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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Appellate Case No.: 2024-001996

Raghu Athimoolam and Irene Athimoolam,.....Respondents,

v.

Meritage Homes of South Carolina, Inc.....Appellant.

**RECORD ON APPEAL
VOLUME II**

s/David S. Cobb

David S. Cobb

TURNER PADGET

Post Office Box 22129

Charleston, South Carolina 29413-2129

Direct: (843) 576-2803

Fax: (843) 577-1629

dcobb@turnerpadget.com

ATTORNEYS FOR APPELLANT

April 23, 2025

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	Docket No.: 2017-CP-04-376
	)	
RAGHU ATHIMOOLAM and IRENE	)	
ATHIMOOLAM,	)	
	)	DEFENDANT MERITAGE HOMES
Plaintiffs,	)	OF SOUTH CAROLINA, INC.'S
	)	RULE 59(e), SCRCP, MOTION
v.	)	
	)	
MERITAGE HOMES OF SOUTH	)	
CAROLINA, INC.,	)	
	)	
Defendant.	)	
	)	

TO PLAINTIFFS AND ATTORNEY FOR PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE THAT Defendant files this motion pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure asking this court for an amended Order (a) vacating the purported January 23, 2024 Arbitration Award; (b) ruling the Arbitrator lacked subject matter jurisdiction to vacate or modify the October 4, 2023 Arbitration Award; (c) sanctioning Plaintiffs for intentionally violating the ADR Rules after the Arbitrator issued the October 4, 2023 award; and (d) reinstating the October 4, 2023 Arbitration Award.

Defendant moves for relief based on the following:

1. The Federal Arbitration Act ("FAA") applied to this matter. Having found that the arbitrator lacked the authority to modify an award under FAA, 9 U.S.C. § 10(a)(4) mandated that this Court vacate the January 23, 2024 award. In fact, this exact issue was examined by the Fifth Circuit in Smith v. Transport Workers Union of America, AFL-CIO Air Transport Local 556 374 F.3d 372 (5th Cir. 2004).

Therein, an arbitration award was issued to the plaintiff but “[q]uestions about taxation of additional costs and the arbitration panel’s authority to modify its initial award gave rise to this controversy. The arbitral panel determined that it had such authority and modified the award to tax additional costs against the [defendant], favoring [plaintiff]. In district court [plaintiff] moved to confirm the modified award and the [defendant] opposed confirmation of the award as modified, but not the original award. The district court agreed with the [defendant] and vacated the modified award, confirming only the original award.” Id. at 374.

As noted by the Court, “[a]rbitration is a matter of contract; a party cannot be required to submit to arbitration unless it agreed in advance that the dispute would be arbitrated. [Footnote omitted.] Although the law imposes a presumption in favor of arbitrability, the policy that favors resolving doubts in favor of arbitration ‘cannot serve to stretch a contractual clause beyond the scope intended by the parties or authorize an arbiter to disregard or modify the plain and unambiguous provisions of the agreement.’” Id. at 374–375.

Indeed “[t]he plain wording of the arbitration agreement contemplates that the arbitrators will not consider correcting the arbitral award at all at the behest of the parties, and forbids a correction or amendment on the arbitrators own motion more than three business days after the award. We conclude that the modification made was beyond the reach of the arbitrators’ power. If an arbitral panel exceeds its authority, it provides grounds for a court to vacate that aspect of its decision.” Id. at 375.

Meritage demonstrated “one of the infirmities listed in § 10 of the [FAA]”, so the court must vacate the award. Trident Technical College v. Lucas & Stubbs, Ltd., 286 S.C. 98, 333 S.E.2d 781 (1985).¹

¹ That case states “The Federal Arbitration Act essentially requires that this Court must ‘uphold the award unless the challenging party demonstrates one of the infirmities listed in §10 of the Act.’”

2. The FAA and S.C. Code Ann. §§ 15-48-10 et seq. do not require an arbitration award to be filed with any Court or Clerk of Court for the award to be considered an official arbitration award. Section 9 of the FAA allows the court to confirm an arbitration award “[i]f the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration” 9 U.S.C. § 9. But, the FAA does not require the award to be filed with any Court in order for the award to be subject to the provisions of sections 10 and 11 regarding challenges to the award. The FAA only requires a filing with the clerk of court when a party moves for an order confirming, modifying, or correcting an arbitration award, as stated in 9 U.S.C. § 13.

Furthermore, S.C. Code Ann. § 15-48-90, entitled “Award” (emphasis added), does not require any filing of the arbitration award but only that the arbitrator provide a copy of the award to each party.

SECTION 15-48-90. Award.

- (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

The subsequent sections of the South Carolina Act provide the steps to change the arbitration award. Then, if either party wants a court to confirm the arbitration award, S.C. Code Ann. § 15-48-120, provides that option:

Upon application of a party, the court shall confirm an award, unless within the time limits hereafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 15-48-130 and 15-48-140.

As noted in Henderson v. Summerville Ford-Mercury, 405 S.C. 440, 748 S.E.2d 221 (2013), the confirmation proceeding “ordinarily is not initiated unless one of the parties refuses to abide by the award or unless it be the desire of a party that an official record of the confirmation and judgment be made.” 748 S.E.2d at 227 quoting 6 C.J.S. Arbitration § 178 (2004). “Confirmation is not a separate judicial process; it is merely a continuation of the arbitration procedure. See generally 6 C.J.S. Arbitration § 181 (2004) (stating a proceeding for confirmation of an arbitration award is not a trial or a separate proceeding, and generally, the only courses of action open to the court are limited to the statutory grounds for review, such as to confirm the award, correct then confirm the award, vacate the award, or dismiss the proceeding” Id.

Additional case law supports the conclusion that the FAA and the South Carolina Uniform Arbitration Act do not require an arbitration award to be filed to be considered “the” arbitration award. See Remmey v. PaineWebber, 32 F.3d 143 (4th Cir. 1994) (finding without merit a claim that the arbitration award in that case did not constitute a “mutual, final, and definitive award” as contemplated by 9 U.S.C. § 10(a)(4)). Further, an arbitration award is “final” under the FAA if it “resolve[s] all issues submitted to arbitration.” Rocket Jewelry Box, Inc. v. Noble Gift Packaging, Inc., 157 F.3d 174, 177 (2d. 1998). Clearly, the October 4, 2023 Arbitration Award in this case did just that.

“[T]he proper standard for vacating an award on this ground is whether the failure to decide an issue causes the award to lack mutuality, finality, and definiteness.” Harper Builders, Inc. v. Edens, 282 S.C. 379, 318 S.E.2d 363 (1984). There can be no doubt that the October 4, 2023 constituted a “mutual, final, and definite award.” First, the Arbitrator filed the Proof of ADR that specifically stated “Order following arbitration will be issued on or before October 4, 2023.” Secondly, the October 4, 2023 concluded very specifically:

“Therefore, it is hereby Ordered, Adjudged, and Decreed that the plaintiffs are awarded the sum of **Fifty-One Thousand Four Hundred Thirteen and 88/100ths (\$51,413.88) Dollars.**”

That October 4, 2023 ruling states “quite unambiguously” the Arbitrator’s decision, which “could hardly be more final and definite.”

3. The FAA clearly gives this Court the power to vacate the improper January 23, 2024 second award. Section 10(a)(4) provides that an arbitration award may be vacated when the arbitrator exceeded his/her powers. As this Court noted, the reasons stated by the arbitrator to support the second award did not meet the requirements to modify or correcting the first award; therefore, the arbitrator did not have the power or authority to issue the second award. Similarly, “[t]he permissible common law grounds for vacating an [arbitration] award ‘include those circumstances where an award fails to draw its essence from the contract, or the award evidences a manifest disregard of the law.’” Dewan v. Walia, 544 Fed. Appx. 240 (4th Cir. 2013) (emphasis added). “... [A] manifest disregard of the law is established only where the ‘arbitrator[] understand[s] and correctly state[s] the law, but proceed[s] to disregard the same.’” Id. “Manifest disregard requires that ‘(1) the applicable legal principle is clearly defined and not subject to reasonable debate; and (2) the arbitrator refused to heed that legal principle.’” Constellium Rolled Products Ravenwood, LLC v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers Int’l Union AFL-CIO/CLC, 18 F.4th 736 (4th Cir. 2021).

South Carolina courts have reversed arbitrator’s decisions when the arbitrator’s decision constituted a “manifest disregard of the law” because the arbitrator exceeded the arbitrator’s powers. C-Sculptures, LLC v. Brown, 403 S.C. 53, 742 S.E.2d 359 (2013) (citing S.C. Code Ann. § 15-48-130 and Gissel v. Hart, 382 S.C. 235, 676 S.E.2d 320 (2009)). In C-Sculptures, LLC, that court noted that “[a]n arbitrator’s ‘manifest disregard of the law,’ as a basis for

vacating an arbitration award occurs when the arbitrator knew of a governing legal principle yet refused to apply it.” Id., 742 S.E.2d at 360. See also Waldo v. Cousins, 442 S.C. 662, 901 S.E.2d 276 (2024) (vacating arbitration award). Here, as noted by this court, the arbitrator clearly disregarded the mandates of the FAA, particularly 9 U.S.C. § 11.

4. The trial court’s current order does not address Meritage’s motion regarding Plaintiffs’ violation of the confidentiality provision (Rule 8) of the South Carolina Alternative Dispute Resolution Rules by including the specific dollar amount of the prior confidential settlement between Meritage and its subcontractors. The arbitrator erred by ignoring this misconduct and the obvious prejudice to Meritage. The second arbitration award resulted in an approximate 7-fold increase in the monetary award to Plaintiffs based off the blatant violation of the ADR Rules.

Rule 8 of the ADR Rules very clearly states that “any mediation communications disclosed during a mediation ... shall be confidential, and shall not be divulged by anyone in attendance at the mediation participating in the mediation” except as permitted by circumstances that do not apply here. Rule 8 further requires: “The parties and any other person present or participating [in the mediation] shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence at any arbitral, judicial or other proceeding, any mediation communication disclosed in the course of a mediation” (emphasis added in both).

Every mediation conducted in South Carolina includes a specific disclosure and warning by the mediator to the parties at the start of the mediation that all mediation discussions and negotiations are confidential and that none of the discussions and negotiations held during a mediation can be disclosed at any trial or hearing. This significant guarantee of confidentiality must be enforced. Otherwise, the negative impact to every mediation to be

conducted is obvious, and the negative impact to every mediation moving forward because of this conduct cannot be understated.

The rationale for the confidentiality rule is clearly designed for an open discussion of the issues and settlement offers and demands in an effort to resolve all pending claims. To allow a party who participated in a mediation to intentionally disclose the confidential settlement discussions from a mediation in an obvious and blatant effort to gain an advantage in a post-arbitration motion should never be allowed and should be sanctioned. Otherwise, the impact of this conduct will be obvious. Moving forward, any party who does not settle at a mediation and who thinks they did not prevail at a subsequent trial or arbitration will intentionally disclose mediation conversations, including offers, demands, and settlements with others, in an attempt to undo a result that the party does not like. Plaintiffs' conduct runs directly in contradiction of the mediation process.

An immediate mistrial would have been required if Plaintiffs in this case had disclosed the confidential information during a trial or during the arbitration hearing. To allow Plaintiffs to now disclose that information without the sanction being an immediate dismissal of their pending motion only rewards their egregious conduct. However, our appellate courts and the applicable rules do not reward that bad faith conduct. See Jones v. Robinson, 2023-UP-369 (S.C. Ct. App. Unpublished opinion filed November 15, 2023) (holding, among other things, that sanctions were appropriate for mediation abuses pursuant to Rule 10(b), SCADR, to include "payment of attorney's fees, neutral's fees, and expenses incurred by persons attending the conference; contempt; *and any other sanction authorized by Rule 37(b), SCRCP[.]*" (emphasis in original). Rule 37(b), SCRCP, permits dismissal as a sanction. Here, Plaintiffs clearly acted intentionally and in bad faith. Their conduct mocks the mediation rules and should not be tolerated. Furthermore, Plaintiffs cannot credibly argue that the intentional disclosure of the confidential settlement information did not have a significant negative impact

on this matter and on the mediation process in general. If the Court allows this willful and deliberate conduct to go unchecked, Plaintiffs' behavior will alter the mediation process.

Any settlement between Meritage and its subcontractors resulted from the extended mediation that included Plaintiffs and that lasted many months. Plaintiffs are and were bound by the confidentiality requirements of the ADR Rules. Plaintiffs' intentional violation of the confidentiality requirement can only be explained as an attempt by them to improperly gain an advantage with the Motion for Reconsideration submitted to the arbitrator, as an attempt to improperly influence the outcome of their Motion for Reconsideration, and as an attempt to prejudice Meritage. That conduct runs counter to the spirit and purpose of the ADR process. Plaintiffs took the risk of not settling at mediation and forcing this matter through arbitration. Plaintiffs should not now be allowed to use a confidential settlement entered into by other parties to unfairly influence an attempt to alter the arbitration award simply because they do not like the result of the arbitration.

As mentioned, Rule 10(b) of the ADR Rules provides the sanctions "if any person or entity subject to the ADR Rules violates any provision of the ADR Rules without good cause," which is certainly the case here. Plaintiffs' intentional violation of the ADR Rules is worthy of sanctions, including, at a minimum, vacating the January 23, 2024 Arbitration Award and any additional sanctions at the Court's discretion. In any event, Plaintiffs' claims on this issue ignore the fact that Meritage's settlement with its subcontractors included settlement of Meritage's claims for contractual indemnity, Additional Insured status, bad faith, and payment of past and future defense costs, including, but not limited to attorney's fees and expert witness fees. Moreover, the claim that Meritage's settlement with subcontractors somehow establishes a floor for Plaintiffs' claims is without any legal support, as evidenced by the fact that Plaintiffs did not provide any case law support for the proposition.

Plaintiffs' misconduct warrants vacating the January 23, 2024 Arbitration Award and reinstating the October 4, 2023 Arbitration Award, in addition to other sanctions. This Court must vacate the January 23, 2024 Arbitration Award and reinstate the October 4, 2023 Arbitration Award to protect the confidentiality rules of mediation.

TURNER PADGET

s/David S. Cobb

David S. Cobb

Post Office Box 22129

Charleston, South Carolina 29413-2129

Direct: (843) 576-2803

Fax: (843) 577-1629

dcobb@turnerpadget.com

Charleston, South Carolina

November 4, 2024

ATTORNEYS FOR MERITAGE HOMES OF
SOUTH CAROLINA, INC.

State of South Carolina
County of Anderson

Court of Common Pleas

Raghu Athimoolam	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2017-CP-04-00376
	)	
Meritage Homes Corporation)	)	
	)	
Defendant.	)	

August 14, 2024
Anderson, South Carolina

B E F O R E:

The Honorable R. Scott Sprouse, Judge.

A P P E A R A N C E S:

Robert Lyles, Jr., Esquire
Attorney for the Plaintiff

David Cobb, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E XWITNESSPAGE

No Witnesses.

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits.

P R O C E E D I N G S

* * * * *

THE CLERK: Next is 2017-CP-04-00376, *Raghu Athimoolam v. Meritage Homes*.

THE COURT: Good morning. This appears to be a motion to vacate filed by Mr. Cobb. So, Mr. Cobb, tell me -- tell me what this is about.

MR. COBB: Good morning. I'm David Cobb. I'm here for Meritage Homes. Both sides have filed extensive memos regarding this particular motion.

THE COURT: Okay.

MR. COBB: As this is a lawsuit -- or was a lawsuit involving a dispute over alleged construction deficiencies at the Athimoolam residence. And to the extent that a construction case could follow a normal track, this one did up until the arbitration awarded the homeowners, who are the plaintiffs in the lawsuit, and Meritage agreed to submit the case to binding arbitration.

The subcontractors, who were implicated by the plaintiff's allegations, were also brought into the lawsuit. They agreed to also go through that same process.

After we completed discovery, we conducted a mediation with Frank Elmore. And that mediation was

1 over a number of months. And none of us knew
2 Mr. Elmore was actually sick while he was doing
3 this. And I'm convinced that this was one of the
4 last things he did before he passed away. He tried
5 to get the case resolved. He was not able to get
6 the case resolved between the plaintiffs and
7 Meritage, but was able to get a settlement between
8 Meritage and the subcontractors.

9 So the case then proceeded to bind an
10 arbitration with Becky Laffitte out of Columbia as
11 arbitrator. We had a hearing last fall that lasted
12 two days. On October 3 -- I'm sorry -- October 4,
13 2023, the arbitrator, Ms. Laffitte, awarded the
14 plaintiff a sum of \$51,000 and change.

15 At that point in time, the plaintiffs then
16 filed -- the Athimoolams filed a motion to have
17 Ms. Laffitte reconsider her award. We objected --
18 Meritage objected to that saying that she had issued
19 an award, and that because this is governed by the
20 Federal Arbitration Act, the South Carolina
21 Arbitration Act, there are certain ways and certain
22 requirements that you have to take if you want to
23 challenge or have an award changed. Nevertheless,
24 Ms. Laffitte, her initial testimony, and issued a
25 second award on January 23, '24, that substantially

1 increased the award that she gave originally to the
2 homeowners.

3 And so that's what this is about. This is --
4 and I currently referenced the memo because it goes
5 through step by step the detail. Essentially, the
6 argument is that the October 3 -- the October 4,
7 2023, award is the only award that's allowed.

8 And then what happened subsequently violates
9 the rules of the FAA. Violates the rules of South
10 Carolina Arbitration Act. And I think also what's
11 important to understand is the motion for
12 reconsideration of the original award included a
13 disclosure to the arbitrator of the amount of money
14 that Meritage had settled with the subcontractors.
15 That was confidential information. That was
16 information that was part of the mediation process
17 because that money was actually offered to the
18 Athimoolams. And once they refused that money is
19 when Meritage agreed to settle with the
20 subcontractors for that same amount of money.

21 That, under the ADR rules, should have never
22 been disclosed to the arbitrator. And I don't think
23 it's a stretch to -- when you look at how things
24 went, that the arbitration award got changed and got
25 changed substantially, and the motivating factor was

1 the fact that the arbitrator was told how much money
2 Meritage had settled with the subcontractors, which
3 the arbitrator should have never known, should have
4 never been told.

5 And so the other basis to set aside this
6 January 23, '24, award is that the fact that that
7 was a clear violation of the ADR Rule 8, the
8 disclosure of confidential information to the judge
9 of the law of the case. That would never be
10 permissible if this was a civil case, if we had a
11 jury, or if we had a bench trial. The person that
12 ultimately would decide the case would never be told
13 the amount of available insurance coverage, never be
14 told the amount of any offset in the amount of any
15 kind of funds that were in play.

16 So jumping back to the arguments. The FAA, the
17 Federal Arbitration Act, has specific provisions
18 that talk about modifying an award or vacating an
19 award. None of those were met in this scenario.
20 And that's outlined in the memo.

21 The South Carolina Arbitration Act, which
22 mirrors in both part the Federal Arbitration Act,
23 also has specific requirements if you want to change
24 an award. None of which were met in this case.

25 There was a third process out there called

1 JAMS, which is in the contract between the
2 homeowners and Meritage. There's a reference to the
3 rules for JAMS, which is also an arbitration
4 process. Those rules were not followed with regards
5 to changing the award.

6 Then you have the fourth step, which is the
7 violation of the ADR rules. All of which resulted
8 in this fundamental change and what the original
9 order was.

10 The best I can -- with respect to Mr. Lyles, I
11 think the argument from -- from the homeowners on
12 this is that somehow what was decided on October 4,
13 2023, was not a, quote, unquote, award because it
14 had not been filed with the clerk of court. But
15 the -- again, the FAA rules and the South Carolina
16 Arbitration Act rules clearly do not require a
17 decision to be filed for the award to be considered
18 an award by an arbitrator. It simply has to be
19 signed.

20 And in this case, furthermore, Ms. Laffitte
21 actually filed a truth of ADR on October 3, 2023,
22 where she said, "I have made a decision. I am going
23 to issue my award." And then the next day is when
24 the parties got the -- the first, the October 4,
25 2023, award. So I -- I think that there's --

1 there's no credible argument that what she did in
2 October of 2023 was, in fact, an award of the
3 arbitration, following the arbitration process. So
4 I'm happy to answer any questions you may have.

5 THE COURT: Now, I see that she filed an award.
6 The Court hasn't had an opportunity to read it, but
7 you allege that she considered other settlements in
8 that -- in that -- you allege that was improper. Is
9 that outlined in the order? Did she use that as a
10 justification for modifying the award?

11 MR. COBB: There's not a specific reference.
12 And, again, all of that information should be in the
13 attachments that are included. The attachments to
14 our motion include the October 4, 2023, award,
15 include the various memos filed by parties on the
16 motion for reconsideration, and then her subsequent
17 January 23, 2024, award.

18 The January 23, 2024 award does not make
19 specific reference to "I know now how much Meritage
20 has received from the subcontractors," but she would
21 have read the plaintiff's memo, which had that
22 information. So that would be -- she says she
23 doesn't consider it, but there's no way that
24 anybody -- and that in context with the original
25 award is supported by the testimony. We did not

1 have a court reporter for the -- for the two-day
2 arbitration hearing, but her original October 4,
3 2023, award is supported by the testimony that was
4 there because Meritage produced a witness. And,
5 again, this is referenced a little bit in the -- in
6 the -- in the memorandum in the motion, but Meritage
7 had a contractor expert who was also an engineer by
8 the name of Jake Rogers testify. And Mr. Rogers
9 took a completely different view of what needed to
10 be done at the house than what the plaintiff's
11 experts had said. Mr. Roger's testimony was he
12 thought that the house could be repaired and all of
13 these issues could be addressed for just -- for
14 around \$25,000. So there was support originally for
15 her decision.

16 One of the key issues, too, in the case was the
17 plaintiff's prepared estimate was substantiated.
18 However, their own repair contractor testified that
19 a significant number of that, of his repair number,
20 included items that were included because
21 Ms. Athimoolam had requested they be included. Even
22 though as he testified both in his deposition and at
23 the arbitration hearing, he could not find anything
24 involving a particular matter that violated the
25 building code or the applicable construction

1 standards published by the South Carolina Builders
2 Commission, so those were homeowner items is I think
3 the phrase that was used.

4 So there was substantial support for the
5 original first award. And so when you say, "Does
6 she consider the -- the money?" You don't know, but
7 that's something she should have never known. And
8 more importantly is the request to have her change
9 the October 2023 award, was not done in accordance
10 with the requirements of the -- the specific
11 requirements of the Federal Arbitration Act and the
12 South Carolina Arbitration Act. Because, again,
13 both of those -- both of those entities require
14 certain standards. And none of those were
15 applicable with what the plaintiff was asking for
16 the relief.

17 THE COURT: Okay. Thank you, Mr. Cobb.
18 Mr. Lyles.

19 MR. LYLES: Yes, sir. As -- just to answer the
20 question that you've asked a moment ago,
21 Ms. Laffitte directly addresses the effect of the
22 disclosure of the settlements in her order, which we
23 believe to be the only order. It's on page 2. And
24 she says that she at no time during the
25 arbitrations, the arbitrator aware of any monetary

1 recovered by defendant Meritage against any
2 subcontractors brought in as third-party defendants.

