnify, hold harmless, and defend (with counsel reasonably acceptable to the City) the City, its Councilmembers, Planning Commissioners, boards, commissions, departments, officials, officers, agents, employees, and volunteers (collectively, "**Indemnified Parties**") from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, liens, levies, costs, expenses, liabilities, losses, damages, or injuries, at law or in equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "**Claims**"), of every nature caused by,

arising out of, or in connection with (i) any business, work, conduct, act, omission, or negligence of the Owner (including the Owner's contractors, subcontractors, licensees, sublessees, invitees, agents, consultants, employees, or volunteers), or such activity of any other person that is permitted by the Owner, occurring in, on, about, or adjacent to the Property; (ii) any use of the Property, or any accident, injury, death, or damage to any person or property occurring in, on, or about the Property; or (iii) any default in the performance of any obligation of the Owner to be performed pursuant to any condition of approval for the Project or agreement related to the Project, or any such claim, action, or proceeding brought thereon. Provided, however, that the Owner shall have no obligation to indemnify, hold harmless, or defend the City as to any Claims that arise from the sole negligence or willful misconduct of the City. In the event any such Claims are brought against the City, the Owner, upon receiving notice from the City, shall defend the same at its sole expense by counsel reasonably acceptable to the City and shall indemnify the City for any and all administrative and litigation costs incurred by the City itself, the costs for staff time expended, and reasonable attorney's fees (including the full reimbursement of any such fees incurred by the City's outside counsel, who may be selected by the City at its sole and absolute discretion and who may defend the City against any Claims in the manner the City deems to be in the best interests of the City).

b. The Owner further and separately agrees to and shall indemnify, hold harmless, and defend the City (including all Indemnified Parties) from and against any and all Claims brought by any third party to challenge the Project or its approval by the City, including but not limited to any Claims related to the Project's environmental determinations or environmental review documents, or any other action taken by the City regarding environmental clearance for the Project or any of the Entitlements, including this Agreement. Such indemnification shall include

the Owner's payment for any and all administrative and litigation costs and expenses incurred by the City in defending against any such Claims, including payment for all administrative and litigation costs incurred by the City itself, the costs for staff time expended, and reasonable attorney's fees (including the full reimbursement of any such fees incurred by the City's outside counsel, who may be selected by the City at its sole and absolute discretion and who may defend the City against any Claims in the manner the City deems to be in the best interests of the City and the Project).

c. Upon the filing of a Claim, the City, in its sole discretion and upon providing notice to the Owner, may require the Owner to deposit with the City an amount estimated to cover costs, expenses, and fees (including attorney's fees) required to be paid by the Owner in relation to any Claims referenced herein, which shall be placed into a deposit account from which the City may draw as such costs, expenses, and fees are incurred. Within 14 days after receiving written notice from the City, the Owner shall replenish the deposit account in the amount the City determines is necessary in the context of the further defense of such Claims. To the extent such deposit is required by the City, the amount of such deposit and related terms and obligations shall be expressed in a written Deposit Account Agreement, which shall be subject to the City Attorney's approval as to form. The City, in its sole and reasonable discretion, shall determine the amount of any initial deposits or subsequent deposits of funds, and the Owner may provide documentation or information for the City to consider in making its determinations. Nothing within this subsection shall be construed as to relieve the Owner's obligations to indemnify, hold harmless, or defend the City as otherwise stated herein.

6. **Notices.** All notices or communication between the Parties pursuant to this Agreement shall be in writing and shall be given by personal delivery, overnight delivery service, or certified

or registered mail to the addresses set forth below. The addresses may be changed by giving 10 days' written notice.

If to the City

City of Escondido
Attn: Andrew Firestine, Director of Development Services
201 N. Broadway
Escondido, CA 92025

with a copy to:

City of Escondido
Attn: Office of the City Attorney
201 N. Broadway
Escondido, CA 92025

If to Owner

Meridian Communities, LLC
Attn: Guy Asaro
9988 Hibert Street, Suite 210
San Diego, CA 92131

with a copy to:

[_____

_____]

7. **Conflict with State or Federal Laws.** If any State or Federal Law prevents or precludes compliance with any provision of this Agreement or requires changes to any Entitlements, such State or Federal Law shall be controlling and the Parties shall make a good faith, reasonable attempt to modify this Agreement to comply both with the intent of the Agreement and with the State or Federal Law.

