

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-Q/A  
Amendment No. 1

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE  
ACT OF 1934

FOR THE QUARTERLY PERIOD ENDED MARCH 31, 2000

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934

COMMISSION FILE NUMBER 1-9977

MERITAGE CORPORATION  
(Exact Name of Registrant as Specified in Its Charter)

MARYLAND  
(State or Other Jurisdiction  
Incorporation or Organization)

86-0611231  
(I.R.S. Employer of  
Identification No.)

6613 NORTH SCOTTSDALE ROAD, SUITE 200  
SCOTTSDALE, ARIZONA  
(Address of Principal Executive Offices)

85250  
(Zip Code)

(480) 998-8700  
(Registrant's Telephone Number, Including Area Code)

INDICATE BY CHECK MARK WHETHER THE REGISTRANT (1) HAS FILED ALL REPORTS REQUIRED  
TO BE FILED BY SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 DURING  
THE PRECEDING 12 MONTHS (OR FOR SUCH SHORTER PERIOD THAT THE REGISTRANT WAS  
REQUIRED TO FILE SUCH REPORTS), AND (2) HAS BEEN SUBJECT TO SUCH FILING  
REQUIREMENTS FOR THE PAST 90 DAYS: YES  NO .

AS OF MAY 1, 2000, 5,563,796 SHARES OF MERITAGE CORPORATION COMMON STOCK WERE  
OUTSTANDING.

MERITAGE CORPORATION  
FORM 10-Q FOR THE QUARTER ENDED MARCH 31, 2000  
TABLE OF CONTENTS

	Page No.
	-----
PART II. OTHER INFORMATION	
ITEM 5. OTHER INFORMATION.....	3
ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K.....	3
SIGNATURES .....	S-1

2  
PART II OTHER INFORMATION

ITEM 5. Other Information

This Amendment to Form 10-Q for the period ended March 31, 2000 is  
submitted for the purpose of including Exhibits 10.1, 10.2, 10.3, 10.4, 10.5 and  
10.6 that were inadvertently omitted from the 10-Q.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) EXHIBITS

Exhibit Number -----	Description -----	Page or Method of Filing -----
10.1	Modification to Guaranty Federal Bank Loan, Dated as of March 29, 2000	Filed herewith
10.2	\$3.3 Million Construction Loan Agreement,	Filed herewith

by and between the Company and Compass Bank,  
Dated as of February 10, 2000

10.3	Change of Control Agreement between the Company and Steven J. Hilton	Filed herewith
10.4	Change of Control Agreement between the Company and John R. Landon	Filed herewith
10.5	Change of Control Agreement between the Company and Larry W. Seay	Filed herewith
10.6	Change of Control Agreement between the Company and Richard T. Morgan	Filed herewith
27	Financial Data Schedule	Previously filed as Exhibit 27 to Form 10-Q for the period ended March 31, 2000
99	Private Securities Litigation Reform Act of 1995 Safe Harbor Compliance Statement for Forward-Looking Statements	Previously filed as Exhibit 99 to Form 10-Q for the period ended March 31, 2000

(b) REPORTS ON FORM 8-K

We filed no reports on Form 8-K during the quarter ended March 31, 2000.

3  
SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report on Form 10-Q to be signed on its behalf by the undersigned, thereunto duly authorized, this 16th day of May, 2000.

MERITAGE CORPORATION,  
a Maryland Corporation

By /s/ Larry W. Seay

-----  
Larry W. Seay  
Chief Financial Officer and  
Vice President-finance (Principal  
Financial Officer and Duly  
Authorized Officer)

S-1

March 29, 2000

Guaranty Federal Bank, F.S.B.  
8333 Douglas Avenue  
Dallas, Texas 75225

Re: Modification of an existing \$80,000,000.00 guidance line from Guaranty Federal Bank, F.S.B. ("Lender") to Legacy/Monterey Homes L.P., an Arizona corporation ("Borrower"); such loan and other indebtedness being guaranteed by Meritage Corporation, a Maryland corporation, MTH-Texas GP, Inc., an Arizona corporation and MTH-Texas LP, Inc., an Arizona corporation (collectively referred to as "Guarantor").

Gentlemen:

Reference is made to that certain Master Loan Agreement dated as of January 31, 1993 (and all amendments thereto, if any) (the "Loan Agreement") between Lender and Borrower governing a \$80,000,000.00 loan (as increased) (the "Loan") for the acquisition and/or refinancing of residential lots located in certain counties in the State of Texas as described therein, and the construction of single-family residences thereon. Unless otherwise expressly defined herein, each term used herein with its initial letter capitalized shall have the meaning given to such term in the Loan Agreement. As used in this letter agreement, the term "Loan Instruments" shall mean and include (i) the "Loan Instruments" as defined in the Loan Agreement, (ii) the Fifth Modification Agreement dated as of even date herewith, executed by and between the parties hereto, and (iii) this letter agreement and all other documents executed in conjunction herewith (and all amendments thereto, if any).

Borrower and Lender desire to decrease the Loan Amount to the stated principal amount of \$65,000,000.00 and to amend and modify certain terms and provisions of the Loan and the Loan Instruments as follows: .

1. The Loan Amount is hereby decreased from \$80,000,000.00 to \$65,000,000.00. All references in the Loan Instruments to the amount of \$80,000,000.00 are hereby decreased to \$65,000,000.00.

2. PARAGRAPH 8 of the Loan Agreement is hereby deleted in its entirety and replaced with the following:

8. REVOLVING LOAN. All or any portion of the principal of the Loan may be borrowed, paid, prepaid, repaid and reborrowed from time to time prior

Guaranty Federal Bank, F.S.B.  
March 29, 2000  
Page 2

to maturity in accordance with the provisions of the Loan Instruments. The excess of borrowing (advances and re-advances) over repayments shall evidence the principal balance of the Loan from time to time and at any time. The aggregate amount of all advances under the Loan may exceed the Loan Amount, but neither the outstanding principal balance of the Loan nor the outstanding aggregate amount of the Loan Allocations shall ever exceed the Loan Amount. The Loan shall not be governed by or be subject to Chapter 15 of the Texas Credit Code Title 79, Revised Civil Statutes of Texas, 1925, as amended.