3 Accordingly, this order will only reflect the
4 testimony of lay and expert witnesses and evidence
5 presented during arbitration and analysis of the
6 applicable law. However, the arbitrator
7 acknowledges the concerns raised by Meritage's
8 counsel about the disclosure of the confidential
9 settlement terms of the mediation involving
10 third-party defendants. So she has told us
11 expressly that she did not consider that information
12 in issuing her award.

13 So just a few moments to respond to my -- to
14 Mr. Cobb. The position that they take in this case
15 is that the arbitrator who, as you know, is vested
16 with great authority in deciding matters. She gets
17 to decide the facts. She gets to decide the law.
18 She gets to decide the procedure related to the
19 arbitration as long as she's got jurisdiction of the
20 case. The position that they take is that the
21 minute that she hits send on her e-mail when she
22 issued the first order in, I believe, October that
23 the dial was cast. And at that point, the
24 arbitrator had no right and no authority whatsoever
25 to ever change anything about that order. If she

1 made a mathematical error, added a zero when she
2 shouldn't have, she doesn't have the right to tell
3 us a day or two or a week later, "I'm sorry. I got
4 the wrong number in there. I need to change it."
5 They think it's done at that point in time.

6 You can imagine if she had awarded us 50- to
7 \$510,000 and then said, "Oh, my gosh. I added a
8 zero I didn't mean to add," then Meritage would've
9 been happy to allow her to correct her mathematical
10 error.

11 If you look at Exhibit 1 to our memorandum, and
12 just like Mr. Cobb said, we both extensively briefed
13 this. Exhibit 1 is her e-mail to us dated October
14 the 4th of 2023, which included what we call the
15 preliminary order. Again, it was sent by e-mail.

16 And she says expressly in the second paragraph,
17 she explains that she's given meticulous -- she's
18 tried to be meticulous in recalling the testimony
19 and evidence without assistance of an official
20 transcript. However, if you believe I have
21 misstated facts, please advise. Then she says that
22 this order needs to be filed. We'd be happy to
23 handle. Just let me know.

24 Well, we thought that she did get the facts
25 wrong. And we thought that she got the law wrong.

1 And so we filed a motion and asked her to reconsider
2 her ruling to take into consideration some of the
3 evidence we think that she didn't consider and to --
4 and there was a particular legal issue that she
5 raised that we have raised at the hearing and that
6 she had rejected and then we pointed out to her that
7 we thought that she was just completely and flatly
8 wrong about the law on a particular issue.

9 Consequently, she asked for additional
10 submissions. We had a telephone conference with
11 her. She went through -- if you know Ms. Laffitte,
12 this won't surprise you any. She went through
13 everything in as detail oriented as she could. She
14 asked us a bunch of questions. I think she asked
15 Meritage some questions. She asked us a number of
16 questions about the evidence that we had presented
17 and wanted us to give her either affirm her
18 recollection of the evidence. And if we -- if we --
19 if she was wrong about that, she wanted us to show
20 her where she was wrong. And so we submitted
21 supplemental materials, including our position with
22 respect to those legal issues that we thought she
23 had messed up on.

24 As a result of all of that, she -- excuse me --
25 she vacated the first order entirely, which they

1 have asked you to reinstate an order that she had
2 vacated and issued what ultimately became the order,
3 which was actually filed with the Court. The first
4 order was not.

5 So I think fundamentally, it's -- it cannot be
6 true that an arbitrator has absolutely no right to
7 change their mind as to the issues of a preliminary
8 order before it's confirmed by the Court, but that's
9 the position that they take. I think that that's
10 wrong.

11 If you review the FAA and you review the South
12 Carolina Arbitration Act, you see and I will admit
13 that -- that when -- that when we were trying to
14 determine what to do procedurally and how to handle
15 this, we tried to figure out the best way to do it
16 and -- and we did the best we could do, and we
17 thought the first step would be to ask her to change
18 her mind.

19 If you -- if you look at our motion to her to
20 reconsider, we laid out what we think the basis of
21 the -- of the right to get a reconsideration is,
22 including the fact which is a distinct basis under
23 the FAA, as well as the South Carolina Arbitration
24 Act, we took the position that her ruling reflected
25 a lack of impartiality, which is absolutely a basis

1 for overturning the arbitration order. What we did
2 though, was we asked her to consider that before we
3 filed any sort of appeal. They said we didn't have
4 the right to do that. Again, I don't think that
5 that's correct.

6 With respect to the disclosure of the
7 settlement amount, that was a matter of public
8 record. They filed it with the Court what they got.
9 It's not a confidential settlement agreement. The
10 amount that they got in settlement is the amount
11 that they got in settlement. There was no
12 disclosure of any discussions, any negotiations that
13 took place. We weren't party to their action
14 against the subcontractor. We didn't file claims
15 against any of the subcontractors. I wasn't a party
16 to any settlement agreement that they had with their
17 subcontractors. I got no consideration for any
18 confidentiality. If there had been a
19 confidentiality provision, which there was not, it
20 was a matter of public record.

21 And as you know, and we all know here, the fact
22 that there have been settlements and the amounts of
23 those settlements, are brought forth in the Court
24 all the time. And it doesn't matter if they -- if
25 the result was a mediation or not. Parties come

1 into court. I've done it myself dozens of times.
2 I'm sure Mr. Cobb has too. We come into court and
3 we say, Judge, I'm being sued for a million bucks.
4 They've already collected a bunch of money from
5 other people, so we want to settle. According to
6 them, that's unethical conduct. I don't know why.
7 Why is it that you can come into court after a
8 mediated settlement and put the terms of the
9 settlement on the record? Why is that unethical?

10 So the ethical basis or the issues that they
11 got is, we took public information and we used it to
12 our advantage, just like they would do if they were
13 to argue and set off in a different case where I
14 have received money. So the idea -- you know, and I
15 thought about this a lot since I got Mr. Cobb's
16 motion. Every other bill born in South Carolina
17 these days references the amount of money that
18 plaintiff's lawyers have got in settlements, most of
19 which I bet was from mediations. Every plaintiff's
20 website in the state of South Carolina references
21 the result of mediated settlements. The fact that
22 you got a result of a mediated settlement, there's
23 nothing that's confidential about that and the law
24 is clear about that and we cited in our -- in our
25 memo.

1 What was protected are the negotiations that
2 lead up to that. And the conduct of the parties
3 in -- in the mediation. We weren't a party to that
4 agreement. We weren't a party to those
5 negotiations. I was at negotiations with them
6 separately, but I didn't tell her what Meritage had
7 offered us. Not that -- not that I think that
8 would've been bad.

9 I mean, the fact of the matter is these were
10 disclosures that were made to a tribunal, just like
11 Your Honor. And I'm sure you are confronted all the
12 time with evidence presented to you that you decide
13 can't go in front of a factfinder, right, or maybe
14 evidence that you decide you got to -- you've got to
15 see it, say I can't look at this, and set it aside.
16 It happens all the time. And so that's kind of
17 where we are.

18 We think that there's one order. It was the
19 second order. It was the one that was confirmed.
20 It's the one that the mediator -- it's the only
21 order there is. She expressly vacated the first
22 order realizing that she had made errors in issuing
23 that first order. She expressly said it's not based
24 on any disclosure of any amounts that Meritage had
25 received. And I think, frankly, that the motion

1 that they have filed is a motion that -- that has no
2 legal support because I think, you know,
3 arbitrator's decisions are final decisions. And
4 that's -- that's the way it is and it's not like a
5 lower court that you can go back and review the
6 record and you can make decisions about whether or
7 not the evidence was sufficient or not sufficient,
8 so on and so forth. It's just not that way. And --
9 and there's no legal basis under the FAA or South
10 Carolina Arbitration Act for you to hold that what
11 she did is somehow wrong or improper under the
12 circumstances. And we've cited that authority in
13 our memorandum.

14 THE COURT: I want to make sure I understand.

15 MR. LYLES: Yes, sir.

16 THE COURT: You asked her to reconsider her
17 decision?

18 MR. LYLES: Yes, sir.

19 THE COURT: Under the FAA and alleged that she
20 was being impartial; is that -- is that correct?

21 MR. LYLES: One of the basis for -- for
22 appealing an arbitrator's award, some of the -- one
23 basis, for example, is mathematical error. I
24 managed to do that once in my career, but another
25 basis is that there is evidence of a lack of

1 impartiality on the part of the arbitrator. And so
2 when I -- when I filed the motion to reconsider with
3 her, I told her that, one, we think you made
4 mistakes in the fact. Second, we think you made
5 mistakes in the law. And -- and all the mistakes
6 went against us. And that -- what that tells us is
7 there was a lack of impartiality. She took great
8 umbrage at that. And I don't blame her. I
9 understand that. I take great umbrage at some of
10 the stuff Mr. Cobb has said, but -- but, yeah, I
11 made that point to her. And then asked her to
12 consider that, among other things, before we filed
13 an appeal of -- of her final order. And,
14 ultimately, what became her final order is what got
15 confirmed by the Court.

16 THE COURT: Okay. All right. Thank you,
17 Mr. Lyles. Mr. Cobb, your response.

18 MR. COBB: First of all, to the extent that I
19 somehow said something to offend to Mr. Lyles, I
20 apologize because I really do enjoy working with
21 Mr. Lyles on -- on cases.

22 If we had a trial on this case today with a
23 jury in that box and I stood up as attorney for the
24 homeowners and told the jury, "By the way, the
25 general contractors already received \$350,000 from

1 the subcontractors," there would be a mistrial.
2 There would be -- because that's clearly not
3 permitted. And there's only one reason why in a
4 motion for reconsideration or whatever they want to
5 call it, that number was disclosed to the arbitrator
6 for the very first time.

7 There is not, to my recollection, and I could
8 be wrong, but I don't think so. There is nothing
9 that has been filed by Meritage in this case before
10 we had an arbitration hearing disclosing to the
11 public what the settlements were with the
12 subcontractors. There were individual settlements
13 with the subcontractors that were totalled. The
14 only thing that I recall being filed may have been
15 some sort of stipulation of dismissal, but,
16 certainly, any release or -- so that, to me, is a
17 nonissue.

18 Likewise, I think the argument that you have a
19 generic number on a billboard as opposed to a
20 specific case that is still under consideration and
21 that you're still trying to ask for additional money
22 where you disclose things, I think those are two
23 different things. And I think it's also two
24 different things in the eyes of the law to sit here
25 and say, well, we have a settlement. We need to

1 have the Court approve where you disclose the terms
2 as opposed to the person who we're asking to make a
3 decision. We don't agree with their first decision,
4 so we want them to change their mind and here's what
5 we're going to tell them as far as, by the way, the
6 people that we are asking you to award money from --
7 against, they've already received funds from third
8 parties.

9 But it also goes back to when this case was
10 originally referred to arbitration, the parties
11 agreed that the FAA would apply. The Federal
12 Arbitration Act has specifics on how you act if you
13 want to change or modify an arbitration order. That
14 was not followed. That was the initial objection
15 from Meritage is, well, if you want to change or
16 modify the order, the FAA applies and you got to
17 follow the provisions of the FAA.

18 The South Carolina Arbitration Act also applies
19 and it has specific provisions about what you want
20 to do as far as you want to change an order. If
21 there had been -- he gave an example of some
22 clerical error or some number that was not put in
23 correctly. There is a mechanism under both the FAA
24 and the South Carolina Arbitration Act for the party
25 who is aggrieved by that to file the appropriate

1 document -- appropriate motion. That was not
2 followed in this particular case.

3 So that is just the gist of the -- the -- the
4 motion here is that there is a process in place that
5 every arbitration is done according to the FAA.
6 Every arbitration is done according to the South
7 Carolina Arbitration Act. It has to follow. None
8 of that was done here.

9 Then you add the additional component where,
10 you know, somebody can say, "I didn't consider it,"
11 but they should have never known that fact to begin
12 with. And it's hard to put the -- put it back in
13 the box once it's been disclosed.

14 Meritage at no point in time disclosed to the
15 arbitrator the amount of money that it had received
16 from the subcontractors. The only thing the
17 arbitrator was told by the parties was at the
18 hearing before the October 4, 2023, award was that
19 Meritage had settled its claims with the
20 subcontractors. That's why the subcontractors were
21 not a part -- were not part of the arbitration
22 process.

23 Lastly, the -- again, the FAA and the South
24 Carolina Arbitration Act do not require that the
25 decision by the arbitrator, the award by the

1 arbitrator be filed before it be sufficient. For
2 example, just as an example, Section 15-48-90 of the
3 Uniform Arbitration Act titled award that says in
4 Subsection 8, "The award shall be in writing and
5 signed by the arbitrator joining in the award. The
6 arbitrator shall deliver a copy to each party
7 personally or by registered mail or is provided in
8 the agreement." That's the only requirement.

9 So to somehow claim that what was submitted to
10 the parties in October of 2023 was not an award, I
11 think fails under the proper legal analysis. And at
12 that point in time, there is a process that the
13 Athimoolams could have followed to appeal that
14 award. And, again, that was the process that was
15 not followed. That's the basis for the objections,
16 and that's the basis in large measure for this
17 current motion, so thank you.

18 THE COURT: Mr. Cobb, how -- how do you respond
19 to Mr. Lyles' argument that an arbitrator, in
20 essence, assumes the role of -- of the judge in a
21 trial as to evidence that is admissible and evidence
22 that is not admissible. I think he referenced in
23 his argument, a judge making a ruling on a -- on a
24 particular piece of evidence and discarding that if
25 he or she rules that evidence is inadmissible.

1 So with -- with the arbitrator specifically
2 stating that she did not consider that evidence in
3 her order, how is the -- how is the Defendant
4 Meritage prejudiced by -- by that in the
5 proceedings?

6 MR. COBB: She should have never -- I'm sorry.
7 I didn't mean to interrupt you.

8 THE COURT: Go ahead.

9 MR. COBB: She should have never been provided
10 that information to begin with. That's a clear
11 violation of the ADR rules. And I apologize to
12 digress to something. When we started the
13 arbitration process, as in every arbitration, all of
14 the parties -- and the Athimoolams are part of the
15 arbitration process -- are told that what is
16 discussed is confidential. One of the things that
17 I've heard a hundred times arbitrators say, I also
18 say it when I -- if a mediator say and I also say it
19 when I mediate cases is, you cannot ask me to come
20 to the courthouse six months from now if this case
21 gets called to trial and say to the judge or to the
22 jury, plaintiff was willing to take \$10 and now they
23 want \$20, or the defendant was willing to pay \$15
24 and now they're only willing to pay five. I can't
25 do that.

1 Once we leave if there is no settlement, there
2 is a confidentiality about the entire process, about
3 offers, demands, and those things. They knew the
4 number because that number was being offered to the
5 plaintiffs. They -- the plaintiffs rejected that
6 number. They knew that Meritage was going to
7 several of the subcontractors because that was
8 conveyed several times to the homeowners about, hey,
9 here's where we are in the process.

10 Getting back to your question is: Once the
11 October 4, 2023, award was published and given to
12 the parties, at that point in time then the terms of
13 the FAA, the terms of the South Carolina Arbitration
14 Act apply as to what has to happen in order for the
15 award to be vacated, modified, or corrected. And
16 the FAA references are to -- I think it's 28. It's
17 in my -- it's in the brief, but I'm sorry, 9 USC,
18 Section 10 and Section 11, which talk about the
19 grounds to vacate an award. Section 12 talks about
20 notice of the motion to vacate, modify, or correct
21 an award. Those are all specifically stated in the
22 FAA.

23 Then under the South Carolina Uniform
24 Arbitration Act, 15-48-100 says, "On application of
25 a party or if an application of the Court is pending

1 under various subsections, on submissions to the
2 arbitrator by Court order under such conditions of
3 the Court may order. The arbitrators may modify or
4 correct the award upon the grounds stated in
5 paragraphs 1 and 3 of, Subsection A of Section
6 15-48-140, for the purpose of clarifying the award,
7 and it has various things.

8 But you go to 15-48-140, Subsection A-1, it
9 says, "These are modification of direction of an
10 award. There was an evident miscalculation of
11 figures or an evident mistake in the description of
12 any person, thing, or property referred to in the
13 award." And then Subsection 3, "The award is
14 imperfect in a matter of form, not affecting the
15 merits of the controversy."

16 So there are mechanisms for a recalculation or
17 a change of the award, but it has to fit certain
18 parameters. And simply saying, we think you got it
19 wrong. We're going to give you more testimony and
20 more and we want you to change your award, that's
21 not permitted. In order to do that, again, under
22 the FAA and under the Uniform Arbitration Act,
23 there's certain provisions where it has to be done
24 in the court. And that's why we're here because,
25 clearly, what was done the second time was not in

1 compliance with either of those -- those statutes, in
2 addition to the improper disclosure of the ADR.

3 There has -- there has to be -- you know, with
4 all due respect, there has to be some sanctions,
5 some punishment for disclosing the confidential
6 amount that was clearly part of the mediation
7 process. Because if you don't, then the
8 construction bar is very tight and as evidenced by
9 the fact that you have two Charleston lawyers here
10 in Anderson. It's a statewide practice. And
11 everybody knows everything that goes on in that
12 construction. And it gets to the part of, well, we
13 went to arbitration, we didn't like the number, but
14 we then told the arbitrator what the settlements
15 were and then the arbitrator changed his or her
16 mind, there's -- there's some potential problems out
17 there.

18 That's why whether it's a car wreck case, a
19 slip and fall case, a construction case, even a
20 business dispute, what happens in mediation has to
21 stay in mediation. And once you let that cat out of
22 the bag, then you're going to have all kinds of
23 problems.

24 THE COURT: Well, how -- how do you answer his
25 assertion that these -- that the settlement amounts

1 was all that was given to the arbitrator? Is that
2 public information?

3 MR. COBB: I don't know where he says it was
4 public information because I wouldn't dare -- yeah,
5 I'll double check, but I'm pretty sure there was
6 nothing filed with the court system that said various
7 settlements of subcontractors were \$350,000.

8 THE COURT: You didn't have a hearing on that
9 and come to court?

10 MR. COBB: No. There was -- there would've
11 been no reason to have any kind of settlement
12 hearing for that.

13 THE COURT: Okay.

14 MR. COBB: It would've been done by individual
15 releases. And the only thing that possibly got
16 filed was a stipulation of dismissal of a
17 third-party complainant.

18 THE COURT: Okay.

19 MR. COBB: So I certainly did not put a
20 billboard on 526 or 385.

21 THE COURT: Okay. Mr. Lyles, I'll give you the
22 last word. Gentlemen, I'm going to read all of
23 this.

24 MR. LYLES: Yes, sir. Just a couple of things.
25 There's no question that if we had a jury here and I

1 blurted out the amount that they had received as
2 part of some settlement that that would be grounds
3 for a mistrial. You handle cases nonjury all the
4 time, I'm sure. And you are required, when you
5 handle cases nonjury, to consider the evidence
6 that's presented to you, some of which may be
7 admissible and some of which may not be admissible.
8 And one of the things that you've got to do as the
9 judge is if you see something that you think is not
10 admissible and shouldn't be considered by you, is to
11 reject that. His theory is that once you see it,
12 it's over. It's impossible for you to proceed as a
13 trier of fact and as the Court, and that's just not
14 reality.

15 Number two, and -- and I can't emphasize this
16 enough. You -- you seized on it. The only thing
17 that was communicated to her was the amount that
18 they had received in settlement. We did not tell
19 her that they offered it to us. We just simply
20 said, this is the amount that they got. She said
21 she didn't consider it.

22 We submitted to you a copy of the settlement
23 agreement that they got with their subcontractors.
24 I wasn't a party to that agreement at all. My
25 client didn't sign anything. I got nothing from

1 that, but we got the agreement. We submitted it to
2 the Court. And it's not confidential. So Mr. --
3 Mr. -- Mr. Cobb keeps talking about it's
4 confidential. It's not confidential. And the fact
5 that there's been a settlement and the amount of the
6 settlement is -- is not something that's ever
7 confidential, unless the parties intend for it to be
8 confidential, which they did not. And -- and so I
9 think that that's essential.

10 And the last point I would make and it takes me
11 back to where we started, which is this: Their
12 position is that an arbitrator who's got the
13 authority to decide a matter does not have the right
14 to ask if we want her to reconsider her award.
15 That's all we did. She could've rejected that and
16 said I don't have the authority to do it. I think
17 she does have the authority to do it. I don't know
18 why in the world she wouldn't. He says there's a
19 process and a procedure. What he's saying is, the
20 only thing you can do once you hit send on that
21 e-mail in October is appeal it. And I just don't
22 think that's right, so...

23 THE COURT: All right. Well, I'm going to look
24 at the statutes and what you -- what you have
25 submitted, so I'll take this under advisement.

1 MR. LYLES: Yes, sir.

2 THE COURT: Thank you, gentlemen. Good to see
3 both of you.

4 MR. COBB: Thank you. You too. If you need
5 anything else from either one of us.

6 THE COURT: Well, and, again, I'm law
7 clerk-less until next week.

8 MR. LYLES: Yes, sir.

9 THE COURT: So going through this, if I have
10 any questions, I'll reach out to you.

11 MR. COBB: Perfect. Thank you, Judge.

12 (At 10:36 a.m., the proceedings concluded.)

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 14th day of August, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 7, 2025

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

Community: Airy Springs
Tract (Map No.): Plat Book S2107Page 00004
County Anderson
Phase/Block: 0001
Lot/Unit No.: 0036
Buyer(s): Raghu Athimoolam

THIS AGREEMENT IS SUBJECT TO MANDATORY ARBITRATION PURSUANT TO THE FEDERAL ARBITRATION ACT AND IF THE FEDERAL ARBITRATION ACT IS INAPPLICABLE, THE UNIFORM ARBITRATION ACT SECTION 15-48-10, ET SEQ., CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED.

MERITAGE HOMES
NEW HOME PURCHASE AGREEMENT
(SOUTH CAROLINA SINGLE-FAMILY HOME – GREENVILLE DIVISION)

THIS NEW HOME PURCHASE AGREEMENT (this "Agreement") is entered into by and between MERITAGE HOMES OF SOUTH CAROLINA, INC., an Arizona corporation ("Meritage"), and the undersigned buyer(s) (collectively, "**Buyer**"), as of the "Agreement Date" (as defined in Section 20 below). This Agreement, together with the Selection Order (as the same may be updated from time to time in accordance with this Agreement, the "**Selection Order**") and schedules attached to this Agreement and any addenda to this Agreement that may at any time be executed by Buyer, all as and to the extent accepted and executed by Meritage in accordance with this Agreement, collectively, constitute a purchase agreement between Meritage and Buyer (collectively, the "**Contract**").

1. **Purchase and Sale.** Subject to and upon the terms and conditions of the Contract, Meritage agrees to sell and Buyer agrees to purchase the lot identified on the Selection Order (the "**Lot**"), together with a residential dwelling and any related improvements (collectively, the "**Lot Improvements**") that have been constructed thereon or will be constructed thereon substantially in accordance with the home plan and elevation (the "**Plan**") identified on the Selection Order. The Lot and the Lot Improvements, collectively, are referred to in the Contract as the "**Home**."