The City shall cooperate with Owner in securing any permits, including permits from other public agencies, that may be required as a result of any modifications, suspensions, or alternate

courses of action necessary for compliance with any State or Federal Law. In the event of a change in State or Federal Law, the City and Owner shall meet and confer in good faith to identify a remedy. The remedy chosen shall be of the minimum scope, effect and duration necessary to accommodate the changed State of Federal law, and shall apply only to the Property and Project.

ARTICLE III

Development of the Property

1. **Applicable Rules, Regulations, and Policies.** Owner shall have the vested right, to the fullest extent allowed by law, to develop the Property in accordance with the Entitlements, Existing Laws, and this Agreement. During the Term, the Entitlements, Existing Laws, and this Agreement shall control the overall design, development, and construction of the Project. Notwithstanding the foregoing, nothing in this Agreement shall preclude the City from applying changes occurring from time to time in the uniform codes published in Title 24 of the California Code of Regulations and adopted by the City, including local amendments, in effect when the building permits are issued.
2. **Future Laws.** Future Laws shall not apply to the Project except as expressly provided in this Agreement. Future Laws shall apply to the Project if they are not in conflict with the Existing Laws. However, Owner may give the City written notice of its election to have any conflicting Future Law applied to the Project, in which case such Future Law will be considered an Existing Law for purposes of this Agreement.
3. **Future Discretionary Reviews.** Except as set forth in this Agreement, the City shall retain its discretionary rights in reviewing applications for Entitlements. Owner's applications for Entitlements, and the City's review thereof, must comply with Existing Laws and with the terms

and conditions of this Agreement. The City shall not impose any conditions upon Entitlements that are more restrictive than or inconsistent with the terms of this Agreement or Existing Laws, except as required by state or federal law. The City may conduct an environmental review for any Entitlements in accordance with the California Environmental Quality Act, California Public Resources Code section 21000 et seq. (“CEQA”) and the State CEQA Guidelines, Title 14 of the California Code of Regulations, section 15000 et seq., or other Existing Laws. The City may impose, if required by CEQA, additional mitigation measures to mitigate significant adverse environmental effects that were not previously considered, or were found to be infeasible, to mitigate at the time of approval of this Agreement. Nothing herein is intended to require or authorize additional CEQA environmental review or mitigation measures beyond that otherwise required by CEQA.

4. **Permitted Uses and Density.** This Agreement shall vest the right to develop the Property to the fullest extent allowed by law with respect to the permitted uses of land, density and intensity of uses, and timing and phasing of development as described in the Entitlements, which are hereby incorporated as if fully set forth in this Agreement. The permitted uses, density, and intensity of use of the Project set forth in PL22-0145, PL22-0146, PL22-0417 and PL23-0032, the maximum height and size of proposed buildings and provisions for reservation or dedication of land for public purposes, shall substantially conform to those specified in the Entitlements, Existing Laws, and this Agreement.

5. **Time for Construction and Completion of the Project.** Any phasing of development of the Property shall occur in conformance with the adopted Entitlements.

6. **Moratorium.** No City-imposed moratorium or other limitation (whether relating to the rate, timing, or sequencing of the development or construction of all or any part of the Property,

whether imposed by ordinance, initiative, resolution, policy, order, or otherwise, and whether enacted by the City Council, an agency of the City, the electorate, or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy certificates, or other entitlements to use or service (including, without limitation, water and sewer) approved, issued, or granted within the City, or portions of the City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with this Agreement; provided, however, the provisions of this Section shall not affect the City's compliance with moratoria or other limitations mandated by other governmental agencies or court-imposed moratoria. Any development moratorium, City of otherwise, that affect the Project automatically extends the term of the Agreement.