The maximum total Loan Allocations and Letters of Credit under the Loan at any time shall be limited to \$110,000,000.00, which sum shall consist of the following:

- (a) the total of all Loan Allocations for Property secured by Mortgages, plus;
- (b) the amount of any Letters of Credit (when issued, if any);

provided, however, that the \$110,000,000.00 Loan Allocation limitation set forth in this sentence shall be increased by an amount equal to any cash deposits made by Borrower with Lender as security for the Loan and as a Borrower's Deposit under PARAGRAPH 5 of the Loan Agreement (with each such deposit to be advanced by Lender to Borrower prior to the disbursement of loan proceeds upon the satisfaction of conditions for advances under this Loan Agreement). Borrower shall execute and deliver to Lender such documents as may be necessary to establish such account and to grant Lender a security interest in the same.

Notwithstanding any provision in the Loan Instruments to the contrary, in no event shall the sum of (i) the aggregate amounts advanced under the Note, and (ii) the amount of any Letters of Credit (when issued, if any) exceed a total of \$65,000,000.00, notwithstanding that the maximum total Loan Allocations and Letters of Credit under the Loan may exceed such \$65,000,000.00 total; and consequently, Lender shall have no obligation to

disburse additional funds in the event the sum of (i) the aggregate amounts advanced or to be advanced (including all Loan Allocations) under the Note, and (ii) the amount of any Letters of Credit (when issued, if any) exceed a total of \$65,000,000.00.

Notwithstanding any provisions in the Loan Instruments to the contrary, if at anytime the aggregate disbursed and unpaid principal balance of the Loan (together with the aggregate amount of any Letters of Credit under the Loan) exceed \$65,000,000.00, then Borrower shall immediately (following written demand by Lender) deliver to Lender a cash amount equal to such excess, which cash amount shall be applied to the principal balance of the Loan in order that such aggregate amount shall be reduced to \$65,000,000.00.

Guaranty Federal Bank, F.S.B.

March 29, 2000

Page 3

3. EXHIBIT A to the Loan Agreement is hereby modified by deleting such exhibit in its entirety and replacing it with EXHIBIT A attached hereto.

4. All Loan Instruments hereby are amended and modified in a manner consistent with the modifications, terms and/or provisions contained herein. Except as modified hereby, all the terms, provisions and conditions of the Loan Instruments shall remain in full force and effect.

5. This letter agreement constitutes the "Letter Agreement" referred to in the Fifth Modification Agreement of even date herewith executed by and between the parties hereto.

6. The terms and provisions of this letter agreement may not be modified, amended, altered or otherwise affected except by instrument in writing executed by Lender and Borrower.

7. Each Guarantor by its execution hereof agree to the amendments and modifications to the Loan Instruments set forth herein and in the prior amendments and modifications to the Loan Instruments and agree that all of such modifications do not and will not waive, release or iii any manner modify either Guarantor's obligations and liabilities under and pursuant to the Guaranty.

(The balance of this page is intentionally left blank.)

Guaranty Federal Bank, F.S.B.

March 29, 2000

Page 4

If this letter agreement correctly sets forth our understanding of the subject matter contained herein, please indicate this by executing this letter agreement in the space furnished below and then return a fully-executed copy to the undersigned.

Very truly yours,

BORROWER:

LEGACY/MONTEREY HOMES L.P.,  
an Arizona limited partnership

BY: MTH-TEXAS GP, INC.,  
an Arizona corporation,  
General Partner

By: /s/ Rick Morgan

-----  
Name: Rick Morgan  
Title: Vice President

Guaranty Federal Bank, F.S.B.

March 29, 2000

Page 5

GUARANTOR:

MERITAGE CORPORATION,  
a Maryland corporation

By: /s/ John R. Landon

-----  
Name: John R. Landon  
Title: CO-CEO

MTH-TEXAS GP, INC.,

an Arizona corporation,

By: /s/ Rick Morgan  
-----  
Name: Rick Morgan  
Title: Vice President

MTH-TEXAS LP, Inc.,  
an Arizona corporation

By: /s/ Rick Morgan  
-----  
Name: Rick Morgan  
Title: Vice President

Guaranty Federal Bank, F.S.B.  
March 29, 2000  
Page 6

ACCEPTED AND AGREED TO:

LENDER:

GUARANTY FEDERAL BANK, F.S.B.,  
a federal savings bank

By: /s/ Sam A. Meade  
-----  
Name: Sam A. Meade  
Title: Senior Vice President

EXHIBIT A

TO LOAN AGREEMENT

1. Introductory Paragraph. RESIDENCE AND INVENTORY LOT LIMITATIONS. At any given time, Residences and Inventory Lots financed under the Loan shall be limited to the following numbers, unless modified by Lender in writing:

Total Residences: Seven Hundred Seventy-five (775).  
Specs: One Hundred Twelve (112).  
Models: Sixty-three (63).  
Inventory Lots: One Thousand One Hundred Twenty-five (1,125).

Borrower may increase the number of Specs allowed above by the same number by which Borrower is short of Models allowed above. Borrower covenants and agrees not to allow, and is prohibited from allowing, any more than ten (10) Specs, three (3) Models or one hundred fifty (150) Inventory Lots to exist in any Approved Subdivision (as hereinafter defined).

The outstanding aggregate amount of the Loan Allocations for all Specs and Models at any time shall never exceed \$16,800,000.00.