2. **Selection Order; Buyer's Information Schedule.** The Selection Order identifies the Home to which the Contract applies, including the Lot, the Plan, the community in which the Lot is located (the "**Community**"), the base price ("**Base Price**") and any and all options, upgrades, discounts, incentives, credits, promotion amounts, and other amounts comprising the total purchase price of the Home (the "**Purchase Price**"), and the deposit amounts and other terms of this transaction, and any references to any of those items in the Contract shall be deemed to refer to the applicable information set forth in the Selection Order. The Plan is on file in the office of Meritage and is available for review by Buyer during Meritage's normal business hours. Buyer's contact information is set forth on Schedule I to this Agreement ("**Buyer's Information Schedule**"). Buyer represents and warrants to Meritage that all information contained in the Selection Order and Buyer's Information Schedule are accurate in all respects and may be relied upon by Meritage for all purposes related to the Contract.

3. **Escrow.** The transaction contemplated by the Contract will be accommodated through an escrow (the "**Escrow**") established with the entity appointed as escrow agent on the Selection Order (the "**Escrow Agent**"). Buyer acknowledges that Buyer has the right (in Buyer's sole discretion), at the time Buyer enters into this Agreement, to designate the title insurance company, title agency, and/or law firm, as applicable, to act as the Escrow Agent under the Contract so long as such entity is experienced in performing and qualified to perform the duties of Escrow Agent under the Contract and such entity has an office open during customary business hours in the same municipality as the Meritage office designated at the end of this Agreement. Buyer does not have the right to change the identity of the Escrow Agent identified on the Selection Order once this Agreement has been accepted by Meritage.

Lot: 0036 Buyer: Athimoolam

1 Buyer's Initials: RA

4. **Purchase Price.**

A. **Payment of Purchase Price.** The Purchase Price will be paid by Buyer as follows:

i. **Initial Deposit.** Buyer will pay an initial earnest money deposit in the amount shown on the Selection Order (the "Initial Deposit"), in U.S. funds, directly to Meritage outside of Escrow concurrently with Buyer's execution of this Agreement. Notwithstanding the foregoing, if Buyer's financing will consist of a VA loan (as and solely to the extent specified in any Financing Addendum executed by Buyer and Meritage in accordance with Section 5.B below), or if specifically provided otherwise in the Contract, the Initial Deposit will be paid directly into Escrow rather than directly to Meritage. Buyer acknowledges and agrees that neither acceptance nor deposit or negotiation of the Initial Deposit by Meritage constitutes or guarantees acceptance of the Contract by Meritage, nor does it constitute a reservation or an option to purchase the Home.

ii. **Additional Deposit (if applicable).** If one or more additional earnest money deposits are shown on the Selection Order (collectively, the "Additional Deposit"), then Buyer will pay the entire amount of any such Additional Deposit, in U.S. funds, directly to Meritage outside of Escrow on or before the date(s) set forth in and required under the Selection Order. Notwithstanding the foregoing, if Buyer's financing will consist of a VA loan (as and solely to the extent addressed in any Financing Addendum executed by Buyer and Meritage in accordance with Section 5.B below), or if specifically provided otherwise in the Contract, the Additional Deposit will be paid directly into Escrow rather than directly to Meritage.

iii. **Balance.** The balance of the Purchase Price will be paid by Buyer at "Closing" (as defined in Section 10 below) in immediately available U.S. funds.

B. **Earnest Money.** The Initial Deposit, the Additional Deposit, as applicable, all "Option Deposits" (as defined in Section 6.E below), and all other deposits, once paid, collectively, constitute the "Earnest Money" under the Contract. Buyer acknowledges that Meritage may receive certain financial benefits as a result of the Earnest Money being delivered directly to Meritage and Meritage will not have any obligation to share with Buyer, or account to Buyer for the value of, any such benefits. Buyer is advised that, except as specifically provided above with respect to transactions involving VA loans or as specifically provided otherwise in the Contract, the Earnest Money will not be placed in a neutral escrow, but will be paid directly to Meritage. This means that Buyer assumes the risk of losing such money if Meritage is unable or unwilling to perform under the terms of the Contract.

Buyer's Initials: _____ / _____ / _____

C. **Home Pricing; Site Premiums.** Meritage makes no representation, warranty, or guaranty regarding the future value of the Home. Buyer acknowledges that real property values fluctuate based upon market conditions that are outside the control of Meritage, and that Meritage is not responsible or liable for the impact of such changes, and Buyer hereby expressly agrees not to seek any right or remedy against Meritage at any time due to such changes. Buyer further acknowledges that Meritage is free to sell other homes in the Community or elsewhere at such prices as Meritage may determine from time-to-time, whether or not such homes are similar to the Home in any way, and Meritage does not have any obligation or liability to Buyer with respect to such prices, and Buyer hereby expressly agrees not to seek any right or remedy against Meritage at any time as a result of such sales, whether or not the prices for such other homes are more or less than the Purchase Price paid by Buyer for the Home. Buyer also acknowledges that premiums for home sites (if any) vary and are subjective in nature, and are determined based on the particular attributes of each home site, as evaluated from time-to-time by Meritage. Considerations that affect home site premiums include, but are not limited to, lot location, lot size, lot dimensions and shape, the elevation of the lot, surrounding development, fences, walls, privacy, and proximity to amenities, commercial areas, and natural features. Buyer acknowledges that the characteristics that may make a home site unique may change over time, and the home site may become more or less desirable because of such changes. Buyer understands that Meritage is not responsible or liable for the impact of such changes, and Buyer hereby expressly agrees not to seek recovery of any home site premium or pursue any other right or remedy against Meritage at any time due to such changes.

Lot: 0036 Buyer: Athimoolam

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Buyer's Initials:

 _____ / _____ / _____

5. Funding of Purchase Price.

A. **Cash Purchase.** If Buyer intends to purchase the Home for all cash (rather than financing any portion of the Purchase Price), then concurrently with the execution of this Agreement Buyer will execute a separate written Cash Purchase Addendum (the "Cash Purchase Addendum"), and if accepted by Meritage in accordance with this Agreement, the Cash Purchase Addendum will govern certain terms and conditions regarding Buyer's cash purchase that are set forth in such addendum, including, without limitation, the amount and timing of Buyer's cash installment payments.

B. **Financing.** In the event that Buyer desires to obtain a mortgage loan to pay all or any portion of the Purchase Price, then concurrently with the execution of this Agreement Buyer will execute a separate written Financing Addendum (the "Financing Addendum"), and if accepted by Meritage in accordance with this Agreement, the Financing Addendum will govern certain terms and conditions regarding Buyer's financing of any portion of the Purchase Price that are set forth in such addendum.

C. **Contingency.** Buyer understands and acknowledges that Buyer's obligations under the Contract are not contingent upon any matter and/or event whatsoever unless Buyer executes, concurrently with this Agreement, and Meritage accepts: (i) a Financing Addendum pursuant to Section 5.B above, and/or (ii) a separate written Contingency Addendum (the "Contingency Addendum"), if Buyer desires that Buyer's obligation to purchase the Home be made contingent upon any other matter or event not set forth in an executed Financing Addendum, which Contingency Addendum will govern all terms, provisions, and conditions regarding such contingency. Except as specifically set forth in a Financing Addendum and/or Contingency Addendum executed by Buyer and Meritage concurrently with the execution of this Agreement, Buyer represents and warrants that the Contract (and any financing to be obtained by Buyer pursuant to Section 5.B above) is not and will not be subject to or contingent upon any matter or event whatsoever, including, without limitation, Buyer's sale, rental, or other disposition of any existing residence or other property, and Buyer acknowledges and agrees that any failure of Buyer to close or to obtain any financing pursuant to any Financing Addendum because Buyer has not sold, rented, or otherwise disposed of an existing home (or the failure of any other contingency) will constitute a default by Buyer, in which event the remedies for default provided for in this Agreement will apply.

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6. Standard Selections; Custom Selections and Options; Model Features; and Option Deposits.

A. **Showcase Home.** For any Home with respect to which construction has already commenced or is substantially complete as of the Agreement Date (a "Showcase Home"), to the extent any "Structural and Landscape Selections" and "Design Selections and Options" (as those terms are defined in part B of this Section 6, and which are referred to in this Agreement, collectively, as the "Standard Selections") have not yet been made for the Home, Buyer must make any and all of such Standard Selections within seven (7) days following the Agreement Date or Meritage shall have the right, in its sole discretion, to terminate the Contract or to make any such Standard Selections for and on behalf of Buyer. In the event that any of such Standard Selections have already been made as of the Agreement Date, then Buyer agrees to accept the Showcase Home with all previously-made Standard Selections. Buyer understands that except as specifically provided above (as and to the extent applicable), any request for selections and/or options of any kind to a Showcase Home, or deletions/changes to selections and/or options already made with respect to a Showcase Home, are deemed to be requests for "Custom Selections and Options" that are subject to the terms and conditions set forth in part C of this Section 6.

B. **Non-Showcase Home.** With respect to a Home other than a Showcase Home, the following terms, conditions, timing, and procedures shall govern the selection of Standard Selections, and Buyer must fully and timely comply therewith:

i. Standard Selections - Schedule and Process.

(a) **Structural and Landscape Selections.** Concurrently with the execution of this Agreement, Buyer has made certain structural and landscape selections for the Home as set forth in the initial Selection Order (collectively, "Structural and Landscape Selections"), which may have included: extended garages, selection of a den (in lieu of a bedroom), bay windows, decks, patios, and any other selections affecting the structural elements of the Home, and the base front-yard landscaping for the Home. Buyer cannot change any of Buyer's Structural and Landscape Selections unless Meritage elects to allow such changes in its sole and absolute discretion, and any requests by Buyer to make any such changes shall be deemed requests by Buyer for Custom

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Selections and Options pursuant to Section 6.C below. Buyer acknowledges that all rights, obligations, and procedures relating to the installation of landscaping on the Lot shall be governed by and must fully comply with any requirements of any applicable governmental authorities, any recorded covenants, conditions, and restrictions affecting the Lot, and any and all rules, regulations, and architectural and/or landscaping guidelines imposed in connection therewith. Buyer further acknowledges that neither Buyer nor any agent or designee of Buyer may install any landscaping on the Lot unless and until Buyer pays the entire Purchase Price for the Home at the Closing.

(b) **Design Selections and Options.** Buyer also will be entitled to make certain design selections ("Design Selections and Options") from any additional options (other than Structural and Landscape Selections) made available by Meritage with respect to the Home, which may include floor coverings, cabinets, countertops, doors, appliances, light fixtures, plumbing fixtures, window coverings, interior paint colors, and other interior features and options. The Design Selections and Options must be made by Buyer at the design studio designated in the Selection Order (the "Design Studio"). At the Design Studio, Buyer may (i) select materials, finishes, and options that are then offered by Meritage for the Home at no extra charge ("Standard Design Selections"); and (ii) request any extra and upgraded Design Selections and Options then offered by Meritage for the Home (the "Design Options"), if any. In order to minimize delays and maximize efficiencies in the construction process, **Buyer agrees to make all Design Selections and Options for the Home within fourteen (14) days after the Agreement Date (the "Design Selection Period").** Should Buyer fail to make all of Buyer's Design Selections and Options within the Design Selection Period, Meritage may either: (i) make such Design Selections and Options within its sole discretion, in which event Meritage's chosen Design Selections and Options shall be final; (ii) await Buyer's designation of Buyer's Design Selections and Options, in which event the Purchase Price shall be increased by an amount equal to two hundred fifty dollars (\$250.00) for each day that Buyer delays in making the Design Selections and Options after expiration of the Design Selection Period; or (iii) cancel the Contract and retain the Earnest Money theretofore paid by Buyer as liquidated damages for Buyer's breach of the Contract. Accordingly, Meritage strongly urges Buyer to **contact the Design Studio within two (2) days after the Agreement Date** to initiate appointments.

(c) **Changes to Design Selections and Options.** Once Buyer has timely selected Buyer's Design Selections and Options during the Design Selection Period, if Buyer thereafter desires to change or delete any of such selected Design Selections and Options prior to the expiration of the Design Selection Period, then in recognition of the additional cost Meritage will incur in processing such change, Buyer may only change or delete any such selections by paying to Meritage, at the time of each change or deletion, a non-refundable fee in the amount of two hundred fifty dollars (\$250.00) for each such change or deletion, which fee will not be applicable to any portion of the Purchase Price (including, but not limited to, any Option Deposit or any cost of the applicable selection/option) and will be deemed fully earned by Meritage upon receipt. Once the Design Selection Period has expired, Buyer shall not be entitled to select or make changes to any Design Selections and Options.

ii. **Additional Selection Guidelines and Restrictions.** Available Design Options and the prices for Design Options allowed by Meritage are determined by Meritage, in its sole discretion, and are subject to change at the discretion of Meritage. Buyer understands that Meritage shall have no obligation to make any changes or upgrades to the Home other than the Standard Design Selections and Design Options Meritage then makes available for the Home that are set forth in an updated Selection Order executed by Buyer and Meritage. Meritage reserves the right at any time to change, modify, or eliminate any Design Options (and/or the pricing therefor) at any time made available for any homes within the Community. If any items selected by Buyer become unavailable or are determined to not be available within time periods necessary to avoid delays in completing construction of the Home, Buyer shall, within seven (7) days after written notice thereof from Meritage, select any replacement item(s) necessary to replace the unavailable item(s) and if Buyer fails to do so, Meritage may make such selections on Buyer's behalf and Buyer shall be bound thereby. If selections made by Buyer and approved by Meritage result in the need for an upgrade to the electrical panel, equipment, or facilities for the Home, Meritage is authorized to install such upgraded panel, equipment, and facilities and make such changes, whereupon the Purchase Price will be increased by Meritage's charge for such upgraded panel, equipment, and facilities, and any related changes. Buyer understands that an appraiser may not give full or any value to Standard Selections and, consequently, Buyer should be prepared to pay cash for any such items that will not be funded from loan proceeds should they not receive full value in the appraisal.

C. **Custom Selections and Options.** At Meritage's sole discretion, Meritage may consider including the following (collectively, "Custom Selections and Options") items in the Home or on the Lot if requested by

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Buyer: custom options, non-standard colors and selections, custom or non-standard landscaping, window coverings, and/or any other options and/or selections not offered by Meritage with respect to the Home, or options or selections of any kind requested after the applicable time period set forth above (including, without limitation, Structural and Landscape Selections and/or Design Selections and Options requested after start of construction of the Home), but excluding any request to allow Buyer to build a pool and/or spa, which request must be made on a separate "Pool Addendum" (defined in Section 7.E below). As a condition to Meritage considering and pricing any Custom Selections and Options, Buyer must first pay to Meritage a non-refundable estimating fee of two hundred fifty dollars (\$250.00) for each individual Custom Selections and Options item before Meritage considers each such request. This fee does NOT constitute any commitment by Meritage to approve or make available to Buyer the requested Custom Selections and Options item. Instead, the fee is paid, and deemed earned by Meritage upon receipt, in consideration of Meritage evaluating the request therefor and obtaining information it deems relevant for evaluating such request. If, and only if, any Custom Selections and Options item is approved by Meritage and is purchased by Buyer, the estimating fee for that particular item will be credited to the price of that item at, and solely upon, Closing. Once Meritage has reviewed any request from Buyer for any Custom Selections and Options, Meritage will advise Buyer in writing whether or not Meritage is willing to provide such Custom Selections and Options and, if so, the price thereof and the time deadline for Buyer to execute an updated Selection Order providing for such Custom Selections and Options. Buyer acknowledges that if any Custom Selections and Options item causes a delay in the construction of the Home, Meritage may include in the price thereof a fee of not less than two hundred fifty dollars (\$250.00) for each day of such delay, as conclusively determined by Meritage. Any approved Custom Selections and Options must be itemized on an updated Selection Order that is executed by Buyer and also is accepted and executed by Meritage. In the event that Meritage does not accept and execute an updated Selection Order for any requested Custom Selections and Options, Meritage shall be deemed to have denied Buyer's request for such Custom Selections and Options. Buyer acknowledges and agrees that Meritage's disapproval of any Custom Selections and Options shall not affect Buyer's obligations under the Contract. Buyer understands that an appraiser may not give full or any value to Custom Selections and Options and, consequently, Buyer should be prepared to pay cash for such items that will not be funded from loan proceeds should they not receive full value in the appraisal.

D. Model and Promotional Features. Buyer is aware that any model home and promotional material that Buyer may have viewed prior to execution of the Contract may contain extra design features, decorations, floor coverings, decorative light fixtures, custom paint and wall coverings, window treatments, landscaping, pool, spa, sound and alarm systems, furnishings, appliances, and other designer/decorator features and amenities that are not included as part of the Home, and that there are items shown in models that are decorator items and/or that display design elements or upgrades that may not be available for homes in the Community and/or for the Home selected by Buyer. Buyer acknowledges that Meritage's sales associate has reviewed with Buyer the included features for the Home, and Buyer understands that in order to incorporate any Design Options shown in any model or brochures (provided Meritage makes such Design Options available for incorporation into the Home), an updated Selection Order setting forth the Design Options added and adjusting the Purchase Price accordingly must be executed by Buyer and accepted by Meritage. Further, Buyer understands that models, pricing, and features may vary from community to community, that Meritage may offer many of Meritage's models at several different communities, and that each model has features, code requirements, materials, association guidelines, aesthetics, landscaping, and a host of other factors that may vary from one community to another and/or over time. Buyer may view models at different communities in order to examine the floor plan, use of space, approximate size of rooms, and traffic pattern of the model, but Buyer acknowledges that such floor plans and features may not be available in the Community. Further, Buyer is advised that Meritage's sales associates in one community may not have specific information regarding features available in another community. From time to time, Meritage may make available a Standard Selection or upgrade that was not offered to Buyer, and Meritage shall have no obligation to offer such added Standard Selection or upgrades to Buyer.

E. Selections and Options Deposit Requirements. Upon Buyer's execution of an updated Selection Order confirming that any Standard Selections and/or Custom Selections and Options will be included in the Home, Buyer agrees to pay an additional deposit (the "Option Deposit"), in U.S. funds, directly to Meritage outside of Escrow on or before the date(s) set forth in and required under such updated Selection Order, in the following amount:

i. **Standard Design Selections.** To the extent that Buyer makes only Standard Design Selections for which no additional amount is due, no Option Deposit is required.

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ii. **Standard Upgrades.** To the extent that Buyer makes any Standard Selections for which an additional charge is reflected on the Selection Order therefor (the "Upgrade Charge"), Buyer will pay an Option Deposit to Meritage as follows:

(a) If the Upgrade Charge equals ten percent (10%) or less of the base price of the Home reflected on the Selection Order, then the Option Deposit shall be the amount specified on the updated Selection Order with respect to such Standard Selections, if any.

(b) If the Upgrade Charge equals more than ten percent (10%) but less than fifteen percent (15%) of the base price of the Home reflected on the Selection Order, then the Option Deposit shall be the greater of: (i) the amount specified on the updated Selection Order with respect to such Standard Selections, if any; or (ii) twenty-five percent (25%) of the portion of the Upgrade Charge that exceeds ten percent (10%) of the base price of the Home. Buyer acknowledges that this paragraph will control over any contrary amount set forth in any updated Selection Order.

(c) If the Upgrade Charge equals fifteen percent (15%) or more, but less than twenty percent (20%) of the base price of the Home reflected on the Selection Order, then the Option Deposit shall be the greater of: (i) the amount specified on the updated Selection Order with respect to such Standard Selections, if any; or (ii) the sum of (A) twenty-five percent (25%) of the portion of the Upgrade Charge that exceeds ten percent (10%) of the base price of the Home, but is less than fifteen percent (15%) of the base price of the Home; plus (B) fifty percent (50%) of the portion of the Upgrade Charge that equals or exceeds fifteen percent (15%) of the base price of the Home. Buyer acknowledges that this paragraph will control over any contrary amount set forth in any updated Selection Order.

(d) If the Upgrade Charge equals twenty percent (20%) or more of the base price of the Home reflected on the Selection Order, then the Option Deposit shall be the greater of: (i) the amount specified on the updated Selection Order with respect to such Standard Selections, if any; or (ii) the sum of (A) twenty-five percent (25%) of the portion of the Upgrade Charge that exceeds ten percent (10%) of the base price of the Home, but is less than fifteen percent (15%) of the base price of the Home; plus (B) fifty percent (50%) of the portion of the Upgrade Charge that equals or exceeds fifteen percent (15%) of the base price of the Home, but is less than twenty percent (20%) of the base price of the Home; plus (C) one hundred percent (100%) of the portion of the Upgrade Charge that equals or exceeds twenty percent (20%) of the base price of the Home. Buyer acknowledges that this paragraph will control over any contrary amount set forth in any updated Selection Order. Notwithstanding the foregoing, Meritage may, at its sole discretion, designate certain items (such as finished basements or municipal-required enhancements) as standard Design Selections for which the Upgrade Charge therefor is to be included in the base price of the Home for purposes of calculating the Option Deposit, in which event the Option Deposit therefor, if any, will be as provided in the applicable Selection Order (without regards to the minimums stated above). Any such designation will be applicable solely to the extent explicitly provided in a Selection Order.

iii. **Custom Selections and Options.** To the extent that Buyer makes any Custom Selections and Options, Buyer will pay an Option Deposit to Meritage equal to the greater of: (a) the amount specified on the updated Selection Order with respect to such Custom Selections and Options, if any; or (b) fifty percent (50%) of the Upgrade Charge.

In NO event will any incentives that may be offered by Meritage to Buyer in connection with the purchase of the Home reduce the amount of the Option Deposit required in this Agreement. Buyer acknowledges and agrees that Buyer's Standard Selections and any Custom Selections and Options will not be released to construction, and Meritage will be deemed to have not accepted any updated Selection Order related thereto, unless and until the applicable Option Deposit has been paid in full. Buyer further acknowledges and agrees that, except as specifically provided otherwise in Section 16(c) below, the Option Deposit will be non-refundable to Buyer once Meritage has accepted the applicable updated Selection Order with respect thereto.

F. **FHA and VA Loans.** If Buyer has elected to finance the purchase of the Home with FHA or VA financing, the total amount of Standard Selections and/or Custom Selections and Options, collectively, may NOT exceed twenty percent (20%) of the base price of the Home reflected on the Selection Order, and in the event that Buyer makes selections that exceed twenty percent (20%) of the base price of the Home reflected on the Selection Order, Meritage will have the unilateral right at any time prior to Closing to omit from the Home and Selection Order such selections/options as it determines, in its sole discretion, are necessary to be omitted so that the total of

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Buyer's selections/options do not exceed twenty percent (20%) of the base price of the Home reflected on the Selection Order.

7. Lot Improvements.

A. Construction of Lot Improvements. All material and labor to construct the Lot Improvements will be supplied by trade contractors and/or suppliers selected by Meritage in its sole and absolute discretion. Meritage will endeavor to cause the Lot Improvements to be constructed in substantial conformance with the Plan. Nevertheless, due to the nature of construction, Buyer understands and acknowledges that deviations and variations from the Plan may exist in the Home, including, without limitation: (i) substitution by Meritage of materials and equipment of substantially equal or better quality; (ii) minor style, lot orientation, and color changes; (iii) minor variances in square footage of the Home and in room and space dimensions, and in window, door, utility outlet, and other improvement locations; (iv) changes in the Plan as may be required by any state, federal, county, or local governmental authority in order to accommodate selections and/or options requested by Buyer and approved by Meritage; and (v) value engineering and field changes. Buyer acknowledges that renderings, floor plans, and other drawings shown in the sales office for the Community and in sales brochures and other advertising material may not be drawn to scale. The Lot Improvements may contain unique characteristics, such as but not limited to: electronic transformers, catch basins, utility boxes, lines, and/or meters, wastewater pumps, and/or similar improvements, the location of which will be determined by Meritage in its sole discretion. Meritage may construct the Home with a floor plan that is the reverse of the model floor plan. Meritage shall have the right to make such changes to the Home and/or to make deviations from the Plan and in materials and locations as Meritage deems appropriate in order to construct the Home in accordance with applicable building codes, practices, and requirements. Upon Completion of the Lot Improvements in accordance with Section 7.B below, Buyer's refusal to accept the Lot Improvements as constructed shall constitute a material default by Buyer under the Contract. By acquiring title to the Home at Closing, Buyer shall be deemed to have agreed to accept the Home as constructed and subject to all changes and deviations that may exist from the Plan, and Buyer shall be deemed to have waived any and all rights and claims against Meritage with respect to any such changes and deviations, except to the extent such changes and deviations are conclusively determined to cause structural deficiencies in the Home.