7. **Operating Memorandum.** The Parties acknowledge that the provisions of this Agreement require cooperation between the City and Owner, and that the refinements and further development of the Project may demonstrate that changes are appropriate with respect to the details of performance of the Parties. The Parties desire, therefore, to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. If and when, from time to time during the Term, the Parties find that such changes or adjustments are necessary or appropriate, they may effectuate such changes or adjustments through an Operating Memorandum approved by the Parties, which, after execution, shall be attached hereto as an addendum and become a part hereof, and may be further changed and amended from time to time as necessary with further approval by the City and Owner. No such Operating Memorandum shall require prior notice or hearing, or constitute an amendment to this Agreement; and in the case of the City, such Operating Memorandum may be acted upon by the City Manager or the City Manager's designee. Failure of the Parties to enter into any such Operating Memorandum shall not affect or abrogate

any of the rights, duties, or obligations of the Parties or the provisions of this Agreement. An Operating Memorandum shall be recorded as an addendum to this Agreement.

8. **Term of Maps and Other Project Approvals.** Pursuant to California Government Code section 66452.6(a), the term of each subdivision map that is processed on all or any portion of the Property and the term of each of the Entitlements shall be extended for a period of time through the Term of this Agreement. Should this Agreement be terminated prior to the expiration of the Term, the Owner shall have 30 days to submit an application for the extension of the term applicable to any portion of an approved tentative map, pursuant to Chapter 32 of the Escondido Municipal Code.

9. **Infrastructure Capacity.** Subject to Owner's proportionate contribution to infrastructure and the Public Benefits provided by Owner, in accordance with the requirements of the Entitlements, the City hereby acknowledges it will have sufficient capacity in its infrastructure services and utility systems, including, without limitation, traffic circulation, flood control, sanitation service, and, except for reasons beyond the City's control, sewer collection; sewer treatment; and water supply, treatment, distribution, and service, to accommodate the Project. To the extent the City renders such services or provides such utilities, the City hereby agrees it will serve the Project and there shall be no restriction on connections or service for the Project except for reasons beyond the City's control.

10. **Easements.** Easements dedicated for pedestrian use shall be permitted to include easements for underground improvements, including but not limited to drainage, water, sewer, gas, electricity, telephone, cable, and other utilities and facilities so long as they do not unreasonably interfere with pedestrian use.

11. **Public Improvements**. Owner agrees to construct any public improvements as required and described in any conditions of approval for the Entitlements or in this Agreement (“**Public Improvements**”). Owner shall construct the Public Improvements within any applicable timeframes set forth in the conditions of approval for the Entitlements or this Agreement.

12. **Fees**. Owner shall pay the General Fees in the amounts in effect at the time Owner submits payment of such fees unless otherwise explicitly provided in this Agreement. Development Impact Fees shall remain at the amount in effect at the Effective Date of this Agreement for a period of five years. After the expiration of five years after the Effective Date, Development Impact Fees shall be paid in the amounts in effect at the time Owner submits payment of such fees. The payment of Development Impact Fees and General Fees may be deferred in accordance with City requirements and memorialized in a writing separate from this Agreement.

13. **Funding Mechanism for Public Services**. Owner shall establish a lawful, proportional funding mechanism to offset the impacts to additional ongoing public services required for the Project. To fund such public services, Owner may voluntarily initiate and consummate proceedings to participate in a community facilities, assessment, or service district organized and adopted by the City in accordance with local, state, or federal law, or alternatively, Owner may establish another lawful funding mechanism reasonably acceptable to the City.

14. **Density Transfer**. The City has 167 units of potential density within the Specific Plan Area from ownership of two parcels totaling approximately 148 acres. The General Plan and Specific Plan have established that the density derived from the acreage held by the City may be transferred to other parcels within the Specific Plan Area, at the discretion of the City Council and in return for public benefit. Consistent with the General Plan and Specific Plan, the City will transfer 20 units of density to Owner for Public Benefit outlined in this Agreement. This density

transfer will not cause the total density within the Specific Plan Area to exceed the total allowable density under the Specific Plan Area or General Plan. Owner shall be entitled to use this transferred density to develop the Project consistent with the Entitlements, Future Entitlements and this Agreement.

15. **Payment of Transfer Fee:** Owner to pay per unit fee of \$77,400 per transferred unit, for a total of 20 Units. Total payment of \$1,548,000 to the City of Escondido to be made prior to Final Map recordation.