The outstanding aggregate amount of the Loan Allocations for all Inventory Lots at any time shall never exceed \$18,000,000.00.

The term "SPECS" means a Residence which is not a Model and is not Under Contract. The term "MODEL" means a Residence specifically utilized for the purposes of marketing other residential products. The term "'UNDER CONTRACT" shall mean Residences under written contract to sell to bona fide third parties unrelated to Borrower, having no contingency or any other conditions not reasonably susceptible to being satisfied, providing for earnest money deposits of at least \$2,000.00, and for which Lender has received preliminary loan approval from a bona fide residential permanent lender.

The term "INVENTORY RESIDENCE" means any Residence which is not a Model.

2. Introductory Paragraph. APPROVED SUBDIVISIONS. The following subdivisions and any additional subdivisions approved in writing by Lender (the "APPROVED SUBDIVISIONS") are approved by Lender for the Residences and Inventory Lots:

Subdivision	County
-----	-----
Stone Canyon (Fern Bluff)	Williamson
Oakmont Forest	Williamson
Settlers Ridge/Creekside	Travis
Round Rock Ranch	Williamson
The Meadows (Thunderbird Est.)	Collin
Brighton Estates - Arlington	Tarrant
Bristol Park (Fountain Creek)	Collin
Chase-Oaks	Collin

Cottonwood Bend	Collin
Country Club Park	Dallas
Creekwood Estates	Denton
Crestwood	Collin
Cross Creek West	Collin
Eden Road Estates	Tarrant
El Dorado Heights	Collin
Heritage Park - Allen	Collin
Highland Parkway	Collin
Hillcrest Estates	Collin

EXHIBIT A, - Page 1

Hunters Glen	Collin
Independence Hill	Collin
Meadow Glen PH IIB	Denton
Oakwood Glen	Collin
Orchard Valley Estates	Denton
Parkdale - Plano	Collin
Shadow Lakes	Collin
Shadow Lakes North	Collin
Lakes of Valley Ranch	Dallas
Vista Ridge Estates	Denton
Windhaven Farms (Carelle Custom)	Collin
Ravenglass Estates	Collin
Frankford Meadows	Dallas
Hunter Trail	Tarrant
Fossil Beach	Tarrant

3. Introductory Paragraph. APPROVED PRICE RANGE. The Residences shall be in the \$70,000.00 to \$350,000.00 price range.
4. Paragraph 1(c). GUARANTOR. Guarantor of the Loan shall be: Meritage Corporation, am Maryland corporation (formerly known as "Monterey Homes Corporation"); MTH-Texas G.P., Inc., an Arizona corporation; and MTH-Texas L.P., Inc., an Arizona corporation.
5. Paragraph 2(h). LOAN FINANCE CHARGE. None.
6. Paragraph 2(k) and 6(g). INSPECTION FEE. An inspection fee of \$30.00 per Residence shall be paid to Lender on the day the Mortgage pertaining to such Residence is recorded in the Real Property Records.
7. Paragraph 4(c). LOAN RATIOS. With respect to Residences Under Contract, the Loan Allocation shall not exceed the lesser of (1) one hundred percent (100%) of the direct costs of a Property, as determined by Lender or, (2) eighty percent (80%) of the lowest of the values as provided in PARAGRAPH 4(C) (I) (II) AND III) of this Loan Agreement.  
  
With respect to Specs, Models and Inventory Lots, the Loan Allocation shall not exceed the lesser of (1) one hundred percent (100%) of the direct costs of a Property, as determined by Lender or, (2) seventy-five percent (75%) of the lowest of the values as provided in PARAGRAPH 4(C) (I,~(II) AND (III) of this Loan Agreement.
8. Paragraph 6(q). OTHER ENTITIES. The Mortgages shall additionally secure all other indebtedness now or hereafter owed by the following entities to Lender: None.
9. Paragraph 6(s). REQUIRED RELEASES. Borrower shall cause: (a) Inventory Residences to be released from a Mortgage nine (9) months from the day such Mortgage is recorded in the Real Property Records, (b) Models to be released from a Mortgage twenty-four (24) months from the day such Mortgage is recorded in the Real Property Records, and (c) Inventory Lots to be released from a Mortgage twelve (12) months from the day such Mortgage is recorded in the Real Property Records; provided, however, if no default then exists under any Loan Instruments, Lender may, at its option, extend the Required Release Date for periods of three (3) months (the "EXTENDED RELEASE DATE"); provided, such Extended Release Date shall in no event go beyond the Stated Maturity Date (as hereinafter defined) or the Extended Maturity Date (as hereinafter defined), if applicable.
10. Paragraph 7. REQUIRED PRINCIPAL REDUCTIONS. Prior to the date that Lender gives Borrower the notice described in PARAGRAPH 4(F) above, the following shall apply: in the event a Property has been granted an Extended Release Date (as provided in PARAGRAPH 9 of this EXHIBIT A) and a Mortgage remains covering such Property beyond the following periods from the date such Mortgage is recorded, then Borrower shall make a principal payment of the Note in an amount equal to ten percent (10%) of the Loan Allocation with

EXHIBIT A, - Page 2

respect to such Property (and the Loan Allocation for such Property shall be reduced by the same amount), as determined by Lender:

Inventory Residences: Fifteen (15) months.  
Models: Twenty-four (24) months.  
Inventory Lots: Twelve (12) months.

From and after the date that Lender gives Borrower the notice described in PARAGRAPH 4(F) of the Loan Agreement, the following shall apply: in the event a Property has been granted an Extended Release Date, as provided in PARAGRAPH 9 of this EXHIBIT A, Borrower shall make a principal payment on the Note of ten percent (10%) of that portion of the Loan advanced by Lender for such Property, within the following periods from the date a Mortgage covering such Property is recorded in the Real Property Records:

Inventory Residences: Fifteen (15) months.  
Models: Twenty-four (24) months.  
Inventory Lots: Twelve (12) months.