B. Completion of Construction. Buyer acknowledges that normal construction schedules may be affected by processing delays and inspections of applicable governmental authorities, weather conditions, the availability of materials and qualified trade contractors, and other factors outside of Meritage's control and, therefore, Meritage does not and cannot guarantee a completion date and Meritage cannot be held responsible for estimated completion dates that Buyer may, at any time, receive from Meritage or any of its agents, employees, trade contractors, or suppliers. So long as Buyer has complied with all of Buyer's obligations under the Contract, Meritage will make reasonable efforts to initiate construction of the Lot Improvements within thirty (30) days of the later to occur of: (i) the date on which Buyer supplies Meritage with evidence of Buyer's Loan Approval (as such terms is defined in the Financing Addendum) and the satisfaction of any and all conditions and contingencies to which such Loan Approval is subject, as applicable, as well as any other conditions and contingencies set forth in any addendum constituting a part of the Contract; (ii) the date Buyer completes Buyer's Standard Selections and delivers a Selection Order to Meritage, executed by Buyer and reflecting all of the Standard Selections made by Buyer (subject to acceptance by Meritage); and (iii) the date a building permit is obtained for the Lot Improvements; and Meritage thereafter will proceed with the construction of the Lot Improvements with reasonable diligence. Meritage agrees to complete construction of the Lot Improvements in the manner specified in the Contract by a date not later than two (2) years from the date Buyer signs this Agreement, subject, however, to delays caused by matters that are legally recognized as defenses to contract actions in the jurisdiction where the Lot Improvements are being constructed, including, but not limited to, delays caused by matters that are beyond the control of Meritage, such as fire, flood, and labor or material shortages. "Completion" of the Lot Improvements shall be deemed to occur upon the issuance of a certificate of occupancy (or other similar document customary in the market in which the Home is located indicating that the Lot Improvements are habitable and able to be occupied) with respect to the Lot Improvements by the city, town, county, or other applicable governmental authority in which the Home is located, or other applicable inspection customary in the market in which the Home is located, which certificate (or similar document or inspection), once issued, shall be deemed to confirm that the Lot Improvements are completed and built in substantial conformance with the Plan and applicable codes.

C. Home Placement. The Lot Improvements will be situated and oriented on the Lot by Meritage (in its sole discretion) depending on setbacks, easements, other restrictions of record, requirements of governmental

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authorities, physical conditions on or adjacent to the Lot, and normal construction practices. In the event that the Lot Improvements will not fit on the Lot or are otherwise not allowed due to any declaration, covenant, condition, or restriction affecting the Lot and/or municipal or other applicable requirements, Meritage will notify Buyer, whereupon: (i) the Contract shall be terminated and all Earnest Money returned to Buyer, in which event the parties will be released from all further liability or obligation under the Contract; or (ii) if Buyer has satisfied any financing or other contingency and is not then in default under the Contract, Buyer may choose another type of home for such Lot and execute an updated Selection Order with respect thereto at the then current prices for such type of home; or (iii) if Buyer has satisfied any financing or other contingency and is not then in default under the Contract, Buyer may choose another lot and execute a new agreement for the purchase thereof and a residence thereon at the then current prices for such lot and home, in which case Buyer's Earnest Money will be applied to the new lot. Buyer is hereby advised that elevation heights of the yards and floor of the Home and that of adjoining lots may vary, and elevation differences from one lot to the next within the Community can cause yard wall heights to change. Buyer is further advised to review all title documents for the Lot and to make itself aware of the boundaries of the Lot, setbacks affecting the Home, and all drainage and/or utility easements and other matters of record, if any, that affect the Home. Neither Meritage nor any of its agents, representatives, or employees is authorized to make any representation to Buyer about such matters, and any such representation is hereby expressly disclaimed.

D. No Buyer Access to / Work on Home Prior to Closing. Due to insurance requirements and for Buyer's safety, Buyer and Buyer's agents, guests, and invitees shall not enter upon the Lot prior to Closing unless accompanied by one of Meritage's sales associates for the Community. In addition, Buyer shall not, prior to Closing: (i) cause any personal property, including, but not limited to, furniture and fixtures, to be stored, located, or otherwise placed on or in the Lot or Home, and/or (ii) except as may be specifically provided in a Pool Addendum (defined in part E of this Section 7), provide materials, trade contractors, or supplies to or for the Home, or work on or make modifications to the Home. Buyer shall not in any event interrupt or interfere with the construction of the Lot Improvements or otherwise prevent, deter, or hinder Meritage, its employees, agents, and subcontractors, from performing any obligation under the Contract. Buyer further agrees not to interfere with or interrupt any workers otherwise in the Community, and not to enter onto any other lot or other property of Meritage in the Community. To the extent that Meritage permits Buyer on the Lot prior to Closing, Buyer shall comply with all applicable laws and standards that may require anyone on a construction site to wear protective clothing and safety devices, including, but not limited to, hard hats and safety glasses. Buyer assumes the risk of injury and loss that may result from any entrance on the Lot by any of Buyer and Buyer's agents, guests, and invitees prior to Closing, and Meritage shall have no responsibility or liability for any injury or loss resulting from or occurring during any entrance by any of Buyer and Buyer's agents, guests, or invitees onto any construction area within the Community, including the Home. Furthermore, the Warranty on any part of the Home affected in any way by any such entrance and/or from any work and/or modifications to the Home by or on behalf of Buyer prior to Closing shall be deemed void, and Buyer shall indemnify and hold Meritage harmless for, from, and against any and all loss, damages, claims, demands, obligations, costs, liability, or responsibility (including, without limitation, all attorneys' fees and costs incurred by Meritage) resulting in any way from any such entrance or from any work and/or modifications to the Home by or on behalf of Buyer prior to Closing. Buyer's obligations in the immediately preceding sentence will survive the termination of the Contract and/or the Closing. Any communication by or on behalf of Buyer regarding construction of the Lot Improvements must be made solely through Meritage's sales associate for the Community (who may schedule an appointment with the appropriate construction supervisor as deemed necessary by such sales associate), and Buyer shall not make any direct contact with any workers, suppliers, superintendents, contractors, or subcontractors of Meritage, or any of their respective employees. Any violation of any of the restrictions set forth in this Section by Buyer will constitute a material default under the Contract.

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E. Pool. If Buyer desires to commence construction of a pool and/or spa and any related improvements (collectively, a "Pool") on the Lot prior to Closing, then Buyer must execute a separate written Buyer Installed Swimming Pool Addendum (the "Pool Addendum") that will govern all terms, provisions, and conditions regarding Buyer's ability to contract with a third-party pool builder (the "Pool Builder") to construct such Pool, including, without limitation, the requirement that Buyer pay to Meritage a "Pool Deposit" in accordance with the Pool Addendum. Meritage will be free to accept or reject any requested Pool Addendum at its sole discretion and for any or no reason, and such decision shall be independent of Meritage's acceptance of this Agreement and the balance of the Contract, which means that Meritage's acceptance of the Pool Addendum is NOT a contingency to Buyer's obligations under the Contract. Similarly, notwithstanding anything contained in the Contract to the

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contrary, completion of the Pool and any related improvements is NOT a contingency to Buyer's obligations to proceed with Closing or otherwise under the Contract, which means that the Pool need not be completed prior to the Closing or any other time as a condition to Buyer's performance of any of Buyer's obligations under the Contract.

F. **Termites.** At Closing, Meritage will deliver to Buyer a certificate from the pest control company that applied the termite treatment for the Home. Buyer understands that current governmental regulations limit the types and concentrations of chemicals and methods of application that can be used in attempting to prevent or eradicate termites and, consequently, termites may appear following Closing. If, within the time period specified in the certificate from the applicable pest control company, Buyer notifies the pest control company that any areas of the Home have become infested with termites, the pest control company will be obligated to re-treat such areas of the Home. Buyer acknowledges and agrees that in no event will Buyer make any claims against Meritage, and in no event will Meritage have any liability to Buyer or any occupants of the Home, for any losses, costs, damages, and expenses arising in connection with the existence of termites in or around the Home.

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G. **Home Buyer Disclosures.** Buyer acknowledges that Schedule 3 to this Agreement contains various disclosures and Buyer acknowledgments. Meritage has advised Buyer to review carefully all of such disclosures and acknowledgments. **Buyer's execution of this Agreement will evidence Buyer's understanding of and agreement to such disclosures and acknowledgments, and Buyer hereby waives any rights or remedies Buyer may otherwise have now or in the future against Meritage with respect to the matters set forth in Schedule 3 to this Agreement.** In addition, concurrently with the execution of this Agreement, Buyer will execute a Community Disclosure Addendum that contains important information about the Home and the Community, and **Buyer acknowledges that Buyer has been advised to carefully read the entire Community Disclosure Addendum prior to executing this Agreement and the balance of the Contract.**

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8. **New Home Orientation.** Between the substantial completion of the Home and the Closing, Meritage will perform a Buyer orientation and inspection of the Home, at which time Meritage will review and demonstrate the features and operations of the Home (the "New Home Orientation"). Meritage will use reasonable efforts to provide Buyer with at least seven (7) days' notice of the New Home Orientation. If, at any time, Buyer elects to designate an individual to act as Buyer's representative and agent (Buyer's "Designated Representative") in connection with the New Home Orientation, Buyer and Meritage will execute a separate written Designated Representative Addendum (the "Designated Representative Addendum"). Only Buyer or Buyer's Designated Representative may attend the New Home Orientation. If, during the New Home Orientation, any deficiencies or incomplete work or items are noted in the Home, then Buyer (or Buyer's Designated Representative) and Meritage may compile a written list of any and all such deficiencies and incomplete work and items (the "Punch List"). Meritage shall have no responsibility or liability to make any repairs or replacements resulting from damage to the Home caused by any of Buyer and Buyer's movers, employees, representatives, invitees, contractors, designees, or any other occupants of the Home, and any damages or defects not specifically identified on the Punch List prior to Closing shall be conclusively deemed to have been caused by Buyer and/or Buyer's movers, employees, representatives, invitees, contractors, designees, and/or any other occupants of the Home, and Meritage will have no responsibility to repair, replace, or otherwise remedy such items. So long as Completion of the Lot Improvements has occurred in accordance with the last sentence of Section 7.B above, any claims by Buyer regarding deficiencies and incomplete work and items in the Home (except to the extent of deviations from the Plan that are conclusively determined to cause structural deficiencies in the Home) shall not entitle Buyer to cancel the Contract, delay the Closing, withhold funds at Closing, or seek any other recourse against Meritage. Further, if the parties are unable to schedule the New Home Orientation prior to the date specified by Meritage for Closing, Buyer must nonetheless proceed with Closing, and in any such event Buyer shall not be entitled to cancel the Contract, delay the Closing, withhold funds at Closing, or seek any other recourse against Meritage due to the failure or inability to conduct a New Home Orientation prior to Closing. If Buyer or Buyer's Designated Representative (if applicable) fails to attend a scheduled New Home Orientation, Meritage may conduct the inspection itself and prepare a Punch List, which shall be deemed conclusive and binding on Buyer, and Meritage shall have no obligation to demonstrate the features and operation of the Home to Buyer.

9. **Utilities.** Buyer, at Buyer's own expense, shall arrange for utilities for the Home to be turned on and placed in Buyer's name immediately following the Closing, and any delays incurred in scheduling such utilities to be

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turned on and placed in Buyer's name shall not permit Buyer to delay the Closing. Notwithstanding the foregoing, Meritage may, but shall have no obligation to, turn on the utilities for the Home on Buyer's behalf. In such event, Meritage will subsequently have no obligation or liability to maintain or pay for such utilities once they have been turned on.

10. **Closing.** The closing of this transaction (the "Closing") shall occur following Completion of the Lot Improvements (as determined in accordance with the last sentence of Section 7.B above) on a date to be specified in a notice provided by Meritage to Buyer ("Closing Date Notification"). Buyer acknowledges and agrees that Meritage has the right, in its sole discretion, to schedule the date, time, and place for the Closing, and that Buyer is obligated to close on such date. Meritage shall provide Buyer with the Closing Date Notification at least ten (10) calendar days prior to the date Meritage designates as the date for Closing. Under no circumstances will Meritage be responsible for temporary housing, furniture storage, moving expenses, or other costs, fees, or expenses related in any way to the timing of the Completion of the Lot Improvements, the New Home Orientation, and/or the Closing. In the event Escrow Agent is closed for business on the day specified for Closing, the Closing shall occur on the next day Escrow Agent is open for business. It will not be necessary that Buyer be present at the Closing; provided, however, that if Buyer cannot or elects not to be present for Closing, Buyer must, prior to the date specified by Meritage for the Closing, execute all documents and instruments and make all payments as are necessary to facilitate the timely occurrence of the Closing. Meritage shall have no responsibility for, and Buyer shall pay for: all title, recording, closing, and escrow fees, costs, premiums, and charges relating to this transaction and any fees, costs, and charges related to any financing obtained by Buyer for this transaction, including, without limitation, those identified in the Financing Addendum. All taxes, special assessments, and regular assessments affecting the Home shall be prorated as of the Closing on a calendar year basis (including, without limitation, any homeowners' or condominium association and similar assessments affecting the Home other than fees related to the transfer of the Home, which are to be paid by Buyer at Closing). At or before the Closing, Buyer shall deposit with Escrow Agent or Meritage: (i) the balance of the Purchase Price due and payable to Meritage; (ii) an amount equal to all closing costs and additional costs or expenses payable by Buyer pursuant to the Contract; (iii) a sum equal to any assessments in connection with the transfer of the Home to Buyer and any other amounts due and payable to any homeowners', condominium, or similar association as required pursuant to any recorded declarations, covenants, conditions, and/or restrictions affecting the Home; and (iv) all documents and instruments necessary to effectuate the transaction contemplated in the Contract. All amounts payable by Buyer at Closing shall be paid by electronic transfer or other form of immediately available funds from a licensed bank or other financial institution acceptable to Meritage and Escrow Agent. Possession of the Home shall be given to Buyer only after Closing occurs. The Closing shall be deemed to have occurred once Meritage has received all monies due it under the Contract.

11. **Title.**

A. **Conveyance.** Title to the Home shall be conveyed by Meritage to Buyer at Closing by special warranty deed, free and clear of liens, encumbrances, and exceptions except: (i) any declarations, covenants, conditions, and/or restrictions affecting the Home; (ii) any existing easements and rights-of-way for roadways, drainage areas, canals, ditches, open areas, laterals, and public utilities; (iii) taxes, special assessments, and community facility assessments (if applicable) that are not delinquent; (iv) matters shown on the plat for the Community; (v) matters that a survey would show; (vi) all applicable zoning and building code requirements and any other governmental and quasi-governmental requirements; (vii) any outstanding mineral or royalty interests; (viii) any matters of record that do not materially and adversely affect the marketability of the Lot; (ix) any matters disclosed in any schedule to this Agreement or any portion of the Contract, or otherwise in connection with the Contract; and (x) any other matters set forth in any title insurance commitment or title report or opinion obtained by Buyer to the extent that Buyer does not object thereto within the time period specified in this Agreement (as applicable). Buyer acknowledges that Meritage may not yet own the Lot as of the Agreement Date. If Meritage, through no fault of its own, is unable to obtain title to the Lot or deliver marketable title to the Lot to Buyer as of the date scheduled for Closing, Meritage shall have the right to cancel the Contract, whereupon the Earnest Money shall be returned to Buyer and the parties shall have no further rights, obligations, liabilities, or remedies under the Contract (except for those that specifically survive such cancellation).

B. **Vesting.** Subject to the restrictions on Buyer's assignment of the Contract, title to the Home will be conveyed to Buyer at Closing pursuant to Buyer's written vesting instructions provided to Escrow Agent and Meritage at least five (5) days before Closing. Buyer's failure to provide any such instruction at least five (5) days before Closing shall be conclusively deemed an irrevocable election by Buyer to take title to the Home in the

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manner that Buyer is identified in this Agreement. The manner of taking title to the Home can have significant legal and tax consequences, and Buyer is advised to consult a professional for advice. Neither Meritage nor any of its agents, representatives, or employees is authorized to advise Buyer about such matters, and any such advice is hereby expressly disclaimed.

12. **Destruction of Home.** Meritage shall bear the risk of loss to the Home until Closing, at which time such risk shall pass to Buyer. If all or a substantial portion of the Home is damaged or destroyed before Closing, Meritage, at Meritage's sole election, may: (i) terminate the Contract by notifying Buyer, in which event the Earnest Money will be refunded to Buyer; or (ii) repair such damage, in which event the Contract shall remain in full force and effect and the Closing may be extended by Meritage for a reasonable period to allow Meritage the opportunity to repair such damage and complete construction of the Lot Improvements.

13. **Meritage's Limited Warranty.**

A. **Meritage's Warranty Agreement.** At the Closing, Meritage shall provide Buyer with the Meritage Homes New Home Warranty & Protection Plan, which shall constitute the only warranty to be provided by Meritage to Buyer with respect to the Home (the "Warranty"). The Warranty is set forth in the Warranty Information section of Meritage's "Making Ownership Easy" homeowner's manual (the "Warranty Agreement"), which is incorporated in this Agreement by this reference and which shall constitute a part of the Contract. Buyer acknowledges having received and reviewed an unexecuted sample of the Warranty Agreement. Buyer understands and agrees that: (i) Buyer will refer solely to the Warranty Agreement for all terms, conditions, rights, remedies, and other provisions of the Warranty; and (ii) the only rights and remedies Buyer and any successor owner of the Home shall have with respect to any actual or alleged construction defects in the Home shall be those specifically set forth in the Warranty Agreement, and Buyer shall have the sole affirmative obligation to notify any prospective purchaser thereof. Buyer further acknowledges and agrees that, from time-to-time, Meritage may make changes to the Meritage Homes New Home Warranty & Protection Plan it offers to homebuyers generally, and that the Warranty Agreement applicable to Buyer shall be the Warranty Agreement as set forth and in effect at the Closing, notwithstanding any subsequent modifications that Meritage may make to the Meritage Homes New Home Warranty & Protection Plan generally and/or for other purchasers of homes from Meritage. **BUYER ACKNOWLEDGES AND AGREES THAT, ANY OTHER PROVISION OF THE CONTRACT OR THE WARRANTY NOTWITHSTANDING, EXCEPT AS SPECIFICALLY SET FORTH IN THE CONTRACT, MERITAGE HAS NOT MADE, DOES NOT MAKE, AND SPECIFICALLY NEGATES AND DISCLAIMS, AND BUYER HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ANY AND ALL REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS, AND/OR GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, CONCERNING, AND/OR WITH RESPECT TO THE HOME. SUBJECT TO THE FOREGOING, NO EXPRESS WARRANTY IS MADE BY: (A) ANY AFFIRMATION OF FACT OR PROMISE THAT THE HOME OR ANY RIGHT OR USE RELATED THERETO WILL CONFORM TO THE AFFIRMATION OF FACT OR PROMISE MADE; (B) THE DISPLAY OF ANY MODEL OR THE DEPICTION OF ANY PHYSICAL CHARACTERISTICS OF THE LOT IMPROVEMENTS OR THE COMMUNITY, INCLUDING THE PLAN OR ANY OTHER PLANS OR SPECIFICATIONS; (C) ANY DESCRIPTION OF THE REAL ESTATE COMPRISING OR CONTEMPLATED TO COMPRISE THE COMMUNITY OR OF THE UNITS OR AMENITIES CONTEMPLATED TO BE A PART OF THE COMMUNITY, INCLUDING PLOTS, PLATS, OR SURVEYS; AND (D) ANY REPRESENTATION MADE BY ANY AGENT OF MERITAGE THAT BUYER MAY PUT ANY OF THE HOME TO A SPECIFIED USE, OTHER THAN RESIDENTIAL. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, ALL IMPLIED WARRANTIES (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY, AND/OR WORKMANSHIP) ARE HEREBY DISCLAIMED AND EXCLUDED BY MERITAGE, AND EXPRESSLY WAIVED BY BUYER. BUYER EXPRESSLY ACKNOWLEDGES THAT THE WARRANTY PROVIDED TO BUYER AT CLOSING WILL IN NO EVENT EXTEND TO ANY CONSUMER PRODUCT, APPLIANCE, AIR CONDITIONING UNIT, FURNACE, WATER HEATER, SOLAR SYSTEM, OR OTHER EQUIPMENT INCLUDED IN THE HOME ("CONSUMER PRODUCT") IF A WARRANTY IS OR HAS AT ANY TIME BEEN PROVIDED BY THE MANUFACTURER OF THE CONSUMER PRODUCT. BUYER FURTHER WAIVES ANY RIGHT TO RECOVER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, AND PUNITIVE DAMAGES SUFFERED AS A**

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RESULT OF ANY DEFECTIVE MATERIALS OR WORKMANSHIP (EVEN IF SUCH DAMAGES ARE FORESEEABLE, AND WHETHER OR NOT BUYER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). BUYER ACKNOWLEDGES THAT THIS SECTION CONSTITUTES AN INTEGRAL PART OF THE BASIS OF THE BARGAIN BETWEEN BUYER AND MERITAGE SET FORTH IN THE CONTRACT AND A MATERIAL CONSIDERATION FOR MERITAGE ACCEPTING THE CONTRACT, AND MERITAGE WOULD NOT HAVE ACCEPTED THE CONTRACT AND AGREED TO SELL THE HOME TO BUYER WITHOUT THE LIMITATIONS AND PROVISIONS PROVIDED IN THIS SECTION.

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B. **FHA/VA/USDA Financed Purchases.** Notwithstanding the foregoing regarding the Warranty being the only warranty with respect to the Home, in the event that Buyer actually finances the purchase of the Home with FHA Financing, VA Financing, or USDA Financing, Buyer also will be provided with a warranty intended to satisfy the warranty requirements specified by such agency (the "Additional Warranty"). Although Buyer will have the right to request warranty performance under the Additional Warranty, in addition to the Warranty, Buyer may not collect twice for the same issue, and amounts paid or expended for warranty performance under either the Additional Warranty or the Warranty will reduce the limit of liability remaining under both warranties. To the greatest extent allowed under applicable law, all disclaimers, limitations of liability, and waivers contained in the Contract and/or the Warranty also shall be applicable to the Additional Warranty, and Buyer will be required to comply with all terms and conditions to obtaining warranty performance specified in the Contract and/or the Warranty in obtaining warranty performance under the Additional Warranty. Accordingly, in the event that Buyer believes that ANY warranty service is needed, Buyer needs to follow the procedures for obtaining warranty service set forth in the Warranty Agreement in order to prevent delays in obtaining warranty service or other warranty service issues.