ARTICLE IV

Provision of Public Benefits

1. **Description of Public Benefits.** Owner shall provide the City with the Public Benefits, as further described in Exhibit B, as consideration for the City's good faith performance of all applicable terms and conditions in this Agreement.
2. **Occupancy Contingent on Public Improvements and Benefits.** Owner acknowledges that the City shall not grant a certificate of occupancy for the first residential or commercial unit on the Property prior to construction. Owner shall construct the Public Improvements within any applicable timeframes set forth in the conditions of approval for the entitlements of all Public Improvements and construction and provision of all Public Benefits. This contingency for occupancy shall survive the termination of this Agreement. In consideration of the Owner constructing the Improvements, the City will transfer 20 units of density to Owner, as set forth in Article III, section 14 of this Agreement.
3. **Recordation of Final Map Contingent on Security for Public Improvements and Benefits.** Prior to recordation of the Final Map, Owner must enter into one or more subdivision improvement agreements that will detail Owner's construction obligations for any Public

Improvements and Public Benefits, and will require Owner to provide financial security for completion of construction, in a form or forms approved by the City Attorney.

4. **Processing During Litigation.** The filing of any third-party lawsuit against the City or Owner relating to this Agreement, any Entitlements, or to other development issues affecting the Property shall not delay or stop the development, processing, or construction of the Project or approval of Entitlements, unless the third party obtains a court order preventing the activity or as otherwise required by law. This provision shall not apply to any third-party lawsuit related to the demolition of any building on the Property based on a challenge to the determination of said building's historical significance.

ARTICLE V

Annual Review

1. **Owner Responsibilities.** At least once every 12 months, continuing through the duration of the Term, Owner shall demonstrate good faith substantial compliance with the major provisions of this Agreement and provide, to the best extent possible, the status and timing of development of the Project, including construction of Public Improvements and provision of Public Benefits, to the City for an Annual Review. If requested by the City, Owner shall provide any additional detail or information necessary to demonstrate good faith compliance with any particular provision of this Agreement identified by the City.

2. **Opportunity to Be Heard.** Owner shall be permitted an opportunity to be heard orally and in writing at any noticed public hearing regarding its performance under this Agreement. Owner shall be heard before each appropriate board, agency, or commission, and the City Council, at any required public hearing concerning a review of performance under this Agreement.

Notwithstanding the foregoing, Owner acknowledges that the opportunity to be heard may be affected by a change in the City's procedures as to public meetings in relation to the current ongoing COVID-19 pandemic or other future pandemic or similar event.

3. **Information to Be Provided to Owner.** At least 10 days prior to the City Council's consideration and review of Owner's performance under this Agreement, the City shall mail to Owner a copy of any applicable staff reports and related exhibits.

4. **Annual Review Letter.** If in connection with the Annual Review, the City Council determines that Owner is found to be in substantial compliance with this Agreement, upon written request by Owner, the City shall issue a letter to Owner stating that, based upon information known or made known to the City Council, the City Planning Commission, and/or the City Manager, this Agreement remains in effect and Owner is in compliance ("**Annual Review Letter**"). Owner may record the Annual Review Letter in the Official Records of the County of San Diego.

5. **Lack of Annual Review.** The City's lack of performing an Annual Review of Owner's substantial compliance with the terms and conditions of this Agreement shall not constitute or be asserted as a default by Owner so long as Owner is otherwise in compliance with this Article V, nor shall it constitute or be asserted as the City's waiver of any failure of Owner to perform or otherwise comply with the terms of this Agreement.

ARTICLE VI

Delay, Default, Remedies, and Termination

1. **Notice and Cure of Default.** In the event of a material default of this Agreement, the Party alleging a default shall give the defaulting Party a notice of default ("**Notice of Default**") in writing. The Notice of Default shall specify the period of time in which the default may be cured, which shall be at least 30 days ("**Cure Period**"). Any Notice of Default shall specify the nature of

the alleged failure and, where appropriate, the manner in which such alleged failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot be reasonably cured within the Cure Period, then the commencement of the cure within the Cure Period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure completed within the Cure Period. During the Cure Period, the Party charged shall not be considered in breach. If the default is cured within the Cure Period, then no breach shall be deemed to exist.

2. **Waiver.** Except as otherwise expressly provided in this Agreement, a failure or delay in asserting any rights or remedies as to any default, including the failure or delay in giving a Notice of Default, shall not operate as a waiver of any default or of any rights or remedies otherwise available to a Party or deprive a Party of the right to institute and maintain any action or proceeding that it may deem necessary to protect, assert, or enforce any rights or remedies it may have.