11. Paragraph 9. MATURITY AND EXTENSION. The maturity date of the Note shall be the later of the maturity date as provided in the Note (July 31, 2000) (the "STATED MATURITY DATE"), or nine (9) months after the recording in the Real Property Records of the last Mortgage (the "EXTENDED MATURITY DATE") approved by Lender and recorded prior to the expiration of the Stated Maturity Date. After the Stated Maturity Date, no additional Mortgage shall be recorded.
12. Paragraph 10. ADDITIONAL DEFAULTS. In addition to the events of default stipulated in the Loan Instruments, it shall be a default under this Loan Agreement if Borrower fails to comply with any of the following: None.
13. Paragraph 11. ADDITIONAL LOAN COVENANTS. Borrower shall fully perform and satisfy the following "ADDITIONAL LOAN COVENANTS":
  - (a) The aggregate net worth of Borrower (determined in accordance with generally accepted accounting principles, consistently applied) shall not fall below \$25,000,000.00.
  - (b) The ratio of total liabilities to equity (as determined by Lender) shall not exceed 3.0 to 1.0.
  - (c) John Landon shall at all times retain management control of Borrower.
  - (d) In no event shall Meritage Corporation, a Maryland corporation, be in default under any secured indebtedness.

If Borrower or Guarantor (if applicable to Guarantor) breaches any of the Additional Loan Covenants then, at Lender's election, no additional Mortgages shall be recorded in the Real Property Records; provided, however, that a breach of any Additional Loan Covenants shall not be considered a default under the Loan Instruments.

14. Paragraph 16(d). RELEASE PRICE. The partial release price shall be a cash amount equal to the Loan Allocation for the Property multiplied by the Stage (expressed as a percentage) of the Property, all as determined by Lender; provided, however, if Lender shall have given Borrower the notice described in PARAGRAPH 4(F) of the Loan Agreement, then the partial release price shall be an amount in cash equal to one hundred and one hundred percent (100%) of the outstanding balance of the Loan advanced by Lender for the Property.
15. Paragraph 16(e). EXTENSION FEE. If Lender extends the Required Release Date, as provided in PARAGRAPH 9 of this EXHIBIT A, Borrower shall pay to Lender an extension fee of one percent (1 %) of that portion of the Loan advanced by Lender for each such Property times a fraction, the numerator of which is the number of days the Required Release Date is extended and the denominator of which is 365.

EXHIBIT A, - Page 3

#### FIFTH MODIFICATION AGREEMENT

This FIFTH MODIFICATION AGREEMENT (this "Agreement") is made and entered into as of March 29, 2000, by and between LEGACY/MONTEREY HOMES L.P., an Arizona limited partnership and GUARANTY FEDERAL BANK, F.S.B., a federal savings bank organized and existing under the laws of the United States ("Lender").

#### WITNESSETH:

WHEREAS, pursuant to a certain Master Loan Agreement (the "LOAN AGREEMENT") dated as of January 31, 1993, between Lender and Borrower, Lender made a loan (the "LOAN") to Borrower, evidenced by a certain Revolving Promissory Note (the "NOTE") dated as of January 31, 1993, payable to Lender in the stated principal amount of FIFTY MILLION AND NO/100 DOLLARS (\$50,000,000.00) (as increased), with interest and principal payable as set forth therein; and

WHEREAS, to secure the Note and Loan, Master Form Deed(s) of Trust (With Security Agreement and Assignment of Rents and Leases) (hereinafter collectively

referred to as the "MASTER DEEDS OF TRUST," whether one or more), which Master Deeds of Trust have been recorded in certain counties in the State of Texas as more particularly described on EXHIBIT A attached hereto; and which Master Deeds of Trust are incorporated by reference pursuant to the terms and provisions of certain Deeds of Trust Incorporating by Reference a Master Form Deed of Trust (With Security Agreement and Assignment of Rents and Leases) (hereafter collectively referred to as the "SUPPLEMENTAL DEEDS OF TRUST," whether one or more) recorded in such counties and encumbering certain real and other property (the "Pro a ") described in such Supplemental Deeds of Trust (such Master Deeds of Trust and Supplemental Deeds of Trust hereafter collectively referred to as the "DEEDS OF TRUST," whether one or more); and

WHEREAS, the Deeds of Trust were modified pursuant to a Modification Agreement (the "FIRST MODIFICATION"), and recorded in various counties in Texas, which First Modification modified certain terms and provisions of the Loan as set forth therein; and

WHEREAS, the Deeds of Trust were further pursuant to a Second Modification Agreement (the "SECOND MODIFICATION") dated as of May 19, 1998, and recorded in various counties in Texas, which Second Modification modified certain terms and provisions of the Loan as set forth therein; and

WHEREAS, the Deeds of Trust were further pursuant to a Third Modification Agreement (the "THIRD MODIFICATION") dated as of March , 1999, and recorded in various counties in Texas, which Third Modification modified certain terms and provisions of the Loan as set forth therein; and

WHEREAS, the Deeds of Trust were further pursuant to a Fourth Modification Agreement (the "FOURTH MODIFICATION") dated as of July 31, 1999, and recorded in various counties in Texas, which Fourth Modification modified certain terms and provisions of the Loan as set forth therein; and

WHEREAS, the Note and the Loan are guaranteed pursuant to that certain Guaranty Agreement dated as of June 30, 1997 (the "GUARANTY"), executed by MTH-Texas GP, Inc., an Arizona corporation, MTH-Texas LP, Inc., an Arizona corporation, and Meritage Corporation, a Maryland corporation (formerly known as "Monterey Homes Corporation") ("GUARANTOR," whether one or more); and

#### FIFTH MODIFICATION AGREEMENT - Page 1

WHEREAS, the Loan Agreement, the Note, the First Modification, the Second Modification, the Third Modification, the Fourth Modification, the Deeds of Trust and all other documents evidencing and/or securing the Loan are hereinafter collectively called the "LOAN INSTRUMENTS"; and

WHEREAS, Lender, the owner and holder of the Note and the Deeds of Trust and all rights and titles evidenced thereby, and Borrower, the record owner of the Property and being liable for the payment of the Note and Loan, desire to modify the Loan Instruments as herein provided.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. The Loan is hereby decreased from \$80,000,000.00 to \$65,000,000.00. All references in the Loan Instruments to the amount of \$80,000,000.00 are hereby decreased to \$65,000,000.00.