14. **Notices.** All notices to be given by either party to the other shall: (i) be in writing; (ii) be effective on the earlier of the day of personal delivery thereof to the party to whom directed, or upon receipt of a facsimile transmission (as evidenced by the automatic, successful transmission, confirmation page), or one (1) day following the date of deposit thereof with delivery charges prepaid with a national delivery service for overnight delivery, or two (2) days following the day of deposit in the United States mail, registered or certified and with postage prepaid, return receipt requested; and (iii) be addressed to the party to receive the notice at the mailing address and/or facsimile number set forth in the Buyer Information Sheet, in the case of Buyer, or to the mailing address and/or facsimile number for Meritage set forth at the end of this Agreement, in the case of Meritage, or at such other mailing address or facsimile number as may be indicated by Meritage by written notice to Buyer given in accordance with this Section. In addition, notice may be given to Buyer by, and shall be effective upon, email to the email address set forth in the Buyer Information Sheet. No notice to Meritage of any alleged breach, default, dispute, or claim under the Contract or otherwise relating in any way to the transaction contemplated in the Contract or the construction or acquisition of the Home, or otherwise with respect to the Home, shall be effective unless and until a copy thereof has also been delivered to Meritage Homes and addressed as follows: "Meritage Homes, 8800 East Raintree Drive, Suite 300, Scottsdale, Arizona 85260, Attention: General Counsel - THIS NOTICE MAY REQUIRE IMMEDIATE ATTENTION." The inability to deliver notices because of a changed address of which no notice was given or rejection or other refusal to accept any notice shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

15. **Amendments.** The Contract may be amended or modified only by a written addendum and/or updated Selection Order signed by Buyer and any Authorized Officer of Meritage. Notwithstanding the foregoing, if Buyer consists of a husband and wife or otherwise consists of more than one person, the signature of only one of such individuals comprising Buyer shall be required to enter into any addendum, updated Selection Order, or other modification to the Contract for the purposes of purchasing options, making selections, and/or providing for modifications to the Home, and each individual comprising Buyer hereby grants all other individuals comprising Buyer an irrevocable special power of attorney (coupled with an interest) to enter into such addendum, updated Selection Order, and other modifications to the Contract, and any such addendum, updated Selection Order, and other modifications executed by one of the individuals comprising Buyer shall be binding upon all individuals comprising Buyer and, once signed by an Authorized Officer of Meritage, such instrument(s) shall effectively amend the Contract.

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16. **Disputes and Remedies.**

A. **Meritage's Right to Cancel if Pre-Closing Dispute Arises.** Notwithstanding any provision contained in the Contract, if, prior to the Closing, ANY dispute (whether or not Buyer is in default under the Contract) arises between Meritage and Buyer with respect to the Home or the Contract, and Meritage, in its sole and absolute discretion, determines that such pre-Closing dispute is unable to be resolved on terms acceptable to Meritage, then in addition to any other rights and remedies available to Meritage under the Contract, Meritage shall have the unilateral right to elect to cancel the Contract by providing written notice thereof to Buyer and Escrow Agent, in which event all Earnest Money other than Option Deposits (which shall be retained by Meritage) shall be returned to Buyer and the parties shall have no further rights or obligations under the Contract (except for those that specifically survive such cancellation). Buyer acknowledges that prior to the Closing, Buyer's rights under the Contract are executory only and may be cancelled by Meritage in accordance with this Section.

B. **Meritage's Remedies for Pre-Closing Default.** In the event Buyer fails to fully and timely comply with any term or provision of the Contract prior to the Closing, or if Buyer advises Meritage in writing or orally that Buyer does not intend to or will not fully perform any provision of the Contract prior to the Closing, Meritage shall have the right to cancel the Contract and retain, as liquidated damages and not as a penalty, an amount equal to the sum of the Earnest Money and all other deposits and payments of any kind paid by Buyer. Buyer hereby acknowledges that because Meritage has taken the Lot off the market for Buyer, spent money on sales, advertising, promotion, and construction, and has incurred other costs incident to the sale contemplated by the Contract, any default by Buyer will damage Meritage. Buyer further acknowledges and agrees that the amount of the damages suffered or incurred by Meritage as a result of a pre-Closing default by Buyer under the Contract would be extremely difficult and/or impractical to ascertain, and that the liquidated damage amount described above constitutes a reasonable estimate of such damages. Such liquidated damages are in addition to, and shall not limit any obligation of Buyer in the Contract to, indemnify and/or hold Meritage harmless, and/or any other obligation of Buyer that survives the cancellation of the Contract. In addition, in the event Buyer fails to timely perform Buyer's obligations at Closing and Meritage does not cancel the Contract as a result thereof, Meritage shall have the right to charge Buyer a late fee in an amount equal to the greater of: (A) interest on the unpaid portion of the Purchase Price at the rate of fifteen percent (15%) per annum; or (B) two hundred fifty dollars (\$250.00) for each calendar day from the date of the scheduled Closing until the date Buyer fully performs Buyer's obligations under the Contract; but in either case, not more than the maximum amount permitted under applicable law. Such late fee shall be an additional cost payable by Buyer at Closing and shall be in addition to Meritage's other rights and remedies under the Contract. Such late fee shall not be applicable where prohibited by applicable federal or state laws or regulations.

C. **Buyer's Remedies for Pre-Closing Default.** SUBJECT TO THE TERMS AND PROVISIONS OF SECTION 11.A ABOVE REGARDING ANY INABILITY OF MERITAGE TO DELIVER MARKETABLE TITLE, IF MERITAGE OTHERWISE FAILS TO SUBSTANTIALLY COMPLY WITH THE TERMS AND CONDITIONS OF THE CONTRACT PRIOR TO THE CLOSING, BUYER SHALL DELIVER TO ESCROW AGENT AND MERITAGE A WRITTEN NOTICE DETAILING THE PRE-CLOSING DEFAULT OF MERITAGE. MERITAGE SHALL HAVE TWENTY (20) DAYS FROM THE RECEIPT OF SUCH NOTICE IN WHICH TO REMEDY THE PRE-CLOSING DEFAULT, EXCEPT THAT IF THE REQUIRED PERFORMANCE CANNOT REASONABLY BE COMPLETED BY MERITAGE WITHIN SUCH 20-DAY PERIOD, THEN MERITAGE SHALL HAVE A REASONABLE PERIOD OF TIME WITHIN WHICH TO REMEDY THE PRE-CLOSING DEFAULT. IF MERITAGE DOES NOT REMEDY THE PRE-CLOSING DEFAULT WITHIN THE TIME PROVIDED IN THE IMMEDIATELY PRECEDING SENTENCE, BUYER, AS BUYER'S SOLE AND EXCLUSIVE REMEDY, MAY EITHER: (I) CANCEL THE CONTRACT AND RECEIVE A REFUND OF THE EARNEST MONEY; OR (II) PURSUE SPECIFIC PERFORMANCE OF THE CONTRACT, AND BUYER HEREBY EXPRESSLY WAIVES ANY OTHER RIGHTS AND REMEDIES BUYER MAY HAVE AT LAW OR IN EQUITY WITH RESPECT TO SUCH DEFAULT. BUYER ACKNOWLEDGES THAT THE PROVISIONS OF THIS PARAGRAPH ONLY APPLY TO PRE-CLOSING DISPUTES/DEFAULTS BETWEEN THE PARTIES AND, THEREFORE, SUCH PROVISIONS ARE NOT AND WILL NOT BE APPLICABLE TO ANY ALLEGED CONSTRUCTION DEFECTS OR DEFICIENCIES WITH RESPECT TO THE HOME OR ANY DISPUTE OR CLAIM RELATED TO THE WARRANTY OR THE WARRANTY AGREEMENT (AND/OR THE ADDITIONAL WARRANTY, AS APPLICABLE), OR ANY OTHER DISPUTE OR CLAIM ARISING AFTER CLOSING, BECAUSE THE PARTIES' RIGHTS AND REMEDIES WITH RESPECT TO SUCH MATTERS WILL BE ADDRESSED IN ACCORDANCE WITH THE TERMS AND

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PROVISIONS APPLICABLE THERETO IN THE CONTRACT. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, BUYER HEREBY WAIVES THE RIGHT TO PURSUE AN ACTION AGAINST MERITAGE FOR ANY MONETARY DAMAGES OF ANY NATURE FOR ANY PRE-CLOSING DEFAULT, INCLUDING, WITHOUT LIMITATION, ACTUAL, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, AND PUNITIVE DAMAGES.

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D. Resolution of Post-Closing Disputes.

i. **Meritage's Right to Repair under State Law.** Meritage expressly reserves all rights to notice and an opportunity to repair any alleged defect(s) with the Home under the Warranty Agreement. Accordingly, as an absolute prerequisite to Buyer commencing any claim against Meritage with respect to any alleged construction defects or deficiencies with respect to the Home, Buyer must first provide Meritage with timely notice and an opportunity to repair any alleged defect(s) in accordance with the Warranty Agreement.

ii. **Meritage's Repurchase Right After Closing.** Although Meritage intends that any alleged construction defects or deficiencies will be addressed in accordance with the Warranty Agreement (and/or the Additional Warranty, as applicable), in the event that Buyer initiates any claim or action against Meritage with respect to any actual or alleged construction defects or deficiencies with respect to the Home following the Closing, Meritage shall have the right and option (but not the obligation), in Meritage's sole discretion, to repurchase the Home from Buyer for an amount equal to the sum of the following less any amounts that may have been paid to Buyer under the Warranty or any other homeowner's warranty in connection with the alleged defect or deficiency: (a) the Purchase Price; (b) the value of any documented improvements made to the Home by third party contractors or decorators after the Closing that add ascertainable value to the Home; (c) Buyer's reasonable moving costs; and (d) any customary closing costs paid by Buyer in connection with the purchase of another comparable home within 90 days after the closing of the repurchase of the Home pursuant to this Section. The close of escrow for such repurchase transaction shall occur within 45 days of the date Meritage provides Buyer with written notice of Meritage's intent to exercise such repurchase rights. Title to the Home shall be reconveyed to Meritage free and clear of all monetary liens and encumbrances, and subject only to such other non-financial title matters as existed on the date of the Closing of Buyer's purchase of the Home from Meritage. All closing costs related to the repurchase of the Home by Meritage shall be paid by Meritage. The exercise by Meritage of the repurchase rights provided in this Section shall, to the fullest extent permitted under applicable law, constitute the full and final satisfaction of all claims and actions relating in any way to the Home, including, without limitation, claims relating to any actual or alleged defects and any other claims under the Contract and/or the Warranty Agreement. In the event of such repurchase of the Home by Meritage, Buyer shall promptly execute and deliver any notice of dismissal and/or other documents that may be necessary or appropriate to confirm or evidence such satisfaction.

iii. **Binding Neutral Arbitration.** Buyer and Meritage hereby agree that from and after the Closing, any dispute, claim, or controversy between them and/or any of their respective successors in interest shall be determined by binding arbitration, as provided by the Federal Arbitration Act (9 U.S.C. Section 1 et seq.) and in accordance with the terms and conditions of this Agreement, and not by or in a court of law or equity. For purposes of this paragraph, "dispute, claim, or controversy" shall include any and all disputes, claims, or controversies of any type or nature whatsoever involving Buyer (and/or any successor to Buyer) and Meritage, including, but not limited to: (a) those arising from or involving the condition of the Home and/or Meritage's construction of the Home; (b) those arising from or related in any way to this Agreement or the Warranty Agreement; and (3) those relating to any claim for personal injury or property damage allegedly sustained by Buyer. Any determination of the scope and applicability of the agreement to arbitrate, however, shall be made solely by a federal court in the state in which the Home is located.

NOTICE: BY INITIALING THE SPACE PROVIDED BELOW, YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE CONTRACT AND/OR THE WARRANTY AGREEMENT DECIDED BY BINDING NEUTRAL ARBITRATION AS PROVIDED BY THIS AGREEMENT AND THE FEDERAL ARBITRATION ACT. TO THE GREATEST EXTENT NOT CONTRARY TO STATE LAW, YOU ARE WAIVING AND GIVING UP ANY RIGHTS YOU MAY HAVE TO HAVE ANY CLAIM OR DISPUTE LITIGATED BY A COURT OR BY JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE WAIVING AND GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL EXCEPT TO THE LIMITED EXTENT PROVIDED IN THIS AGREEMENT. IF YOU REFUSE TO SUBMIT TO

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ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF APPLICABLE FEDERAL AND STATE LAW. YOUR AGREEMENT TO THIS BINDING NEUTRAL ARBITRATION PROVISION IS VOLUNTARY. I/WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT ALL CLAIMS AND DISPUTES TO BINDING NEUTRAL ARBITRATION IN ACCORDANCE HEREWITH.

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iv. **Rules for Binding Neutral Arbitration.** Subject to the limitations set forth in this Agreement, the arbitration shall be administered by Judicial Arbitration and Mediation Services ("JAMS") pursuant to its Arbitration Rules and Comprehensive Procedures, including, but not limited to, the expedited procedures of JAMS Rule 16 and the JAMS Optional Arbitration Appeal Procedure, and in accordance with the Expedited Procedures in those Rules. Nothing in this Agreement, however, shall preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

(a) **Demand for Arbitration.** Any demand for arbitration pursuant to this Section shall be in writing and delivered by certified mail, return receipt requested to the address specified in Section 14 of this Agreement, within the applicable statute of limitations period. Note that pursuant to such Section, a copy of any demand made for arbitration to Meritage must be provided to Meritage Homes, 8800 East Raintree Drive, Suite 300, Scottsdale, Arizona 85260, Attention: General Counsel – **THIS NOTICE MAY REQUIRE IMMEDIATE ATTENTION.** Any disputes regarding the sufficiency and timeliness of any demand for arbitration shall be resolved by the "Arbitrator" (as defined in Section 16.D.iv.(b) below). In order to constitute a valid demand for arbitration, the party demanding arbitration shall include all of the following in the written demand for arbitration: (i) a detailed description of the claim or dispute; (ii) the date upon which the condition which is the subject of the claim or dispute first arose; (iii) the names, work locations, and telephone numbers of any individuals with knowledge of the dispute; and (iv) the relief requested.

(b) **Appointment of Arbitrator.** A neutral arbitrator, (the "Arbitrator") shall be selected by mutual agreement of the parties. Unless Buyer and Meritage agree otherwise, the Arbitrator shall be an attorney licensed and in good standing to practice in the state in which the Home is located or a retired federal or state judge who presided in the state in which the Home is located. The arbitration proceedings shall take place at a location within forty-five (45) miles from both the Home and Meritage's nearest Division office, unless both Meritage and Buyer agree otherwise in writing. In the event Buyer and Meritage are unable to agree upon an Arbitrator, either party may declare an impasse and apply to a court of competent jurisdiction in the state in which the Home is located within ten (10) days thereafter to appoint an Arbitrator, who shall act under this Agreement with the same force and effect as if Buyer and Meritage had selected the Arbitrator by mutual agreement.

(c) **Fees and Costs.** Except as required otherwise by this Agreement or the laws of the state in which the Home is located, Buyer and Meritage shall share equally in advancing JAMS and Arbitrator fees and costs required, and each party shall bear its own attorneys' fees and costs. This provision notwithstanding, the prevailing party shall be awarded its reasonable attorneys' fees and costs to the greatest extent not otherwise contrary to state law in any litigation to enforce or compel arbitration in accordance with this Section.

(d) **Discovery and Hearing Limitations.** By entering into this Agreement, both Buyer and Meritage acknowledge and agree that one of the goals of arbitration in accordance with this Section is to create an informal process (as contrasted with proceeding in Court) to quickly and efficiently resolve their disputes with minimal cost and expense. With this objective in mind, both Buyer and Meritage agree to the following limitations and parameters:

(1) All discovery will close no later than one hundred fifty (150) days following appointment of the Arbitrator;

(2) If the claim or dispute arises from an alleged construction defect, Meritage shall be entitled reasonable access to the Home to conduct reasonable inspections and destructive testing;

(3) Each party shall be limited to no more than thirty (30) written interrogatories;

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(4) Each party shall be limited to no more than thirty (30) document requests;

(5) Each party shall be limited to three (3) depositions of non-expert witnesses and each party's depositions are to consume not more than a total of fifteen (15) hours, with no speaking objections at the depositions except to preserve privilege;

(6) All expert witnesses shall be identified in writing within sixty (60) days after the appointment of the Arbitrator and be made reasonably available for deposition within the discovery period above;

(7) The evidentiary hearing on the merits ("**Hearing**") shall commence within one hundred eighty (180) days following appointment of the Arbitrator;

(8) Upon the request of either party, the Arbitrator shall conduct a site visit;

(9) At the Hearing, each party shall have no more than two (2) days for presentation of direct evidence and for cross examination, exclusive of a site visit and reasonable opening and closing remarks; and

(10) The Arbitrator shall issue a reasoned written decision, including findings of fact and conclusions of law, within thirty (30) days following the close of the Hearing, or within thirty (30) days after service of post-hearing briefs if the Arbitrator directs the service of such briefs.

Notwithstanding the foregoing, for good cause shown, upon written request of either party the Arbitrator may modify these limitations and parameters as equitable. In doing so, however, the Arbitrator shall remain mindful of the parties' objectives to resolve their dispute(s) quickly and efficiently, with minimal cost and expense. Failure to meet any of the foregoing deadlines will not render the award invalid, unenforceable, or subject to being vacated; however, the Arbitrator may impose appropriate sanctions and draw appropriate adverse inferences against the party primarily responsible for the failure to meet any such deadlines.

(e) **Appellate Procedures.** Buyer and Meritage hereby adopt and agree to implement the JAMS Optional Arbitration Appeal Procedure with respect to any final award in excess of \$100,000, subject to the following limitations and parameters:

(1) There shall be one (1) neutral Appeal Arbitrator unless either party elects, prior to the selection of an Appeal Arbitrator, to have the appeal heard by a panel of three (3) Appeal Arbitrators. In the event a party elects the appointment of a panel of three (3) arbitrators, the requesting party shall be responsible for the cost and expense of the additional two (2) Appeal Arbitrators. Each Appeal Arbitrator shall have experience as a judge on an appellate court in the state in which the Home is located.

(2) Except as provided otherwise in this Agreement, the parties shall equally share the JAMS and Appeal Arbitrator fees and costs of the Appeal;

(3) The party requesting the appeal shall be responsible, at its sole cost and expense, for providing a certified copy of the hearing transcript and all documentary evidence to the Appeal Arbitrator and the non-requesting party. In the event both parties request the appeal, these costs and expenses shall be equally shared.

(f) **Participation by Other Parties.** Meritage may elect to have all other parties it deems necessary and/or proper included as parties to the arbitration, including, but not limited to, any subcontractors, vendors, manufacturers, professionals, and/or others who provided materials, labor, and/or professional services pertaining to the Home. Meritage's failure to add such parties shall in no manner be construed as a waiver of any claims against any such third parties.

(g) **Applicable State Law.** The Arbitrator shall apply the substantive law of the state in which the Home is located to resolve the claims made, without regard to conflict or choice of law rules. Nevertheless, the Arbitrator need not strictly comply with the applicable Rules of Evidence in such state with the sole exception of those regarding the protection of privileged attorney work product and attorney-client

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communications. Notwithstanding the foregoing provision with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C. Section 1 et seq.).

(h) **Class/Collective Action Waiver.** Buyer and Meritage acknowledge and agree that there shall be no right or authority for any dispute or claim to be brought, heard, or arbitrated pursuant to collective action or in a representative capacity on behalf of a class, the community in which the Home is located, or the general public. In the event any party makes a claim in any forum contrary to this provision, the other party shall have the right to seek enforcement of this Class/Collective Action Waiver under the Federal Arbitration Act and seek dismissal of such class or collective action or claim. Moreover, notwithstanding any other provision of the Contract, any claim that all or part of this Class/Collective Action Waiver is unenforceable, void, or voidable may be determined only by a court of competent jurisdiction and not by an Arbitrator or Appeal Arbitrator.

(i) **Confidentiality.** The parties shall maintain the confidential nature of the arbitration and the award, including the Hearing, except as may be necessary to prepare for or conduct the hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

(j) **Damages.** The arbitrator(s) may award only those actual damages actually incurred by a party as a direct result of the claims, and may not award punitive or exemplary damages or any incidental, indirect, or consequential damages, including damages for lost profit, except where expressly permitted by statute, and the parties waive any right to recover any such damages.

E. **Severability.** A determination that any portion of this Section 16 is invalid or unenforceable shall not affect the enforceability of the remaining provisions of this Section 16.

F. **Waiver of Trial by Jury.** IN ADDITION TO, AND WITHOUT WAIVING ANY PROVISION OF THE BALANCE OF THIS SECTION 16, BUYER, TO THE FULLEST EXTENT ALLOWED UNDER APPLICABLE LAW, HEREBY KNOWINGLY, VOLUNTARILY, IRREVOCABLY AND UNCONDITIONALLY WAIVES BUYER'S RIGHT TO TRIAL BY JURY IN ANY ACTION, LEGAL PROCEEDING, CLAIM, OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) BETWEEN MERITAGE AND BUYER AND IN ANY MATTERS ARISING OUT OF OR CONNECTED IN ANY WAY WITH THE CONTRACT, AND ALL SUCH MATTERS SHALL BE HEARD BEFORE A JUDGE AND NOT A JURY.

Buyer's ^{DS} RA Initials: _____

G. **Waiver of Subrogation.** From and after Closing, Buyer shall secure and maintain insurance covering risk of loss and damage to the Home. Each of Buyer and Meritage hereby releases the other from any claims with respect to any casualty loss to the Home, or other damage to the Home, that could be insured against under the terms of standard fire and extended coverage insurance policies, regardless of the cause or origin, and mutually agree that their respective insurance companies shall have no right of subrogation against the other party on account of any such loss and each party agrees that it will request its insurance carrier to include in its policies such a clause or endorsement. Nothing in this paragraph shall be deemed to modify or otherwise affect releases of either party from liability contained elsewhere in this Agreement.

17. **State Specific Provisions.**

A. **Title Opinion and Insurance.** Buyer acknowledges that Meritage has not, directly or indirectly, required Buyer to purchase either an owner's or lender's title insurance policy from any particular insurer or agency, or at all, as a condition of the Contract. In the event that Buyer desires to obtain a title opinion and/or title insurance with respect to the Lot or otherwise to review matters affecting title to the Lot, then as soon as possible after the Agreement Date, Buyer shall cause the Escrow Agent to provide to Buyer such opinion and/or a commitment for a title insurance policy, and to deliver a copy thereof to Meritage. Buyer shall be deemed to have approved such title commitment (and, if Buyer elects to acquire a title policy, to agree to accept at or after Closing a title policy consistent with that title opinion and/or commitment, and subject to the matters identified as exceptions therein and matters described in Section 11.A above) unless Buyer delivers to Meritage and Escrow Agent a written notice of objection thereto that provides a specific, detailed itemization of each and every basis for such objection (a "Title Objection Notice") on or before the earlier to occur of: (i) five (5) days after Buyer's receipt of the title

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opinion/commitment; or (ii) fourteen (14) days following the Agreement Date; or (iii) the Closing date specified by Meritage in the Closing Date Notification; provided that Buyer may only provide a Title Objection Notice with respect to title exceptions shown on the title commitment that satisfy all of the following conditions: (A) such exceptions are not described in Section 11.A above; and (B) such exceptions are not customary; and (C) such exceptions have a material adverse effect on the value of the Home. If Buyer timely provides a valid Title Objection Notice, Meritage (in its sole discretion) may cancel the Contract or attempt to cause the title insurer to delete or endorse over the title matters identified in the Title Objection Notice. If Meritage fails to cause the title insurer to agree to delete or endorse over such title matters within thirty (30) days after receipt of a valid Title Objection Notice, Buyer may cancel the Contract by delivering written notice thereof to Meritage and Escrow Agent within thirty-five (35) days after delivery of a Title Objection Notice to Meritage, in which event the Earnest Money shall be returned to Buyer. If Buyer fails to cancel the Contract timely, then Buyer shall be conclusively deemed to have waived all such title objections. Buyer acknowledges that in no event will Meritage be obligated to obtain and/or deliver any so-called "long-form" of lien affidavit or other affidavit executed by any of Meritage's subcontractors and/or material suppliers in connection with any title opinion and/or insurance sought by Buyer, and Buyer consents to any exceptions related thereto other than as a result of liens actually recorded in the public records of the county in which the Home is located by such subcontracts and/or material suppliers.