3. **Default by Owner.** The City's Director of Development Services may recommend the review and termination of this Agreement to the City Council upon an occurrence of a material default that is not cured within the Cure Period. The foregoing does not limit any of the City's other remedies upon a material breach of this Agreement by the Owner.

4. **Default by the City.** Upon a material default by the City that is not cured within the Cure Period, Owner, without limiting any of its other remedies, shall not be obligated to complete any of its obligations under this Agreement, and any resulting delays in Owner's performance shall neither be construed as a material default by Owner nor constitute grounds for termination or cancellation of this Agreement by the City.

ARTICLE VII

Encumbrances and Releases on Property

1. **Discretion to Encumber.** This Agreement shall not prevent or limit Owner from encumbering the Property, or any portion of or improvement on the Property, by any mortgage. The City acknowledges that lenders providing financing may require modifications to this Agreement, and the City agrees, upon request from Owner, to meet with Owner and/or representatives of lenders to negotiate in good faith any lender request for modification to this Agreement, provided that any modification will not affect the timely completion or fulfillment of any requirements in the Entitlements or this Agreement relating to the Public Benefits.

ARTICLE VIII

Miscellaneous Provisions

1. **Recitals.** The Recitals set forth above are included herein by this reference as part of this Agreement and the Parties agree that said Recitals are essential facts to this Agreement.
2. **Severability.** This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement. If any material part of the Agreement is adjudged by a court of competent jurisdiction to be invalid, void, or illegal, the Parties shall take all steps necessary to modify the Agreement to implement the original intent of the Parties in a valid and binding manner.
3. **Entire Agreement.** This Agreement, together with its attachments or other documents described or incorporated herein, contains the entire agreement and understanding of the Parties

concerning the subject matter of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. The Parties acknowledge that (i) no other Party, nor the agents nor the attorneys for any Party, has made any promise, representation, or warranty whatsoever, express or implied, not contained herein, to induce the execution of this Agreement, and (ii) this Agreement has not been executed in reliance upon any promise, representation, or warranty not contained herein.

4. **Waivers.** All waivers of the provisions of this Agreement must be in writing and signed by the appropriate agents of the City or Owner.

5. **Recording.** This Agreement shall be recorded in the Official Records of the County of San Diego within 30 days following the later of (i) the Effective Date, or (ii) the Parties' execution of the Agreement.

6. **Project as a Private Undertaking.** It is specifically understood by the Parties that the Project is a private development and Owner shall have the full power and exclusive control of the Property subject to the provisions of this Agreement. Any improvements completed remain the property of the Owner unless the City has explicitly accepted any improvement or as otherwise provided herein.

7. **Headings.** Section and paragraph headings within this Agreement are for reference purposes only and shall not be used for interpreting the meaning of any provisions of this Agreement.

8. **The City's Ongoing Statutory Authority.** Except as expressly stated, nothing in this Agreement shall limit the City's authority and responsibility under the California Constitution and applicable California statutes to act in the best interests of the public health, safety, and welfare,

and nothing in this Agreement is intended to limit in any way the legislative discretion or authority otherwise afforded the City under state or federal law.

9. **Covenant of Cooperation.** The Parties shall cooperate with and assist each other in the performance of the provisions of this Agreement including assistance in obtaining permits for the development of the Property that may be required from public agencies other than the City. The covenant of cooperation shall include, to the maximum extent permitted by law, that the City shall use its best efforts to prevent any ordinance, measure, moratorium, or other limitation from invalidating, prevailing over, or making impossible any provision of this Agreement, and the City shall cooperate with Owner to keep this Agreement in full force and effect. Owner reserves the right to challenge any such ordinance, measure, moratorium, or other limitation in a court of law if it becomes necessary to protect the development rights vested in the Property pursuant to this Agreement.