2. Borrower shall execute and deliver to Lender a letter agreement (in form and substance satisfactory to Lender in its sole discretion) (the "LETTER AGREEMENT") dated as of the date hereof amending certain other terms and provisions of the Loan Instruments. (Hereafter, this Agreement and the Letter Agreement shall be included in the defined term "LOAN INSTRUMENTS.")

3. Borrower acknowledges and agrees, that as an accommodation to Borrower, EXHIBIT A hereto (which exhibit describes the recording information of the Master Deeds of Trust) shall be attached to this Agreement (and to any and all other documents which may require the attachment of a description of the recording information of the Master Deeds of Trust) after Borrower's execution of same. Accordingly, Borrower hereby authorizes and directs Lender to attach such EXHIBIT A to this Agreement.

4. Notwithstanding anything to the contrary in any of the Loan Instruments, Borrower acknowledges and agrees, that to the extent that Lender is relying on Chapter 303 of the Texas Finance Code .to determine the Maximum Lawful Rate (hereafter defined) payable on the Note and/or the Related Indebtedness (hereafter defined) Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Lender will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under other applicable law by giving notice, if required, to



Borrower as provided by applicable law now or hereafter in effect. As used herein, the term "MAXIMUM LAWFUL RATE" shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Lender in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that it permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all Charges (as hereafter defined) made in connection with the transaction evidenced by the Note and the other Loan Instruments. As used herein, the term "CHAR YES" shall mean all fees, charges and/or any other things of value, if any, contracted for, charged, received, taken or reserved by Lender in connection with the transactions relating to the Note and the other Loan Instruments, which are treated as interest under applicable law. As used herein, the term "RELATED INDEBTEDNESS" shall mean any and all debt paid or payable by Borrower to Lender pursuant to the Loan Instruments or any other communication or writing by or between Borrower and Lender related to the transaction or transactions that are the subject matter of the Loan Instruments, except such debt which has been paid or is payable by Borrower to Lender.

FIFTH MODIFICATION AGREEMENT - Page 2

5. Notwithstanding anything to the contrary contained in the Deeds of Trust or other Loan Instruments, with respect to any amendment to the Master Deeds of Trust, the following terms and provisions shall apply;

With respect to any amendment or modification of the Master Deeds of Truth now or hereafter executed by Borrower (or any future owner of the Property if different from Borrower) and duly recorded in the appropriate official public records, Borrower acknowledges and agrees that such amendment or modification of the Master Deeds of Trust shall constitute an amendment or modification to the terms and provisions of any such Supplemental Deeds of Trust (and shall be incorporated into any such Supplemental Deeds of Trust and made a part thereof for all purposes, as though such amendment or modification of the Master Deeds of Trust specifically referred to such Supplemental Deeds of Trust) without the necessity of any specific reference in such amendment or modification to any such Supplemental Deeds of Trust; and no such amendment or modification of the Master Deeds of Trust shall impair the obligations of Borrower under any such Supplemental Deeds of Trust or any other of the Loan Instruments.

6. Borrower hereby expressly promises to pay to the order of Lender, the principal amount of the Note (as modified and increased) and all accrued and unpaid interest now or hereafter to become due and payable under the Note, and Borrower hereby expressly promises to perform all of the obligations of Borrower under the Loan Instruments (as modified and increased).

7. The liens of the Deeds of Trust are hereby acknowledged by Borrower to be good, valid and subsisting liens, and such liens are hereby renewed and extended so as to secure the payment of the Note and Loan (as modified and increased).

8. Borrower hereby represents and warrants to Lender that (a) Borrower is the sole legal and beneficial owner of the Property; (b) Borrower has the full power and authority to make the agreements contained in this Agreement without joinder or consent of any other party; (c) the execution, delivery and performance of this Agreement will not contravene or constitute an event which itself or which with the passing of time or giving of notice or both would constitute a default under any deed of trust, loan agreement, indenture or other agreement to which Borrower or Guarantor is a party or by which Borrower or any of its property is bound; and (d) there exists no default under the Loan Instruments (as modified). BORROWER HEREBY AGREES TO INDEMNIFY AND HOLD LENDER HARMLESS AGAINST ANY LOSS, CLAIM, DAMAGE, LIABILITY OR EXPENSE (INCLUDING WITHOUT LIMITATION, ATTORNEYS' FEES) INCURRED AS A RESULT OF ANY REPRESENTATION OR WARRANTY MADE BY BORROWER HEREIN PROVING TO BE UNTRUE IN ANY MATERIAL RESPECT.

9. The terms and conditions hereof may not be modified, amended, altered or otherwise affected except by instrument in writing executed by Lender and Borrower.

10. All Loan Instruments are hereby amended and modified in a manner consistent with the modifications, terms and/or provisions contained herein. Except as expressly modified hereby, the terms and conditions of the Loan Instruments are and shall remain in full force and effect.

11. Borrower agrees to pay to Lender, contemporaneously with the execution and delivery hereof, all costs and expenses incurred in connection with this transaction, title insurance endorsement premiums, reasonable fees of Lender's counsel and recording fees.