B. Brokerage Disclosure. Buyer acknowledges that Meritage may be a licensed South Carolina real estate broker and/or may employ licensed South Carolina real estate broker(s), none of whom represents Buyer. Meritage will only pay a co-brokerage fee or commission to a licensed South Carolina broker that represents Buyer from the inception of Buyer's dealings with Meritage (the "Buyer's Broker"), and only if such Buyer's Broker is identified as the Buyer's Broker below Buyer's signature on this Agreement and in the separate written Broker Registration and Commission Addendum required to be executed and delivered by Buyer's Broker to Meritage concurrently with the execution of this Agreement. If no such Buyer's Broker is identified and/or no such Broker Registration and Commission Addendum is accepted and executed by Meritage in the same manner specified for acceptance and execution of this Agreement, Meritage shall have no responsibility or liability to pay any co-brokerage fee in connection with the Contract and/or Buyer's purchase of the Home. Buyer represents and warrants to Meritage that Buyer has not dealt with any agents, brokers, salespersons, finders, or other persons in connection with the Contract and/or Buyer's purchase of the Home except as expressly disclosed as the Buyer's Broker below Buyer's signature on this Agreement and in the Broker Registration and Commission Addendum, if applicable, and Buyer shall indemnify and hold Meritage harmless for, from, and against any and all loss, damages, claims, demands, obligations, costs, liability, expenses, and responsibility (including, without limitation, all attorneys' fees and costs incurred by Meritage) resulting in any way from any breach of such representation by Buyer, which obligations will survive the termination of the Contract and/or the Closing.

C. Megan's Law Disclosure. Meritage discloses as follows:

Notice: Pursuant to applicable law, information about specified registered sex offenders is made available to the public via an Internet Web site maintained by the South Carolina Law Enforcement Division at www.icrimewatch.net/index.php?AgencyID=54575&disc. Depending on an offender's criminal history, this information will include either the address at which the offender resides or the community of residence and ZIP code in which the offender resides.

Meritage has not and will not check for any offenders in this area. Should you wish to check for offenders in the area in or around the Home that is of concern to you, please refer to the Internet Web site identified in the preceding paragraph.

D. In the event the Home is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at Buyer's expense.

E. Closing. Notwithstanding anything to the contrary in Section 10, The Buyer shall be responsible for excise stamp taxes applicable to the deed pursuant to Section 12-24-20, South Carolina Code of Laws. Additionally, Buyer shall be responsible for applying for any applicable property tax exemptions and/or reductions available to property owners in South Carolina.

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F. **Earnest Money.** Buyer acknowledges that Meritage intends to use the Earnest Money for construction of the Home.

G.

18. **Miscellaneous.**

A. **Attorneys' Fees.** In the event Meritage retains the services of one or more attorneys to enforce or protect its rights or remedies under the Contract, and whether or not an action or claim is filed, Meritage shall be entitled to recover from Buyer all legal fees and all other costs, including court costs, incurred by Meritage in connection therewith.

B. **No Assignment.** Buyer may not sell, assign, hypothecate, or otherwise transfer any of Buyer's rights under the Contract, voluntarily, involuntarily, or by operation of law (collectively, "Transfer"), without the prior written consent of Meritage, which may be withheld in Meritage's sole discretion. If Buyer attempts to Transfer any of Buyer's interest under the Contract or if Buyer enters into another escrow for the concurrent resale of the Home, Buyer shall be in default under the Contract. Escrow Agent is instructed not to assist or participate in any way in the consummation of any so-called "double-escrow" initiated by Buyer. Subject to the foregoing prohibition, the Contract shall inure to the benefit of and bind the parties hereto and their heirs, executors, representatives, administrators, successors, and assigns. Notwithstanding the foregoing, in the event of the death of any individual comprising Buyer, Meritage shall, in its sole and absolute discretion, have the right to cancel the Contract, in which event the Earnest Money shall be returned to Buyer, less the price of any Structural and Landscape Selections, Design Selections and Options, and Custom Selections and Options that have been ordered, contracted for, or implemented by Meritage and that, in Meritage's sole discretion, do not add value to the Home equal to or greater than the price of such item.

C. **Non-Waiver.** Nothing contained in the Contract shall in any way be construed to prevent Meritage from waiving or modifying any conditions or requirements contained in the Contract, provided that any such waiver or modification shall not be effective except for the instance and circumstances particularly specified, and unless set forth, in a writing executed by an Authorized Officer of Meritage, and provided further that any such waiver and/or modification shall be at Meritage's sole discretion and Meritage shall have no obligation to agree to any such waiver and/or modification. Any failure or delay of Meritage to enforce any provision of the Contract shall not be construed as modifying in any way the terms of the Contract or as waiving Meritage's rights to enforce the provisions of the Contract. No waiver of any of Meritage's rights under the Contract in a particular instance shall preclude Meritage's subsequent exercise of its rights under the Contract.

D. **Governing Law and Venue.** The Contract and the rights of the parties under the Contract shall be governed by the laws of the state in which the Home is located. Subject to and without waiving any provision of the Contract relating to the resolution of disputes, including, without limitation, Section 16 of this Agreement, any action to enforce the Contract shall be brought in the state or federal court in the county in which the Home is located and each of Buyer and Meritage hereby consents to those courts exercising personal jurisdiction over it. Buyer certifies that Buyer is, of Buyer's own volition, executing the Contract while in the state in which the Home is located. The Contract shall not be more strictly construed against one party by virtue of the fact that it may have been physically prepared by one party or by its attorneys, because both parties (and their respective attorneys, where applicable) have participated and/or had the opportunity to participate in the negotiation of the Contract.

E. **Captions.** The captions in the Contract are for convenience of reference only and in no way define, describe, extend, or limit the scope or the intent of the Contract or any provisions hereof.

F. **Time is of the Essence.** Time is of the essence of the Contract and every term and provision of the Contract.

G. **Severability.** In the event any term, condition, or provision of the Contract is declared illegal, invalid, or unenforceable for any reason, the remaining terms, conditions, and provisions shall remain in full force and effect and shall in no way be invalidated, impaired, or affected thereby.

H. **Counterparts.** The Contract, and any addendum constituting a part of the Contract, may be executed in two or more counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute and be taken as one and the same instrument.

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I. **Survival.** All representations, releases, discharges, agreements or other obligations to defend, hold harmless, and/or indemnify, dispute resolution provisions, and covenants or agreements of Buyer that are set forth in the Contract and that contemplate performance that may occur after termination of the Contract and/or the Closing will survive any termination of the Contract and/or the Closing. Without limiting the generality of the foregoing, or the survival of any other express provisions to similar effect, the terms and conditions contained in the Schedules to this Agreement will survive the termination of the Contract and/or the Closing.

J. **No Right to Buyer's Lien; Recording.** Neither the Contract, the rights of Buyer under the Contract, nor any Earnest Money shall constitute a lien upon the Home or any portion thereof. Buyer shall not record in any public records any portion of the Contract, nor any notice thereof, nor any Notice of Lis Pendens in respect to the Home. Any such recording shall constitute a wrongful lien and shall be a material default by Buyer under the Contract.

K. **English Language Comprehension.** Buyer represents that Buyer fully comprehends and understands English and all terms, provisions, and conditions of the Contract or, if such is not the case, that competent and effective language assistance has been obtained by Buyer, prior to Buyer's signing the Contract, and Buyer assumes full responsibility for language interpretation and agrees to abide by all terms, conditions, and provisions of the Contract and waives any defense thereto in any way relating to the fact that the Contract is written in English.

L. **Marketing.** Buyer agrees that Meritage may use exterior and/or interior photos of the Home in promotional and advertising materials from and after Closing without restriction.

M. **Joint Obligations.** If Buyer is comprised of more than one person and/or entity, then all of the persons and entities comprising Buyer shall be jointly and severally liable for the performance and/or satisfaction of Buyer's obligations under the Contract.

N. **Legal and Other Review.** Buyer understands that the Contract consists of important legally binding provisions with serious consequences. Buyer represents and warrants that Buyer has had full and fair opportunity to consult with legal counsel of Buyer's own choosing and/or a real estate agent of Buyer's own choosing concerning the Contract and the transaction provided for in the Contract and, voluntarily, knowingly, and without reservation has executed the Contract.

O. **Third Party Business Providers.** Buyer acknowledges that Meritage has, or may establish from time to time, business, marketing referral, and/or alliance relationships with various third party service and/or product providers, including, without limitation: providers of telecommunications, cable/satellite TV, internet services, alarm companies, pest control services, and/or other home-related services. By signing this Agreement, Buyer authorizes Meritage to share with such providers Buyer's first and last names (or entity name, as applicable), mailing address, and telephone numbers provided by Buyer to Meritage. Except as specifically provided otherwise in the Contract, if applicable, Buyer is under no obligation to accept any offers for services, products, and/or promotions from any such providers, and is free to decline all such offers and promotions. Further, Buyer may notify any such provider(s) at any time that Buyer requests that such provider(s) not call or contact Buyer. If Buyer chooses to purchase any of the services and/or products offered by such provider(s), Buyer acknowledges that all matters related to such services and/or products are the sole and absolute responsibility of such provider(s), including without limitation, all installation, service, repair, maintenance, warranty, corrective actions, and/or other actions arising out of or related in any way to the products or services provided by such provider(s), and Buyer agrees that Meritage has no, and will have no, obligation, responsibility, or liability whatsoever with respect to any of such matters. Meritage may or may not receive monetary and/or non-monetary consideration and compensation from any of these provider(s) for providing Buyer's information as provided above.

P. **Buyer's OFAC Representations and Acknowledgment.** Buyer represents and warrants to Meritage that Buyer is not, and to the extent that Buyer is not a natural person, none of Buyer's constituents or affiliates is: (i) identified on the OFAC List (as defined below in this paragraph) or on the Annex to, or is otherwise subject to the provisions of, the Executive Order (as defined below in this paragraph); (ii) a person or entity with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of U.S. law, rule, regulation, or Executive Order of the President of the United States; (iii) owned or controlled by, or acting for or on behalf of, any person or entity that is listed on the OFAC List or on the Annex to, or is otherwise subject to the provisions of, the Executive Order; (iv) a person or entity with whom Meritage is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering

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Buyer's Initials:

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law, including, but not limited to, the Executive Order and the Patriot Act; (v) a person or entity who commits, threatens or conspires to commit, or supports "terrorism," as defined in the Executive Order; or (vii) a person or entity who is affiliated with any person or entity listed above. As used in the Contract, the term (A) "OFAC List" means the list of specially designated nationals and blocked persons subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control ("OFAC"), and any other similar list maintained by OFAC pursuant to any law, rule, regulation, or Executive Order of the President of the United States, including, without limitation, trade embargo, economic sanctions, or other prohibitions imposed by Executive Order of the President of the United States; and (B) "Executive Order" means Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended or modified from time to time. Buyer covenants and agrees that all of the foregoing representations will remain true and correct at all times prior to and as of the Closing. Buyer acknowledges that any breach of any of the foregoing representations will constitute a material default under the Contract. Buyer hereby authorizes Meritage to conduct any and all inquiries and other diligence deemed necessary or desirable by Meritage to confirm the foregoing representations of Buyer, and Buyer waives any and all claims against Meritage arising in any way, directly or indirectly, as a result of any such inquiries.

19. Entire Agreement. Meritage wishes to avoid any misunderstanding concerning the purchase of the Home. It is the policy of Meritage not to enter into any oral agreement or to ask any Buyer to rely on any oral representations concerning the Home, the Community, or the surrounding area. As a result, the entire agreement between Buyer and Meritage must be in writing and, therefore, Buyer must write in the spaces provided below ANY understandings, representations, warranties, guaranties, or promises that are not set out in the Contract but that have been made by Meritage or its purported agents or employees and upon which Buyer is relying in making this purchase, and if there are none, Buyer shall so indicate by writing the word "NONE": NONE

Buyer's failure to write anything in the space above shall be conclusively deemed Buyer's affirmation that "NONE" is applicable thereto. To induce Meritage to accept the Contract, and as material consideration to Meritage, Buyer hereby acknowledges that: (i) there are no understandings, representations, warranties, guaranties, or promises of any kind that have been made to induce Buyer to execute the Contract or to acquire the Home except as specifically set forth in the Contract, and the Contract supersedes any and all prior understandings and agreements between the parties; (ii) all advertising materials are superseded by the Contract; (iii) the Contract sets forth in full the entire agreement between the parties; (iv) Buyer has not relied on any oral agreement, statement, or representation that is not expressly set forth in the Contract; and (v) no person on behalf of Meritage is authorized to make any future oral agreement upon which Buyer may rely to cancel, change, or modify any portion of the Contract.

Buyer's Initials: _____ / _____ / _____

20. Execution of this Agreement by Buyer constitutes an offer to purchase the Home. The Contract shall be deemed accepted by and binding upon Meritage only if and when it is executed by an authorized officer of Meritage (an "Authorized Officer"), and the execution or acceptance of the Contract by any salesperson, broker, agent, or employee of Meritage other than an Authorized Officer of Meritage shall NOT be binding upon Meritage. Unless the Contract is accepted by Meritage within thirty (30) days after being executed and delivered to Meritage by Buyer, this offer shall be deemed revoked and the Initial Deposit shall be returned to Buyer. The "Agreement Date" shall be the date of acceptance of this Agreement by an Authorized Officer. Unless and until the Contract has been accepted by Meritage and Meritage has delivered a fully executed copy of this Agreement to Buyer, Meritage shall be free to accept ANY other offer for the Home and/or Lot without any liability to Buyer as a result thereof. Buyer acknowledges and agrees that Buyer's offer and Buyer's execution of this Agreement does not constitute a reservation or an option to purchase the Home.

[AGREEMENT CONTINUES ON FOLLOWING PAGES]

Lot: 0036 Buyer: Athimoolam

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Buyer's Initials:

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THIS IS A LEGALLY BINDING CONTRACT. READ IT CAREFULLY BEFORE SIGNING.

BUYER:

DocuSigned by:

Raghu Athimoolam

4/10/2015

Signature ID: 072541F...

Date

Signature

Date

Signature

Date

Signature

Date

Name and Address of Buyer's Broker/Agent: _____

Co-Broker Commission: 0 (See Broker Registration & Commission Addendum for details)

RECEIVED (But Not Accepted), AND RECEIPT OF THE INITIAL DEPOSIT ACKNOWLEDGED:

By: Janice Horne

Meritage's Sales Associate

Janice Horne

4/10/15

Date

THIS AGREEMENT SHALL NOT BE EFFECTIVE UNLESS AND UNTIL IT IS ACCEPTED BY MERITAGE, WHICH SHALL OCCUR ONLY IF THE FOLLOWING IS FULLY SIGNED AND COMPLETED.

MERITAGE'S ACCEPTANCE:

MERITAGE HOMES OF SOUTH CAROLINA, INC.,
an Arizona corporation

By: _____

Its: _____

(must be a Division President, Division Finance Department Head, or Corporate Officer)

Date: _____

4/10/15

Meritage address:

Meritage Homes of South Carolina, Inc.
P.O. Box 1097
Douglasville, GA 30133
Fax No.: 770.947.4026

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MERITAGE HOMES
NEW HOME PURCHASE AGREEMENT
LIST OF SCHEDULES

- | | |
|-------------------|---|
| Schedule 1 | Buyer's Information Schedule |
| Schedule 2 | Disclosure, Disclaimer, and Waiver Regarding Mold Conditions |
| Schedule 3 | Homebuyer Disclosure |
| Schedule 4 | Westwood Insurance Agency Disclosure / Request |
| Schedule 5 | Notice of Affiliated Business Arrangement |

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MERITAGE HOMES
NEW HOME PURCHASE AGREEMENT
SCHEDULE 1
BUYER'S INFORMATION SCHEDULE

Raghu Athimoolam

Buyer's Full Name

Birthday: 11-25-1964

188 Southridge Dr

Current Address

Rochester NY 14626

City State Zip

May, 2013

Dates at this Address (Mo/Yr - Mo/Yr) OWN or RENT

(630) 460-6633

Home Phone

Mobile Phone

ireneelale@gmail.com

Email Address

(630) 460-6633

Fax No.

+971566866991

Work Phone

VASCO WORLDWIDE

Employer (Mo/Yr)

operations Manager

Occupation / Position

\$ 8,000.00

Monthly Income

8.00 pm Dubai time

Best time of day to be contacted

Home # Work # Mobile # E-mail Fax

Preferred method of contact/communication (circle one)

MARRIED

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Marital Status

of Dependents

Vesting Instructions (see Section 11B):

Co-Buyer's Full Name

Birthday:

Current Address

City State Zip

Dates at this Address (Mo/Yr - Mo/Yr) OWN or RENT

(630) 460-6633

Home Phone

Mobile Phone

Email Address

Fax No.

Work Phone

Employer (Mo/Yr)

Occupation / Position

Monthly Income

Best time of day to be contacted

Home # Work # Mobile # E-mail Fax

Preferred method of contact/communication (circle one)

Marital Status

of Dependant

The foregoing information has been reviewed and verified by Buyer:

Raghu Athimoolam

4/10/2015

Buyer's Initials

Date

Buyer

Date

Buyer

Date

Buyer

Date

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MERITAGE HOMES

NEW HOME PURCHASE AGREEMENT

SCHEDULE 2

Disclosure, Disclaimer, and Waiver Regarding Mold Conditions

Initially capitalized terms used and not otherwise defined in this Schedule have the meanings given such terms in the New Home Purchase Agreement to which this Schedule is attached.

Disclosure and Acknowledgments

What You Need to Know about Mold. According to the United States Environmental Protection Agency, mold can be found almost everywhere. Molds are microscopic organisms that are part of the fungi family, and are an essential part of the world's ecological system. Outdoors, many molds live in soil and are key to the natural breakdown and recycling of organic material, such as leaves, wood, and plant debris. Lumber used in the construction of homes typically contains some level of molds, fungi, and/or spores. Because it may be impossible or impracticable to eliminate all indoor mold, indoor mold is an important topic about which you should become informed.

Mold spores are airborne and travel in and out of buildings as air is exchanged and with the movement of people and their belongings. When excessive moisture or water accumulation occurs indoors, mold growth likely will occur, especially if the moisture problem is not discovered and remedied. There is no practical method to eliminate all molds and mold spores in an indoor environment. The primary method to control indoor mold growth is to control moisture. The best course of action for any homeowner is to keep the indoor environment as "clean and dry" and free from dust and dirt as reasonably possible. All mold is not necessarily harmful, but certain strains of mold have been alleged to have adverse health effects in susceptible persons. The most commonly reported effects are allergic reactions, including skin irritation, watery eyes, runny nose, coughing, sneezing, congestion, sore throat, and headache. Individuals with suppressed immune systems may risk infections. Although experts disagree as to whether, and to what extent, mold may cause health problems, the Center for Disease Control states that a causal link between the presence of toxic mold and serious health conditions has not been proven.

Information Available to You. For additional information, you should contact the United States Environmental Protection Agency ("EPA"), applicable state agencies, or other governmental authorities. The EPA web site contains information and publications regarding mold and other biological pollutants that may be of interest to you. For example, see "Biological Pollutants in Your Home" and "Mold Resources" on the EPA web site (www.epa.gov). Additional mold-related information is available on the Centers for Disease Control and Prevention web site (www.cdc.gov).

Limiting Mold Growth. A practical approach to limiting mold growth is early detection and prompt resolution of excessive moisture. If you can see mold or detect an earthy or musty odor, you can assume you have a moisture problem. Any moisture problem must be solved in order to control and eliminate mold growth. Part of the control of the indoor environment is controlling air moisture. Watch for water condensation on interior surfaces such as walls, windows, and areas near air conditioning registers. Uses that have the potential of increasing relative air humidity include such things as bathing, cooking, plants, washing, and humidifiers, especially if not vented. Other moisture sources, which sometimes can go unnoticed, are water leaks from pipes in walls and rainwater leakage through windows and roofs. Controlling air moisture is the most important action in controlling mold growth. Accordingly, keep drip pans from refrigerators and air conditioners clean and dry and use exhaust fans or open windows when cooking, washing, drying clothes, and bathing. A more complete list of ways to prevent mold set forth below under "Mold Prevention Tips." **Report or fix water leaks promptly.** Any indication of water leaks or resulting mold at roofs, windows, floors, carpets, etc., should be reported immediately (within 24 hours) to Meritage's Warranty Department, which will determine if the condition is covered by the Warranty. The prompt reporting of any water leak or intrusion to Meritage's Warranty Department is critical to the containment and minimization of mold growth. By signing below, you acknowledge that Meritage will not be responsible for mold resulting from a water leak or water intrusion that is not promptly reported to Meritage's Warranty Department.

Disclaimer and Waiver

As you can see from the discussion above, whether or not you as a homeowner experience mold growth in your Home depends largely on how you manage and maintain your Home. Again, Meritage urges you to read and follow the Mold

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Buyer's Initials:

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Prevention Tips below. Meritage's responsibility as a homebuilder must be limited to things that it can control. As explained in the Warranty Agreement, Meritage will repair or replace defects in the construction of the Home as and to the extent provided in the Warranty Agreement. Meritage will not be responsible, however, for any damages caused by mold or by some other cause, including, without limitation, property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects. To the fullest extent permitted by law and except as provided in the Warranty Agreement, all other warranties, express or implied, including, but not limited to, any implied warranty of condition, good and workmanlike manner, habitability, merchantability, or fitness for a particular purpose, are hereby expressly disclaimed and negated.

BY SIGNING BELOW YOU CERTIFY THAT YOU HAVE READ AND FULLY UNDERSTAND THE INFORMATION, DISCLOSURES, DISCLAIMERS AND WAIVERS CONTAINED IN THIS SCHEDULE. THIS SCHEDULE CONTAINS INFORMATION AND WAIVERS THAT HAVE A LEGAL IMPACT ON THE PURCHASE OF YOUR HOME.