10. **Successors and Assigns; Covenants Run with the Land.** So long as this Agreement remains in effect, the obligations and benefits provided for in this Agreement shall run with the land obligated and benefited, respectively, and shall be binding on all parties having or acquiring any right, title, or interest in the Property or Project, or any part thereof. As such, it is the intent of the Parties that this Agreement and the promises, covenants, rights, and obligations set forth herein (i) shall be and are covenants running with the Property, encumbering the Property for the term of this Agreement and binding upon Owner's successors in title and all subsequent owners and operators of the Property; (ii) are not merely personal covenants of the Owner; and (iii) shall bind Owner and its respective successors and assigns during the term of this Agreement. Further, Owner shall ensure that any future transfer of interest in the Property is made subject to the terms

of this Agreement, such that any future successor in title or owner or operator of the Property or Project shall be bound by the terms herein.

11. **Time of the Essence.** Time is of the essence for each term and condition of this Agreement.

12. **Governing Law.** This Agreement and all rights and obligations arising out of it shall be construed and enforced in accordance with the laws of the State of California. Any litigation arising out of this Agreement shall be conducted only in the state or federal courts of San Diego County, California. All statutory references are to California statutes.

13. **No Waiver of Owner's Existing Rights Under Applicable Laws.** This Agreement shall not constitute a waiver of any of Owner's existing rights under applicable laws, nor shall it limit or expand Owner's right to challenge any General Fee, Exaction, or Future Exaction as being contrary to applicable law or in excess of the City's legal authority.

14. **Authorization.** Each person executing this Agreement hereby warrants and represents that he or she has the authority to enter into this Agreement and to bind his or her respective entity to the provisions hereof.

15. **Counterparts.** This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument.

16. **No Third Party Beneficiaries.** This Agreement and each and every provision hereof is for the exclusive benefit of the Parties hereto and not for the benefit of any third party, except as set forth herein.

(SIGNATURE PAGE FOLLOWS)

This Agreement is executed by the Parties or their duly authorized representatives:

CITY OF ESCONDIDO,
a California municipal corporation

By: _____
Dane White
Its: Mayor

Meridian Communities, LLC
a [A Delaware Limited Liability Company]

By: _____
Name: _____
Its: _____

(Above Signatures Must Be Notarized; Acknowledgment Pages Follow)

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY
Michael R. McGuinness, City Attorney

By: _____
M. Dare DeLano, Senior Deputy City Attorney

ACKNOWLEDGMENT

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 _____]

On _____, before me,
_____, a Notary Public, personally appeared
_____, 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: _____ (Seal)

City

ACKNOWLEDGMENT

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 _____]

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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: _____ (Seal)

Owner

EXHIBIT A

Legal Description of Property

That certain real property in the County of San Diego, State of California, described as follows:

DRAFT

EXHIBIT B

Public Benefits

I. PUBLIC BENEFITS AND IMPROVEMENTS

A. PUBLIC ART. Owner reserves the right to implement, construct, or install public art in lieu of paying the fee required for the Project associated with public art, defined as “art in public places” in Escondido Municipal Code section 33-731 (“**Public Art**”). Any Public Art proposed to be implemented, constructed, or installed shall be subject to the review and approval of the Director of Development Services, which shall occur prior to the issuance of the first building permit for the Project. If any proposed Public Art is not approved by the Director of Development Services, or a request for such Public Art is not submitted by Owner, at the time the City is otherwise prepared to issue the first building permit for the Project, then the otherwise applicable public art fee shall be paid prior to the issuance of the first building permit for the Project. The cost involved with the implementation, construction, or installation of any Public Art shall be comparable to that which would otherwise have been assessed as the public art fee for the Project.

B. OPEN SPACE PRESERVATION. Preserving approximately 10.95 acres of open space, together with related plant and animal habitat and steeper hillsides.

C. STREET “E”. Installation of full Street “E” improvements from Lake Wohlford Road on the north to Bevin Drive on the south, as identified in the Northeast Gateway Specific Plan.

D. DRAINAGE IMPROVEMENTS. Providing for drainage improvements that benefit Planning Area 2 (PA2).

E. FISCAL BENEFIT. Payment of \$1,548,000 to the City for the transfer of 20 units of density from the City’s Northeast Gateway allocation.

EXHIBIT C

Fee Guide for Development Projects is available at the following link:

<https://www.escondido.org/Data/Sites/1/media/Building-Division/2022FeeGuideUpdateSeptember2022.pdf>

DRAFT