12. Borrower hereby agrees to execute and deliver to Lender such further documents and instruments evidencing or pertaining to the Loan, as modified and increased hereby, as may be reasonably requested by Lender from time to time so as to evidence the terms and conditions hereof.

FIFTH MODIFICATION AGREEMENT - Page 3

EXECUTED on the date(s) set forth in the acknowledgment(s) below to be EFFECTIVE as of the date first above written.

BORROWER:

LEGACY/MONTEREY HOMES L.P.,  
an Arizona limited partnership

BY: MTH-TEXAS GP, INC.,  
an Arizona corporation,  
General Partner

By: /s/ Rick Morgan

-----  
Name: Rick Morgan  
Title: Vice President

LENDER:

GUARANTY FEDERAL BANK, F.S.B.,  
a federal savings bank

By: /s/ Sam A. Meade

-----  
Name: Sam A. Meade  
Title: Senior Vice President

STATE OF TEXAS ss.  
ss.  
COUNTY OF COLLIN ss.

This instrument was ACKNOWLEDGED before me on March 28, 2000, by Rick Morgan, Vice President of MTH-TEXAS GP, C., an Arizona corporation, as General Partner of LEGACY/MONTEREY HOMES L.P., AN ARIZONA limited partnership on behalf of said limited partnership.,

[SEAL]

/s/ Amy C. Kirkpatrick

-----  
Notary Public

My Commission on Expires

2/24/2001

Amy C. Kirkpatrick

-----  
Printed Name of Notary Public

FIFTH MODIFICATION AGREEMENT - Page 4

STATE OF TEXAS ss.  
ss.  
COUNTY OF DALLAS ss.

This instrument was acknowledged before me on the 29th day of March, 2000, by Sam A. Meade, Senior Vice President of GUARANTY FEDERAL BANK, F.S.B., a federal savings bank, on behalf of said federal savings bank.

[Seal]

/s/ Leslie Ruth Reynolds

-----  
Notary Public in and for the  
above county and state

My Commission Expires:

02/04/2001

Leslie Ruth Reynolds

-----  
Printed Name of Notary

FIFTH MODIFICATION AGREEMENT - Page 5

CONSENT OF GUARANTOR

Each of the undersigned, as a guarantor ("GUARANTOR," whether one or more) of the loan (the "LOAN"), evidenced by the Note and secured by the Deeds of Trust described in the foregoing Fifth Modification Agreement (the "Agreement") to which this Consent is attached, hereby acknowledge and consent (jointly and

severally) to the terms of the Agreement and agree (jointly and severally) that the execution and delivery of the Agreement will in no way change or modify Guarantor's respective obligations under their respective Guaranty (as defined in the Agreement); and each Guarantor acknowledges and agrees (jointly and severally) that the Indebtedness (as defined in the respective instruments comprising the Guaranty) includes the Loan, together with any and all other Indebtedness now or at any time hereafter owing by Guarantor to Lender; and each Guarantor (jointly and severally) hereby unconditionally and absolutely guarantees to Lender the payment when due of such Indebtedness, and hereby acknowledge and agree that their respective Guaranty is in full force and effect, and that there are no claims, counterclaims, offsets or defenses to their respective Guaranty; and each Guarantor acknowledges and consents (jointly and severally) to the terms of any and all prior modifications to the terms of the Loan (including, without limitation, any and all extensions of the term thereof and increases in the principal thereof prior to the date hereof, if any).

EXECUTED on the date(s) set forth in the acknowledgment(s) below to be EFFECTIVE as of the 29th day of March, 2000.

GUARANTOR:

MERITAGE CORPORATION,  
a Maryland corporation

By: /s/ John R Landon

-----  
Name: John R. Landon  
Title Co-CEO

MTH-TEXAS GP, INC.,  
an Arizona corporation

By: /s/ Rick Morgan

-----  
Name: Rick Morgan  
Title: Vice President

MTH-TEXAS LP, INC.,  
an Arizona corporation

By: /s/ Rick Morgan

-----  
Name: Rick Morgan  
Title: Vice President

FIFTH MODIFICATION AGREEMENT - Page 6

STATE OF TEXAS ss.

ss.

COUNTY OF COLLIN ss.

This instrument was ACKNOWLEDGED before me on March 28, 2000, by John R. Landon, Co-CEO of MERITAGE CORPORATION, a Maryland corporation, on behalf of said corporation.

/s/ Amy C. Kirkpatrick

-----  
Notary Public

My Commission expires:

2/24/2001

Amy C. Kirkpatrick

-----  
Printed Name of Notary Public

STATE OF TEXAS ss.

ss.

COUNTY OF COLLIN ss.

This instrument was ACKNOWLEDGED before me on March 28, 2000, by Rick Morgan, Vice President of MERITAGE CORPORATION, a Maryland corporation, on behalf of said corporation.

/s/ Amy C. Kirkpatrick

-----  
Notary Public

My Commission expires:

2/24/2001

Amy C. Kirkpatrick

-----  
Printed Name of Notary Public

STATE OF TEXAS ss.  
ss.  
COUNTY OF COLLIN ss.

This instrument was ACKNOWLEDGED before me on March 28, 2000, by Rick Morgan, Vice President of MERITAGE CORPORATION, a Maryland corporation, on behalf of said corporation.

/s/ Amy C. Kirkpatrick

-----  
Notary Public

My Commission expires:

2/24/2001

Amy C. Kirkpatrick

-----  
Printed Name of Notary Public

FIFTH MODIFICATION AGREEMENT - Page 7

EXHIBIT A

DESCRIPTION OF THE DEED(S) OF TRUST

LEGACY/MONTEREY, L.P.