<u>DocuSigned by:</u> <u>Raghu Athimoolam</u>		<u>4/10/2015</u>	
<u>Buyer</u>	<u>Date</u>	<u>Buyer</u>	<u>Date</u>
<u>Buyer</u>	<u>Date</u>	<u>Buyer</u>	<u>Date</u>

Mold Prevention Tips

While it is very difficult to eliminate the possibility of mold growth in your new home, there are important steps that you can take to help minimize the potential for mold growth. **BUYER HEREBY ACKNOWLEDGES THAT THIS INFORMATION IS PROVIDED BY MERITAGE ON AN INFORMATIVE BASIS ONLY AND SHALL NOT IN ANY WAY BE DEEMED A REPRESENTATION OR GUARANTY OF MERITAGE.**

1. Keep the home free of dirt and debris that can harbor mold (dirt/dust/animal dander/indoor plants are all very efficient hosts for mold).
2. Regularly clean and sanitize windows, bathrooms, kitchens, and other home surfaces where water, moisture condensation, mildew, and mold can collect.
3. Use dry towels or bath mats when stepping out of shower or tub.
4. Use bathroom fans while showering or bathing. If no fan exists, open a window to allow proper ventilation and moisture to escape.
5. Use exhaust fans whenever cooking, dishwashing, or cleaning. If no fan exists, open a window to allow proper ventilation and moisture to escape.
6. Properly maintain your dryer vent exhaust line (clean/remove lint at least once a year or sooner as may be needed).
7. Properly maintain your air-conditioning unit (HVAC), including replacing filters and maintaining condensate lines as recommended by the manufacturer and keeping drip pans clean, flowing properly, and unobstructed.
8. Maintain regular airflow and circulation throughout the home and keep heating, ventilation, and HVAC equipment running at all times. Do not turn off equipment for extended periods of time (like vacations).
9. Use all reasonable care to close all windows and other openings in the home to prevent outdoor water from penetrating into the interior of the home (i.e., rain, irrigation water, etc.).
10. Clean and dry any visible moisture on windows, walls, ceilings, floors, and other surfaces including personal property, as soon as reasonably possible. (Note: Mold can grow on damp surfaces within 24 to 48 hours).
11. Limit the indoor watering of houseplants (total number of plants indoors is also an important variable).
12. Do not hang wet clothing on indoor drying line.
13. The use of humidifiers is not generally recommended (includes both whole house and room specific types).
14. Maintain caulking around tubs, showers, toilets, sinks, and other interior water receptacles at least once a year and more frequently if needed.
15. Maintain caulking around windows, doors, and other exterior openings at least once a year and more frequently if needed.
16. Maintain window tracks and weep holes at least once a year and more frequently if needed (keep tracks and weep holes clean of debris/dust to allow proper egress of water when rain or irrigated water gets in them).
17. Maintain positive drainage and grading away from the foundation and walls of the home.
18. Maintain gutters and downspouts in a clean and operable condition at least once a year and more frequently if needed.

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Lot: 0036 Buyer: AthimoolamBuyer's Initials: RA

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19. Prevent penetrations of exterior surfaces (i.e., stucco, siding, and brick) and roof of home from post-construction additions (i.e., trellises, patio covers, awnings, satellite dishes, etc.).
20. Maintain and do not obstruct fresh air supply to furnace, air conditioner, or heater.
21. Maintain and do not obstruct ventilation installed in attic, basements, crawl spaces, or other locations in the home.
22. Prevent irrigation systems from exposing exterior surfaces of the home to water or over saturating/flooding ground/soil near and around foundation of the home.
23. Properly use and maintain appliances containing water and other liquids.
24. Do not alter insulation installed by builder.
25. Prevent clogging of plumbing.
26. Fix any non-working fan, heater, air conditioner, or ventilation system.
27. Report the following to Meritage within twenty-four (24) hours:
 - a. water intrusion of any kind, including, but not limited to:
 - plumbing leaks, drips, sweating pipes, wet spots;
 - overflows from bathroom, kitchen, or home laundry facilities, especially in cases where the overflow may have permeated walls or cabinets;
 - any mold or black or brown spots or moisture on surfaces inside the premises;
 - broken irrigation systems or standing water near structures;
 - b. any adverse health conditions or symptoms related to or suspected to be related to actual or potential mold growth; and
 - c. any musty or unusual odor.

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Buyer's Initials:

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MERITAGE HOMES

NEW HOME PURCHASE AGREEMENT

SCHEDULE 3

Homebuyer Disclosure

Initially capitalized terms used and not otherwise defined in this Schedule have the meanings given such terms in the New Home Purchase Agreement to which this Schedule is attached.

Meritage wants each of its buyers to be satisfied customers. Accordingly, Meritage offers the basic disclosures set forth in this Schedule as a service and protection for Buyer, which disclosures are in addition to any disclosures otherwise made in the Contract, any recorded instrument applicable to the Home, pursuant to applicable law, and/or otherwise in writing with respect to the Community. Buyer acknowledges that Meritage has no control over much of the information covered in these basic disclosures, and information is subject to change without notice. Accordingly, Buyer has been encouraged to verify the information contained below through independent means by contacting the individuals, agencies, or firms identified for the most up-to-date information and undertaking such other investigations as Buyer deems necessary or desirable. In addition, because individual sensitivities may vary with respect to conditions at or nearby the Community, Buyer has been urged to investigate the area surrounding the Community to appreciate and/or assess nearby conditions and/or nuisances.

DISCLOSURE:

1. **Lot Characteristics.** Each lot is unique in its size, shape, and drainage characteristics. Consequently, Buyer understands and agrees that: (a) the size of the Lot, the exact location of sidewalks and driveways (if any), and the drainage patterns of the Lot may differ from any model home plans, drawings, or renderings Buyer has examined; (b) the placement of ground-mounted air conditioning condensers and other mechanical equipment on the Lot may limit, restrict, or negate the ability to construct or install RV gates and certain other optional features on the Lot; and (c) Meritage reserves the right to determine the precise location and configuration of the Home and other improvements upon the Lot, subject to applicable subdivision laws and other requirements. Building pads are designed and engineered pursuant to applicable standards and generally follow the natural grade of the land. They typically will be built higher than the natural terrain only to the extent necessary to remain free from inundation in a 100-year storm event. If the Home is located within or near a flood plain, Buyer understands that Buyer may be required to purchase flood insurance for the Home. Depending on the location of any applicable public sewer main, the configuration and slope of the Lot, and the placement and height of the Home being constructed on the Lot, Meritage may elect (in its sole discretion) to install a sewer ejector pump on the Lot to facilitate the removal and transport of sewage from the Home to such public sewer main.
2. **Materials Used in Construction.** Materials used in the construction of the Lot improvements, including, but not limited to, paint, stucco, roof material, concrete, block, stone, brick, tile, granite, wood, carpet, laminate, cabinets, and cultured marble, will vary in color and texture depending on age, density, type of finish, dye mixtures, textures, designs, porosity, place of origin, and other factors, and many such finishes will change as they are exposed to the elements. Such variations are typical and should be expected by Buyer, and neither Meritage nor its suppliers or trade contractors can guarantee exact matches. Buyer acknowledges that the concrete floor of the Home may have expansion control joints or a post-tension slab system to minimize cracking due to settling, expansion, and contraction of the concrete. Nevertheless, expansion control joints or post-tension slab systems do not eliminate all cracking from occurring. When ceramic tile is installed, the tile and the grout between the tiles may crack. This is a condition that is uncontrollable by Meritage, and Buyer hereby expressly releases Meritage from any liability or responsibility to replace or repair tile or grout in the event the tile or grout crack or otherwise become dislodged, except as may be required by the Warranty.
3. **Future Development and Home Design Changes.** Meritage shall have the right, without any obligation or liability to Buyer, to:
 - (a) Make changes in the design and plan of the Community (including, without limitation, the number of homes and/or the sizes of lots in the Community), and in the plans, elevations, sizes, features, prices, and incentives for homes to be hereafter constructed within the Community. Topographical maps in sales office(s), lot plotting maps, maps offered by master developers, and other forms showing "complete" Community projections do not in any way constitute Meritage's promise to complete the Community or, if completed, to complete the Community as shown. This includes

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Buyer's Initials:

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any proposed amenities, such as but not limited to: entry monumentation, parks, pools, gazebos, hike and bike trails, exercise facilities, etc.

(b) Change the currently contemplated timing of its construction of any other homes in the Community and/or decide to build more or fewer homes than currently planned, or to build larger homes, smaller homes, more expensive homes, less expensive homes, and/or no other homes in the Community.

(c) Use any lawful method of marketing to sell, or otherwise dispose of, any or all of its remaining or future inventory of homes in the Community, including, without limitation, the use of incentives, concessions, price reductions, lot sales programs, bulk sale, or other promotions or techniques, without any regard to the price paid by Buyer for the Home, and without any obligation to offer any comparable incentives to Buyer.

(d) Sell, at any time, all or any portion of the lots within the Community to any third party, including other developers or builders.

4. **Surrounding Area.** Because Meritage may not have any control over the area surrounding or adjacent to the Lot, Meritage strongly recommends that Buyer drive and walk around or otherwise inspect the Community and the surrounding area (and conduct any other desired research) in order to become familiar with local conditions such as traffic, noise, prospective future development, and other factors prior to consummating the purchase transaction. Buyer acknowledges that the character, nature, and uses of the areas surrounding the Community and the general vicinity of the Community may change in the future, and that future uses of adjacent or nearby property could include transportation, commercial, agricultural, equestrian, recreational, pedestrian, and/or any number of other uses. Future development cannot be predicted with accuracy and is subject to change, and for this and other reasons, Meritage cannot make any representation concerning the area surrounding the Lot. It is Buyer's sole responsibility to determine the use and potential use of any property surrounding the Lot.

5. **Construction and Sales Activity.** Meritage discloses that certain construction and sales activities may be occurring within and in proximity to the Community after Buyer's occupancy of the Home. This may result in some inconvenience to Buyer due to noise, dust, fumes, and vibrations from the construction activities and the operation of the model homes and sales office. Construction hours often begin early (particularly in warmer seasons) and sales activity will likely involve significant traffic and visitors, particularly on weekends. As a result of the ongoing construction and sales activities, infrastructure and public and private utilities (water, electrical, cable television, sewer, storm drains, etc.) within the Community and/or servicing the Home may be temporarily interrupted and/or adversely affected during build-out of the Community. Buyer acknowledges that nails and other construction debris may be found within the Community during construction, including on the street. If the Community is gated, Buyer acknowledges that the gates likely will remain open as long as Meritage is doing any construction work or conducting sales in the Community. To the fullest extent permitted under applicable law, Buyer hereby waives and agrees not to make any claim against Meritage or its contractors, subcontractors, and suppliers as a result of such construction and/or sales activity.

6. **Pricing.** Buyer acknowledges that Meritage, as the seller, has the full right to establish prices for the sale of properties in the Community owned by Meritage from time to time (or any other community developed by Meritage), without regard to the price to be paid by Buyer or any other buyers for any specific lot and/or home(s) within the Community. Buyer acknowledges Meritage's right to have offered or to offer lower prices, price reductions, financing incentives, bought down interest rates, new floor plans, additional features, and other similar incentives (collectively, "Incentives") to past or future buyers of properties in the Community (or any other community developed, constructed, and/or sold by Meritage) without any obligation to offer any comparable Incentives to Buyer. Buyer further acknowledges that Buyer has satisfactorily negotiated its purchase price for a particular Lot (and improvements) within the Community, and that Buyer is fully satisfied with such price (and any Incentives actually received in connection with the negotiation of such price). Other than Buyer's contracted price, all other prices, terms, upgrades, and any other concessions are subject to change without notice, at the sole discretion of Meritage, including changes in the model homes offered for sale and specification levels in future homes. Meritage has not made any representation, warranty, or agreement with respect to the valuation of the Lot and/or Home relative to the Purchase Price, nor regarding the future valuation of the Lot and/or Home, nor the likelihood of future appreciation of the Lot and/or Home.

7. **Adjustments.** A home is a unique product engineered with a large number of parts, many of which are natural materials. All new homes experience changes in the first several months as materials dry out and naturally settle. Such settlement occurs in virtually all construction. During this process, natural phenomena such as small hairline cracks in wood, sheetrock, concrete, brick, and stucco, lumber shrinkage, joint separations, and slight realignments of moldings, trims, and door jams may appear in the Home. In addition, various appliances and operating components of the Home may also require fine-tuning or adjustments after initial move in. To the extent these types of occurrences are covered

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by the Warranty, Meritage will address these issues upon receipt of a written claim pursuant to the procedures outlined in the Warranty. Buyer is strongly encouraged to review the Warranty for precise details regarding coverage and methods of making claims. Homes in the Community may be located in an area containing expansive soil. If this is the case, the Lot Improvements will be constructed in accordance with recommendations made in a soils report prepared by a licensed engineer, with the goal of minimizing the effects of expansive soils, if present. The possible problems caused by expansive soils are often cosmetic, rather than structural, in nature and include, without limitation, upward movement of foundation and floor slab systems, cracking of concrete, flooring surfaces, drywall, and stucco, and misalignment of doors and windows. Buyer acknowledges that Buyer's only rights with respect to damage caused by or repairs necessitated by expansive soil conditions, subsurface conditions, or foundation or slab settling shall be to require the repair or correction of such conditions pursuant to the Warranty to the extent such condition is then covered by the Warranty. Flowerbeds and planters should be properly maintained to ensure that water drains away from the foundation because any water ponding near the foundation can be a source of structural problems.

8. **Square Footage.** All square footage and measurements of homes in advertisements, marketing materials, model numbers, or other plan type identification are approximate figures. Different standards of measurement may yield different results. For example, the square footage measurements used by property tax assessors, multiple listing services, real estate appraisers, and/or brokers in particular communities may differ from the standards of square footage measurement used by Meritage or its architects, designers, or other applicable service providers. Accordingly, exact square footage was not and will not be a material consideration in determining the Purchase Price of the Home or Buyer's decision to purchase the Home.

9. **Matching Colors.** Meritage is not responsible for precisely matching colors as portrayed in model homes for paint, grout, tile, carpeting, and the like. Although Meritage will always attempt to match colors, it cannot guarantee a perfect match at any time, including in situations where repairs may be necessary under the Warranty.

10. **Easements.** Buyer acknowledges that the Lot is subject to all easements of public record, including, but not limited to, those shown on the recorded map or plat of the Lot and those of an apparent nature, including, but not limited to, easements for telephone, electricity, natural gas, cable television, water, sanitary sewer, storm sewer, drainage, and aircraft aviation. Buyer acknowledges that the cost of maintaining these easements may be the responsibility of Buyer. The locations of utility lines/structures, utility improvements (including, but not limited to, junction boxes, transformers, pedestals, meters, and pumps), street lights, pull boxes, fire hydrants, sewer taps, etc., in the Community is controlled by the utility agencies and may be subject to change without prior notice to Buyer.

11. **Drainage.** The Community has been designed to facilitate drainage, often using existing drainage patterns. Consequently, during heavy rain, full running water may occur on Lots, including low spots of driveways. The Lot will be graded according to the final engineered grading and drainage plan, which has been developed to facilitate proper drainage from slopes and yard drainage to the street and/or out of the Community. This plan may include slopes and berms on the Lot to accommodate drainage conditions. Drainage features on the Lot may be subject to minor erosion requiring periodic maintenance. Erosion is a natural occurrence in many environments and can be minimized by careful landscape planning, but not completely prevented. When erosion occurs, it is the Buyer's responsibility to repair and maintain affected areas. ANY INTERFERENCE with the drainage pattern(s), as initially constructed, can cause water to become entrapped within the yard area, materially impact soil characteristics, and negatively affect the structural integrity of the Home. This is particularly the case in areas of more sensitive soils. Pooled water, incorrect drainage, leaky irrigation systems, over-watering, or other conditions can also lead to groundwater infiltration and must be avoided. *Please note:* the construction of retaining walls, pools, spas, patios, gazebos, curbs, decks, walks, or any other landscape amenities can block, alter, or modify drainage patterns, thereby requiring corrective measures to be taken to insure proper water flow. Buyer acknowledges that Meritage has advised Buyer not to change or interfere with the established drainage pattern(s) on the Lot without consulting a licensed landscape architect or civil engineer.

12. **Site Plan.** There may be a map of the Community in the sales office that is not an official site plan. It is an artist's concept and is not drawn to scale. This map is intended to give Buyer a general overview of the development. The site plan may not reflect all easements with accuracy. The site plan does not constitute a guarantee that the Community will be built out or developed as shown in any such site plan. Plans are copyrighted and/or otherwise subject to intellectual property rights of Meritage and/or others and cannot, without Meritage's prior written consent (which Meritage may withhold in its sole discretion), be reproduced or copied for use by Buyer or any third party. Buyer shall not infringe on any such copyrights or other intellectual property rights in any manner, including, but not limited to, the construction of a residence substantially similar to the Home. Individual plot/survey plans describe the actual Lot boundaries and house location, copies of which should be provided as part of the title documents and may also be available at the sales office. At closing, Buyer will be given (upon request and at Buyer's expense) an updated individualized survey plot plan for their particular Lot. Buyer understands that home selection is subject to architectural

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guideline control. Not all homes will be allowed on every lot in the Community. Lots in the Community may contain areas designated by applicable governmental authorities where the Community is located as "Natural Area Open Space" ("NAOS") and/or "Drainage Easement" ("DE"). Generally, these areas must remain undisturbed; however, in certain circumstances, such areas may be disturbed during home construction. Buyer will be responsible for revegetating any NAOS/DE area disturbed on the Lot as part of the building process.

13. **Trees and Other Vegetation.** Meritage does NOT guarantee the preservation of any trees, shrubs, ground cover, or other foliage located on the Lot, in the Community, or anywhere within the vicinity of the Community, and MERITAGE EXPRESSLY RESERVES THE RIGHT TO REMOVE ANY TREE(S) AND/OR OTHER VEGETATION IT DEEMS NECESSARY OR DESIRABLE. This includes any "greenbelt," "detention," "park land," and related areas that may exist in the Community. Meritage is not responsible for any immediate or long-term damage to vegetation caused by construction activity, adverse weather, or otherwise. Lot premiums are based on location, size, or other construction-related issues and not pre-existing vegetation. The construction of homes, lots, streets, and/or utilities may alter the environment of any trees, shrubs, or other landscaping. All care and maintenance of any such foliage is solely the responsibility of Buyer. This includes all obligations to water, trim, or otherwise maintain foliage.

14. **Ponds.** The Community may contain one or more ponds intended to assist with drainage within the Community that may also offer aesthetically pleasing qualities to the Community. Further, some of the home sites in the Community may have direct views of one or more of such ponds. Since such pond(s) act(s) in conjunction with the drainage system of the Community, the water level of such pond(s) will not be maintained and will be controlled solely by the amount of rain received by the Community and the resulting runoff from such rain events. As a result, during drought or dry conditions, such pond(s) may contain little or no water. Buyer acknowledges that none of Meritage, its agents, employees, and subcontractors has made or can make any representation, warranty, or covenant of any kind regarding the water level of the pond(s), the maintenance of the pond(s) or any surrounding areas, or otherwise with respect to such pond(s).

15. **Views and Surroundings.** Buyer acknowledges that none of Meritage, its agents, employees, and subcontractors has made or can make any representation, warranty, or covenant of any kind regarding: (i) views that may be available from the Home; (ii) the height or nature of homes to be constructed adjacent to or near the Home; (iii) the continuation or cessation of the existing nature, character, or uses of the areas surrounding the Community and/or adjacent to the Home; (iv) the permissibility or likelihood of changes to the existing nature, character, or uses of the property surrounding the Community; (v) the presence or level of noise, fumes, vibrations, dust or fuel particles, and other effects from nearby roadways, airports, property, or equipment, whether permanent, temporary, or transported on, to, or away from nearby locations; and (vi) whether or not any open or undeveloped space adjacent to the Lot or the Community, if any, will remain open space or undeveloped, as Buyer understands that any such areas may be changed or developed in the future. Meritage assigns specific lot prices and/or lot premiums based on lot location, size, and/or other construction-related issues and not for any pre-existing view. A view may be negatively impacted by a variety of occurrences, including, but not limited to, the construction of rooftops, buildings, decks, landscaping, or other future development. Meritage makes no statements or assurances with respect to the construction, future improvements, and landscaping that may have an impact upon the view of the Lot. Any view from the Lot or surrounding areas, whether developed or undeveloped, is not part of the value of the Lot. Since Meritage cannot control future development adjacent to the surrounding community, Meritage cannot guarantee preservation of any potential view, now or in the future. Meritage is not responsible for or bound by any representation regarding views made by a sales person or agent under any circumstances.

16. **Open Spaces/Recreational Areas.** In the event there are designated open spaces, lakes, golf courses, or other recreational areas within the Community or areas surrounding the Community, Meritage makes no representations with respect thereto. If the Community is located adjacent to or in the vicinity of a golf course, body of water, or natural terrain, Buyer acknowledges that there are certain hazards and risks of injury or damage to person or property that result from living or owning a residence adjacent to or near such features. In consideration of the sale by Meritage of a residence adjacent to or in the vicinity of such features, Buyer acknowledges and agrees that Meritage is under no obligation to protect Buyer from damage or injury resulting from the proximity of the Home to such features, and Buyer hereby releases, remises, and forever discharges and agrees to save and hold Meritage harmless for, from, and against all liabilities, claims, debts, demands, risks, causes of action, and possible causes of action whatsoever arising out of or relating in any way to any loss, damage, or injury (including death) that may be sustained to any persons or property in connection with such features, which obligations will survive the termination of the Contract and/or the Closing.

17. **Attic Access.** Ladders facilitating entry into attic space are designed and intended for access only. Meritage does not represent or warrant the use of attic space for storage or existing joist members for support of additional weight. Buyer uses attic space for storage at its own risk.