- Collin County Recorded September 4, 1996, Clerk File 96-0075977
- Dallas Recorded September 5, 1996, Volume 96175 Page 00192
- Denton Recorded September 5, 1996, Clerk File 96-80061921
- Fort Bend Recorded January 28, 1999, Clerk File 199900703
- Harris Recorded August 6, 1997, Clerk File No. 5579911
- Rockwall Recorded August 19, 1997, Clerk File No. 176219
- Tarrant Recorded September 5, 1996, Clerk File D196175179
- Travis Recorded September 6, 1996, Volume 12766, Page 1157.
- Williamson Recorded September 9, 1996, Clerk File 9648096

EXHIBIT A, DESCRIPTION OF THE DEEDS OF TRUST - Page I

LOAN NO. \_\_\_\_\_

REVOLVING PROMISSORY NOTE  
(Fourth Amended and Restated)

\$65,000,000.00

As of May 31, 1993

FOR VALUE RECEIVED, the undersigned (sometimes referred to herein as "MAKER"), jointly and severally if more than one, promise to pay to the order of GUARANTY FEDERAL BANK, F.S.B., a federal savings bank organized and existing under the laws of the United States (sometimes referred to herein as "PAYEE"), at its principal offices at 8333 Douglas Avenue, Dallas, Texas 75225, or at such other place as the holder hereof may from time to time designate, the principal sum of SIXTY-FIVE MILLION AND NO/ 100 DOLLARS (\$65,000,000.00), or so much thereof as may be advanced, with interest on the principal balance from time to time remaining unpaid prior to default or maturity at the rate hereinafter provided, interest only being payable on the first day of each month commencing June, 1993, and continuing until and including July 31, 2000, when, unless extended pursuant to the terms of Loan Agreement (hereafter defined), the unpaid principal balance of this Note, together with all accrued and unpaid interest, shall be due and payable. The principal of this Note shall otherwise be payable in accordance with the Loan Agreement. All payments due under this Note shall be delivered to the holder hereof not later than twelve o'clock, noon, Dallas, Texas time, on the date such payment becomes due and payable (or the date any voluntary prepayment of this Note is made), in immediately available funds. Any payment received by the holder hereof after such time will be deemed to have been made on the next following business day.

As herein provided, the unpaid Principal Amount (hereafter defined) of this Note (or portions thereof) from time to time outstanding shall bear interest prior to maturity at a varying rate per annum equal to, at Maker's option, (i) the Commercial Base Rate (hereafter defined), or (ii) the applicable LIBOR Base Rate (hereafter defined) (as elected in the manner specified in this Note),

provided that in- no event shall the Applicable Rate (hereafter defined) exceed the Maximum Rate (hereafter defined). Notwithstanding the foregoing, if at any time the Applicable Rate exceeds the Maximum Rate, the rate of interest payable under this Note shall be limited to the Maximum Rate, but any subsequent reductions in the Commercial Base Rate or the LIBOR Base Rate, as the case may be, shall not reduce the Applicable Rate below the Maximum Rate until the total amount of interest accrued on this Note equals the total amount of interest which would have accrued at the Applicable Rate if the Applicable Rate had at all times been in effect. Interest on this Note shall be calculated at a daily rate equal to 1/360 of the annual percentage rate stated above, subject to the provisions hereof specifying the maximum amount of interest which may be charged or collected hereunder.

As used in this Note, the following terms shall have the meanings indicated opposite them:

"ADDITIONAL COSTS" -- Any costs, losses or expenses incurred by Payee which it determines are attributable to its making or maintaining the Loan (hereafter defined), or its obligation to make any Loan advances, or any reduction in any amount receivable by Payee under the Loan or this Note.

"APPLICABLE RATE" -- The Commercial Base Rate (as to that portion of Principal Amount bearing interest at the Commercial Base Rate); provided, however from and after May 15, 1998, the Applicable Rate shall be either the Commercial Base Rate (as to that portion of the Principal Amount bearing interest at the Commercial Base Rate) or the LIBOR Base Rate (as to each Euro-Dollar Amount) as elected in the manner specified in this Note.

"ASSESSMENTS" -- Any impositions and assessments imposed on Payee with respect to any Euro-Dollar Amount for insurance or other fees, assessments and surcharges.

-1-

"COMMERCIAL BASE RATE" -- One percent (1 %) per annum in excess of the base rate announced or published from time to time by Guaranty Federal Bank, F.S.B., which rate may not be the lowest rate charged by Guaranty Federal Bank, F.S.B.; it being understood and agreed that the Commercial Base Rate shall increase or decrease, as the case may be, from time to time as of the effective date of each change in such rate; provided, however, from and after August 1, 1995, the "Commercial Base Rate" shall be the base rate announced or published from time to time by Guaranty Federal Bank, F.S.B.

"EURO-DOLLAR AMOUNT" -- Each portion of the Principal Amount bearing interest at the applicable LIBOR Base Rate pursuant to a Euro-Dollar Rate Request. There shall be no more than seven (7) portions of the Principal Amount bearing interest at an applicable LIBOR Base Rate outstanding at any time, each such portion shall be in amounts of not less than \$1,000,000.00 each and in no event shall the total portions of the Principal Amount bearing interest at the LIBOR Base Rate exceed seventy percent (70%) of the Principal Amount of the time of any Euro-Dollar Rate Request.

"EURO-DOLLAR BUSINESS DAY" -- Any day on which commercial banks are open for domestic and international business (including dealings in U.S. Dollar deposits) in New York City and Dallas, Texas.