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Lot: 0036 Buyer: Athimecolam

Buyer's Initials: RA / / /

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18. **Flatwork.** Cement/concrete finishes contain variable aggregate materials and are applied pursuant to industry standards. As such, finishes vary in color, pattern, and texture. Furthermore, cement/concrete naturally expands and contracts with atmospheric temperature changes. Accordingly, Meritage does not warrant that there will be no cracking, lifting, and/or settling of non-structural concrete such as driveways, walkways, and patios.
19. **Tract Boundary Fence or Wall.** In some instances, walls and/or fences may encroach on either side of actual lot lines, and the placement and location of perimeter walls and fences for the Lot are subject to Meritage's discretion dependent upon topographical or other site conditions and issues and/or any requirements and limitations imposed by any applicable governmental authority or owners association. An easement shall be deemed to exist for any such encroachment, and Buyer's acquisition of the Home shall constitute Buyer's acknowledgment of such easement. Many times, tract boundary fences or walls are set back onto homeowners' lots (inside lot lines) at certain distances or intervals to create a more aesthetic Community. As a result, lots bordered by these types of fences or walls may be subject to an easement and extend to the other side of the boundary structure. Buyers of homes along the perimeter of the tract should refer to the recorded plat map or individual survey plot plan to determine the precise location of any tract boundary fence or wall, and the actual lot lines of the Lot.
20. **Retaining Walls.** Some lots in the Community may require retaining walls, generally built of wood, block, or concrete as determined by existing lot conditions or as recommended by a civil engineer. Retaining walls may be located on or adjacent to the lot line. If the retaining wall is along a street or public right-of-way, the retaining wall may be inside the lot line and, if so, it is the Buyer's responsibility to maintain. If the retaining wall is located between adjacent property owners, the responsibility to repair and maintain the retaining wall is the joint responsibility of the adjacent homeowners. Since site conditions vary, walls shown on current grading plans may be added or deleted. The presence or absence of a retaining wall does not affect the purchase price of the Home. Soils/materials behind the wall may settle or erode and create indentures in the ground at the top of the wall, and such soils/materials should be maintained by the Buyer because eroded areas are not warranted under the Warranty. The Purchase Price of the Home does not include any retaining wall installations by Meritage, other than those installed pursuant to original development plans.
21. **Technology.** The Home may be pre-wired and equipped with certain communications equipment required by, and in accordance with, the specifications of the developer of the Community. In such event, Buyer understands that Meritage has no control over the functionality or connectivity of such equipment outside of the Home itself and is not responsible for the operation or capabilities of any of such equipment, nor the period associated with the functional completion of any related equipment and/or facilities outside of the Home itself.
22. **Utilities.** Subject to the immediately preceding paragraph, if applicable, Buyer acknowledges that Meritage is not responsible for providing any utilities to the Property other than those necessary for obtaining a certificate of occupancy. Buyer must notify applicable utility companies to commence service and Meritage has no responsibility for delays by any utility provider.
23. **Environmental.** The Home and its occupants may now or in the future be exposed to various environmental conditions in or near the Home (collectively "Environmental/Physical Conditions") that may include, without limitation, radon gas and/or electromagnetic fields (as discussed below), dust, mold, moisture, the presence of surface and/or underground utility lines and facilities, and the possibility of air, water, and soil pollution, and/or earth fissures or ground subsidence. Buyer understands that the future occurrence of any such Environmental/Physical Conditions and the resulting effects on Buyer or any occupants of the Home are beyond the control of Meritage. Meritage disclaims all liability, and Buyer hereby waives all warranties, either expressed or implied, including any warranties of habitability or fitness for a particular purpose, that could be construed to cover the presence of any Environmental/Physical Conditions. The only warranties Meritage provides to Buyer are those contained in the Warranty.
24. **Radon Gas.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in the state where the Home is located. Additional information regarding radon and radon testing may be obtained from the local public health department for the area where the Home is located. Meritage disclaims all liability, and Buyer hereby waives all warranties, either expressed or implied, including any warranties of habitability or fitness for a particular purpose, that could be construed to cover the presence of radon. The only warranties Meritage provides to Buyer are those contained in the Warranty.
25. **Electromagnetic Fields.** All power lines and electrical appliances that draw electric current have electromagnetic fields ("EMF") around them. Meritage has no expertise or information about EMF or the detection of EMF and does not review or monitor research efforts regarding EMF. Consequently, Meritage does not make any representations or warranties of any kind related to EMF. Rather, Buyer should contact its local electric utility company

servicing the Home or its state or local environmental, energy, or health agencies, or the regional office of the Environmental Protection Agency to obtain such information.

26. **Natural Occurrences.** The Home and/or Community is subject to the occurrence of natural disasters and may be located in, on, or nearby identified or yet to be identified seismic fault lines, fissures, areas prone to sink-holes, hurricane prone areas, or other areas susceptible to natural disasters.

Buyer acknowledges that Buyer's execution of the Agreement evidenced Buyer's understanding of and agreement to the foregoing disclosures and acknowledgments, and Buyer's agreement to release and waive any rights or remedies Buyer may otherwise have now or in the future against Meritage with respect to the matters set forth in this Schedule.

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Lot: 0036 Buyer: Athimoolam

Buyer's Initials: RL

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MERITAGE HOMES

NEW HOME PURCHASE AGREEMENT

SCHEDULE 4

Westwood Insurance Agency Disclosure / Request

Initially capitalized terms used and not otherwise defined in this Schedule have the meanings given such terms in the New Home Purchase Agreement to which this Schedule is attached.

In the process of your purchasing a home from Meritage, there may be needs for a variety of services, including, but not limited to, home loans and property, life, and auto insurance. In order to comply with our policy regarding your privacy, we will share information about you with Westwood Insurance Agency in order that they may inform you of opportunities that may be of interest to you *unless* you let us know below that you prefer that we do not share such information. If you sign below and do not mark "NO," you give permission for Westwood Insurance Agency to contact you whether or not your telephone number(s) are listed on the Federal "Do Not Call" list.

Do Not Allow Information Sharing With Westwood Insurance Agency: If you mark "No" and sign this form below, we will not share nonpublic personal information about you with Westwood Insurance Agency. In the unlikely event that an error occurs or Meritage inadvertently fails to advise Westwood Insurance Agency of your desire not to be contacted, please inform us of your declination so that we may take corrective measures.

We will maintain the original of this document, or a true and correct copy. You are entitled to a copy of this document upon request, but you may want to make a copy of the document for your own records at this time.

☐ NO, please do not share my/our personal information with Westwood Insurance Agency.

The undersigned hereby sign(s) this disclosure / request on the date written.

<i>Raghu Athimoolam</i> Buyer	4/10/2015 Date	 Buyer	 Date
---	----------------------------------	--------------------------	-------------------------

 Buyer	 Date	 Buyer	 Date
--------------------------	-------------------------	--------------------------	-------------------------

Westwood Insurance Agency Telephone No.: 888.822.5396

34

Lot: 0036 Buyer: Athimoolam

Buyer's Initials: RA

WIN-91PKE6392E235080cc-ed57-4b51-8151-e1878fcdad3Contract

MERITAGE HOMES

NEW HOME PURCHASE AGREEMENT

SCHEDULE 5

Notice of Affiliated Business Arrangement

Initially capitalized terms used and not otherwise defined in this Schedule have the meanings given such terms in the New Home Purchase Agreement to which this Schedule is attached.

Meritage hereby notifies you that Meritage has a business relationship with MTH Mortgage, LLC, an Arizona limited liability company ("MTH Mortgage"). Specifically, Meritage or one of its affiliates is a member of and owns a sixty-five percent (65%) ownership interest in MTH Mortgage. As a result of this relationship between Meritage and MTH Mortgage, Meritage's referral of MTH Mortgage may provide Meritage with a financial or other benefit. As provided in the Contract, you are **NOT** required to use MTH Mortgage as a condition of your purchase of the Home from Meritage.

Set forth below is the estimated fees or range of fees charged by MTH Mortgage, LLC for settlement services (lender fees, excluding third party fees). You are **NOT** required to use MTH Mortgage as a condition of your purchase of the Home from Meritage. THERE FREQUENTLY ARE OTHER SETTLEMENT SERVICE PROVIDERS AVAILABLE WITH SIMILAR SERVICES. YOU ARE FREE TO SHOP AROUND TO DETERMINE THAT YOU ARE RECEIVING THE BEST SERVICES FOR YOU AND THE BEST RATE FOR THESE SERVICES.

Service	Fee or Range
Lender Paid Broker Compensation	0 - 4% of Loan Amount

NOTE: The above charges represent only those charges by MTH Mortgage. Buyer will be charged additional closing costs by the escrow/title company/closing attorney and/or lender. MTH Mortgage and/or the applicable lender will provide Buyer with a Good Faith Estimate of Settlement Costs detailing all estimated costs to be charged at settlement.

BUYER'S ACKNOWLEDGEMENT OF RECEIPT OF NOTICE OF AFFILIATED BUSINESS ARRANGEMENT: I/We acknowledge that I/we have received and read this Notice of Affiliated Business Arrangement and that I/we understand that Meritage has a business relationship with the entity or entities identified above, and that Meritage may receive a financial or other benefit as the result of Meritage's referral of such entity or entities.

Signed by: Raghu Athimodam 4/10/2015
 Buyer's Initials: RA Date

Buyer _____ Date _____

Buyer _____ Date _____

Buyer _____ Date _____

DRAFT



May 29, 2021

Mr. David Cobb
Turner Padgett
P.O. Box 22129
Charleston, SC 29413

Re: Athimoolam v Meritage Homes
116 Ariel Way, Easley, SC
RCE File No.: 190382

Dear Mr. Cobb:

Meritage Homes, your client, constructed a home at the above referenced address. There have been concerns by the homeowner's expert about siding installation, grading, deck construction, window installation, mud sill anchors, and garage doors. In light of these allegation, you requested that I evaluate the building and grounds.

As a result of the investigation, a number of observations have been made and conclusions have been reached. The observations and conclusions stated in this report are based on information available as of this writing. It is conceivable that additional information may be forthcoming which bears on these conclusions and opinions. I reserve the right to review all conclusions and opinions at any future point in time, should, in fact, additional information become available.

Background

I, Mr. Richard J. Rogers, P.E., Consulting Engineer with Rogers Construction Engineering, inspected, photographed, and documented the above-referenced property on July 15, 2019. I made a visual inspection of the interior and the exterior of the building. A representative of the homeowners and you were present during my site visit.

2318 Devine Street
Columbia, South Carolina 29205
803-708-2573
jay@rogersconeng.com

I have reviewed the following as part of my investigation:

1. *Summary of Field Observations and Recommendations* by Fuller Envelope dated October 27, 2016 with revisions on August 27, 2018.
2. *Construction Estimate* by Edwards Builders, Inc. dated January 9, 2019.
3. *Remediation Estimate* by Paul Davis Restoration Upstate South Carolina Department dated January 8, 2019.
4. *Mold Remediation – Letter of Completion* by AdvantaClean of the Upstate dated August 11, 2016.

Facts and Observations

The issues listed by Fuller Envelope in their recommendations are listed below with my response in italics.

1. Removal and reinstallation of existing windows and doors.
 - a. *There is no evidence shown of damage to the windows or doors as a result of their installation. The windows and doors were installed to industry standards at the time of construction. The recommendations by Fuller are a betterment, are unnecessary and economically wasteful. There is no action required.*
2. Removal and replacement of the exterior cladding, including all fiber-cement siding, brick veneer, AMSV, composite MDF trim, and related accessories.

The fiber-cement siding appears to be functioning as intended. To address the spacing over 24" shown in a couple of places in Fuller's report, the siding could be face nailed and the siding repainted without removing the entirety of the siding.

The only valid defect indicated in the brick is the lack of weepholes and weep flashing at the top of the six windows in the brick. The repair of this is to remove the brick soldier course and arch key above these six windows; add flashing; and replace the brick with appropriate weep holes.

The AMSV is installed correctly and does not appear to have lost any of its adhesion to the home. For the one location identified as having exposed wood framing, the adhered stone can be removed; peel and stick added; and the stone re-adhered.

The composite trim pieces are functioning as intended. It is not normal practice to paint the ends of trim pieces. No repair of this condition is required.

The gap shown in the WRB is an anomaly and this one condition should be repaired if Fuller didn't repair when they had this exposed. The WRB should not be cut for the installation of the metal flashing. The purpose of this flashing is to protect the fiber-

2318 Devine Street
Columbia, South Carolina 29205
803-708-2573
jay@rogersconeng.com

cement trim boards that are directly beneath them. It is meant to prevent water from entering from the outside and not meant to drain water from the wall system. Weather lapping of this trim metal would necessitate cutting the installed WRB and creating an avenue for water to enter the system.

*All of the work described above can be performed for less than **\$15,000**.*

3. Contractor to provide an allowance for interior repairs for nail pops, drywall, painting, etc.

This is unnecessary due to the significantly reduced scope of repair.

4. Exterior alcove of the walk-out basement.

*I agree that the area underneath this alcove should be regraded to create fall in this area to eliminate standing water. This work can be performed for **\$1,500**.*

5. At the rear elevation, first floor level, repairs shall be completed at the floor structure...

*I agree that these repairs are necessary and should be performed as described in Fuller's report. This work can be performed for **\$1,000**.*

6. Localized repairs shall be performed at the deck structure...

*I agree that these repairs are necessary and should be performed as described in Fuller's report. This work can be performed for **\$1,000**.*

7. At the rear elevation, remove existing gutter and replace...

The gutter is functioning. This is unnecessary.

8. Properly integrate drip edges with the roofing underlayment along the eaves...

The drip edge repair is unnecessary. There is a technical violation with no consequence on an extended fascia that is not above finished space. There are no signs of damage as a result of this condition.

9. At the first-floor mudsill plate for the perimeter of the structure, install fasteners into unattached mudsill anchors and additional fasteners at anchors lacking fasteners.

*I agree that this should be done. This work can be performed for **\$300**.*

10. Within the basement, install closed-cell spray foam at the rim board of the first floor....

*I agree that the insulation should be installed where missing, but batt insulation is acceptable by the code. This work can be performed for **\$500**.*

11. As recommended by Environmental Testing & Management...

I believe that a clear mold report has been issued by AdvantaClean. I don't believe any repairs are necessary for this item.

12. At the Master Bedroom, remove and reset the out of square door and door jamb...

*I agree that this condition should be repaired. This work can be performed for **\$1,000**.*

13. At the Garage, remove brown-colored masonry mortar and replace....

2318 Devine Street
Columbia, South Carolina 29205
803-708-2573
jay@rogersconeng.com

- I agree that this condition should be repaired. This work can be performed for \$500.*
14. At the Garage, remove the existing garage door guide rails and install rails that are of proper height to provide a 6'8" minimum clearance at the house entry door landing.

I agree that this condition should be repaired. This work can be performed for \$500.

Conclusions

The defects claimed by the plaintiffs are excessive and overstated. The re-cladding of the house is not necessary. The repairs can be repaired as stated above.

As a licensed General Contractor, I examined the construction estimate provided by the plaintiffs in the total amount of \$413,257. This is unwarranted. The overzealous scope of repair presented is not required even if the allegations by the plaintiffs were accurate. The repairs can be performed as described above for less than **\$25,000**.

Please let me know if you have any questions or need further clarification. Rogers Construction Engineering appreciates you contacting us in this matter. Should you have any questions, or if we may be of further assistance, please do not hesitate to call.

Sincerely,

Rogers Construction Engineering



Richard J. Rogers, P.E. M.B.A.
President



2318 Devine Street
Columbia, South Carolina 29205
803-708-2573
jay@rogersconeng.com

From: Robert Lyles <rtl@lylesfirm.com>
Sent: Monday, January 8, 2024 9:21 AM
To: blaffitte@robinsongray.com; Cobb, David S. <DCobb@TurnerPadget.com>
Cc: jdww@lylesfirm.com; cmoore@robinsongray.com; ebr@lylesfirm.com; Hagen, Heather A. <HHagen@TurnerPadget.com>; blaffitte@robinsongray.com
Subject: Re: Athimoolam v. Meritage Homes January 8

I agree with that, Becky. Thank you.

From: Becky Laffitte <blaffitte@robinsongray.com>
Date: Monday, January 8, 2024 at 9:17 AM
To: Cobb, David S. <DCobb@TurnerPadget.com>
Cc: Robert Lyles <rtl@lylesfirm.com>, Danny Winterstein <jdw@lylesfirm.com>, Carenn Moore <cmoore@robinsongray.com>, Erica Rehorn <ebr@lylesfirm.com>, Hagen, Heather A. <HHagen@TurnerPadget.com>, Becky Laffitte <blaffitte@robinsongray.com>
Subject: RE: Athimoolam v. Meritage Homes January 8

Good morning, David, Danny and Robert:

Now that I've received all submissions, which I appreciate, I'll be finalizing the Order. For clarification, I would like confirmation that you agree the Order was never filed. It was sent to you both but neither I nor you filed it. It is important to get consensus on this because I don't want to move to vacate an Order that was never filed. I appreciate your willingness to provide additional information and confirmation about the Order. Have a great day Best Becky



BECKY LAFFITTE MEMBER

DIRECT 803.231.7831

[VCARD](#) [VIEW BIO](#)

ROBINSONGRAY.COM

2151 Pickens Street

Suite 500

PO Box 11449 (29211)

Columbia, SC 29201



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From: Becky Laffitte <blaffitte@robinsongray.com>
Sent: Monday, January 8, 2024 9:50 AM
To: Cobb, David S. <DCobb@TurnerPadget.com>
Cc: rtl@lylesfirm.com; jdww@lylesfirm.com; cmoore@robinsongray.com; ebr@lylesfirm.com; Hagen, Heather A. <HHagen@TurnerPadget.com>
Subject: RE: Athimoolam v. Meritage Homes January 8

Good morning David:

I appreciate you and Robert responding so quickly with your positions. I'll proceed as I believe appropriate under the circumstances. Hope you all have a great Monday Best B



BECKY LAFFITTE MEMBER

DIRECT 803.231.7831

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Columbia, SC 29201



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From: Cobb, David S. <DCobb@TurnerPadget.com>
Sent: Monday, January 8, 2024 9:48 AM
To: Becky Laffitte <blaffitte@robinsongray.com>
Cc: Robert Lyles <rtl@lylesfirm.com>; Danny Winterstein <jdw@lylesfirm.com>; Carenn Moore

<cmoore@robinsongray.com>; Erica Rehorn <ebr@lylesfirm.com>; Hagen, Heather A. <HHagen@TurnerPadget.com>

Subject: RE: Athimoolam v. Meritage Homes January 8

Good morning.

Meritage's position is that the Proof of ADR filed on October 4, 2023 stated that the "Order following arbitration will be issued on or before October 4, 2023." That Order was issued on October 4, 2023 and is considered final. Further, Meritage submits that modification of the October 4, 2023 Order is not permitted and is not proper for the reasons stated in its two memoranda regarding Plaintiffs' motion for reconsideration.

David

From: Becky Laffitte <blaffitte@robinsongray.com>

Sent: Monday, January 8, 2024 9:17 AM

To: Cobb, David S. <DCobb@TurnerPadget.com>

Cc: Robert Lyles <rtl@lylesfirm.com>; Danny Winterstein <jdww@lylesfirm.com>; Carenn Moore

<cmoore@robinsongray.com>; Erica Rehorn <ebr@lylesfirm.com>; Hagen, Heather A. <HHagen@TurnerPadget.com>;

Becky Laffitte <blaffitte@robinsongray.com>

Subject: RE: Athimoolam v. Meritage Homes January 8

Good morning, David, Danny and Robert:

Now that I've received all submissions, which I appreciate, I'll be finalizing the Order. For clarification, I would like confirmation that you agree the Order was never filed. It was sent to you both but neither I nor you filed it. It is important to get consensus on this because I don't want to move to vacate an Order that was never filed. I appreciate your willingness to provide additional information and confirmation about the Order. Have a great day Best Becky



BECKY LAFFITTE MEMBER

DIRECT 803.231.7831

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Suite 500

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Columbia, SC 29201



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From: Becky Laffitte <blaffitte@robinsongray.com>
Sent: Thursday, January 18, 2024 2:26 PM
To: rtl@lylesfirm.com; jdww@lylesfirm.com; Cobb, David S. <DCobb@TurnerPadgett.com>
Cc: blaffitte@robinsongray.com; cmoore@robinsongray.com
Subject: Athimoolam Order Jan 18

Good afternoon, Robert, Danny and David:

I hope this email finds you well as a lot of sickness is around!

I really appreciate your patience and extra submissions on the above. I am prepared to file the Order tomorrow as the October 4 Order was never filed. I am noting your differences of opinion on whether the October 4 Order is the Order and/or appealable since it was not filed. However, as far as the Court is concerned, I believe they will look at the current Order as controlling given that the other was not filed. I apologize in advance for any confusion over the Orders. I have tried to be fair to all parties and have reviewed my notes from Arbitration, the Arbitration exhibits and subsequent submissions and controlling law to render a decision based upon the facts, evidence and controlling law.

If you have any questions or if you would like to discuss my plans regarding tomorrow's filing, I'm happy to schedule a conference call. Have a nice afternoon and my thanks again for your patience. Lesson learned... always recommend the presence of a court reporter to memorialize the testimony! Best Becky



BECKY LAFFITTE MEMBER

DIRECT 803.231.7831

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2151 Pickens Street
Suite 500
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Columbia, SC 29201

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GRAY

Litigation + Business

REBECCA LAFFITTE

DIRECT 803 231.7831 DIRECT FAX 803 231.7881

rlaffitte@robinsongray.com

October 3, 2024

VIA E-MAIL

The Honorable R. Scott Sprouse
Circuit Court Judge
Tenth Judicial Circuit
Post Office Box 1277
Walhalla, South Carolina 29691

RE: Raghu Athimoolam and Irene Athimoolam v. Meritage Homes of South
Carolina, Inc.
Civil Action No.: 2017-CP-04-00376
Our File No.: 5160/5753

Dear Judge Sprouse:

I served as the arbitrator in the above matter in September 2023. Although an Order was prepared in November 2023, it was not filed but provided to counsel for all parties. Thereafter, counsel for the Athimoolams filed a Motion to Reconsider, after which counsel for Meritage Homes submitted a reply brief. I then requested a conference call with all counsel given my belief that I had inadvertently misapplied the law to evidence and testimony of the expert witnesses who testified at the arbitration. This call was held on November 17, at which time I requested additional information for clarification and consideration. Additional documentation, opinions and objections were received from all counsel.

The Order was submitted on January 19, 2024, and filed on January 23, 2024. All counsel filed motions requesting a review by this Honorable Court.

To ensure that I prepare the appropriate response to your recent Form 4 Order (enclosed), would it be possible to have a conference call with you and all attorneys so that I can better understand the specifics of your request?

I regret any issues that I have caused and created for you, the attorneys, and parties, as this was not my intent. I look forward to hearing from you and appreciate further guidance from you on this matter.



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Litigation + Business

October 3, 2024
Page: 2

With warmest regards, I remain

Very truly yours,

Becky Laffitte

RL:srm

Enclosure

cc: Robert T. Lyles, Jr., Esquire (via e-mail)
Joseph Daniel Winterstein, Esquire (via e-mail)
David S. Cobb, Esquire (via e-mail)

STATE OF SOUTH CAROLINA
COUNTY OF Anderson
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP0400376

Raghu Athimoolam et al
PLAINTIFF(S)

Meritage Homes Of South Carolina Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the Court upon Defendant's Motion to Vacate the January 23, 2024 Arbitration Award and Motion to Reinstate the October Arbitration Award. The Court notes that the modified award differed significantly from the original arbitration award. After consideration of applicable law, namely Pittman Mortg. Co., Inc. v. Edwards, 327 S.C. 72, 76 (1997) and South Carolina Code § 15-48-100, this matter is REMANDED so that the Arbitrator can set forth specific findings of legal and factual error that were corrected to ensure that the interests of all parties were protected. The Order, as written, makes it difficult for the Court to evaluate whether the modifications to the initial Order were done outside the scope of the relevant statutory and case law.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/05/2024 .

Gutter Cutters, Inc.
GGG Construction, LLC
Down To Earth Grading, LLC
Advantaclean Of The Upstate
DRC Investment, LLC
84 Lumber Company, LP
DRC Investment, LLC
SDR Restoration And Construction, LLC
Advantaclean Of The Upstate
Jony Munoz
Jose Gonzalez
Star Builders, Inc.
Sealing Agents Waterproofing, Inc.
Lopez Masonry, Llc
Miguel Angeles

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Anderson Common Pleas

Case Caption: Raghu Athimoolam , plaintiff, et al VS Meritage Homes Corporation
, defendant, et al

Case Number: 2017CP0400376

Type: Order/Electronic Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit

Electronically signed on 2024-09-05 15:51:32 page 3 of 3

RECEIVED

Apr 23 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

Appellate Case No.: 2024-001996

Raghu Athimoolam and Irene Athimoolam,.....Respondents,

v.

Meritage Homes of South Carolina, Inc.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

s/David S. Cobb

David S. Cobb

TURNER PADGET

Post Office Box 22129

Charleston, South Carolina 29413-2129

Direct: (843) 576-2803

Fax: (843) 577-1629

dcobb@turnerpadget.com

ATTORNEYS FOR APPELLANT

April 23, 2025