"EURO-DOLLAR RATE REQUEST" -- Maker's telephonic notice (to be promptly confirmed in a written notice which must be received by Payee before such Euro-Dollar Rate Request will be put into effect by Payee), to be received by Payee by twelve o'clock noon (Dallas, Texas time) three (3) Euro-Dollar Business Days prior to the Euro-Dollar Business Day specified in the Euro-Dollar Rate Request for the commencement of the Interest Period, of (a) its intention to have (1) all or any portion of the Principal Amount which is not then the subject of an Interest Period (other than an Interest Period which is terminating on such Euro-Dollar Business Day), and/or (2) all or any portion of any advance of Loan proceeds which is to be made on such Euro-Dollar Business Day, bear interest at the LIBOR Base Rate, and (b) the Interest Period desired by Maker in respect of the amount specified. There shall be no more than three (3) such requests for an election outstanding at any time.

"EURO-DOLLAR RATE REQUEST AMOUNT" -- The amount, to be specified by Maker in each Euro-Dollar Rate Request and stated in increments of \$1,000,000.00, which Maker desires to bear interest at the LIBOR Base Rate; provided, however, in no event shall an such amount be less than \$1,000,000.00 in each instance.

"EURO-DOLLAR REFERENCE SOURCE" -- The display for Euro-Dollar rates provided on The Bloomberg (a data service), viewed by accessing Page One (I) of the global deposits segment of money-market rates (or such other page as may replace Page One [ 1 ] for the purposes of displaying Euro-Dollar rates); or, at the option of Payee the display for Euro-Dollar rates on such other service selected from time to time by Payee and determined by Payee to be comparable to The Bloomberg, which other service may include Reuters Monitor Money Rates Service.

"INTEREST PERIOD" -- The period during which interest at the LIBOR Base Rate, determined as provided in this Note, shall be applicable to the applicable

Euro-Dollar Rate Request Amount; provided, however, that each such period shall be either thirty (30), ninety (90), or one hundred eighty (180) days, which shall be measured from the date specified by Maker in each Euro-Dollar Rate Request for the commencement of the computation of interest at the LIBOR Base Rate, to the numerically corresponding day in the calendar month in which such period terminates (or, if there be no numerical correspondent in such month, or if the date selected by Maker for such commencement is the last Euro-Dollar Business Day of a calendar month, then the last Euro-Dollar Business Day of the calendar month in which such period terminates, or, if the numerically corresponding day is not a Euro-Dollar Business Day, then the next succeeding Euro-Dollar Business Day, unless such next succeeding Euro-Dollar Business Day enters a new calendar month, in which case such period shall end on the next preceding Euro-Dollar Business Day); and in no event shall any such period be elected which extends beyond the Maturity Date.

-2-

"LIBOR BASE RATE" -- With respect to any Euro-Dollar Amount, the rate per annum (expressed as a percentage) determined by Payee to be equal to the sum of (a) the quotient of the LIBOR Rate for the applicable Euro-Dollar Amount and the applicable Interest Period, divided by (1 minus the applicable Reserve Requirement), rounded up to the nearest 1/100 of 1%, PLUS (b) the applicable Assessments, plus (c) two and one-half percent (2.5%); provided, however from and after March \_\_, 1999, the LIBOR Base Rate shall be equal to the sum of (a) the quotient of the LIBOR Rate for the applicable Euro-Dollar Amount and the applicable Interest Period, divided by (1 minus the applicable Reserve Requirement), rounded up to the nearest 1/100 of 1%, PLUS (b) the applicable Assessments, PLUS (c) two and one-quarter percent (2.25%) provided, further however from and after March \_\_, 2000, the LIBOR Base Rate shall be equal to the sum of (a) the quotient of the LIBOR Rate for the applicable Euro-Dollar Amount and the applicable Interest Period, divided by (1 minus the applicable Reserve Requirement), rounded up to the nearest 1/100 of 1%, plus (b) the applicable Assessments, plus (c) two percent (2.0%);

"LIBOR RATE" -- The rate determined by Payee (rounded upward, if necessary, to the nearest 1/16 of 1%) equal to the offered rate (and not the bid rate) for deposits in U.S. Dollars of amounts comparable to the Euro-Dollar Rate Request Amount for the same period of time as the Interest Period selected by Maker in the Euro-Dollar Rate Request, as set forth on the Euro-Dollar Reference Source at approximately 10:00 a.m. (Dallas, Texas time) on the first day of the applicable Interest Period.

"LOAN" -- The \$65,000,000.00 loan evidenced hereby.

"MATURITY DATE" -- July 31, 2000, being the date this Note becomes due and payable in its entirety, unless extended pursuant to the terms of the Loan Agreement.

"MAXIMUM RATE" -- The maximum interest rate permitted under applicable law.

"PRINCIPAL AMOUNT" -- That portion of the Loan evidenced hereby as is from time to time outstanding.

"REGULATION D" -- Regulation D of the Board of Governors of the Federal Reserve System, as from time to time amended or supplemented.

"REGULATION" -- With respect to the charging and collecting of interest at the LIBOR Base Rate, any United States federal, state or foreign laws, treaties, rules or regulations whether now in effect or hereinafter enacted or promulgated (including Regulation D) or any interpretations, directives or requests applying to a class of depository institutions including Payee under any United States federal, state or foreign laws or regulations (whether or not having the force of law) by any court or governmental or monetary authority charged with the interpretation or administration thereof, excluding any change the effect of which is determined by Payee to be reflected in a change in the LIBOR Base Rate.

"RESERVE REQUIREMENT" -- The average maximum rate at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained under Regulation D by member banks of the Federal Reserve System in New York City with deposits exceeding one billion U.S. Dollars against "Eurocurrency Liabilities," as such quoted term is used in Regulation D. Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by such member banks by reason of any regulatory change against (a) any category of liabilities which includes deposits by reference to which the LIBOR Rate is to be determined as provided in this Note, or (b) any category of extensions of credit or other assets which includes loans the interest rate on which is determined on the basis of rates referred to in the definition of "LIBOR Rate" set forth above.

If Maker desires the application of the LIBOR Base Rate, it shall submit a Euro-Dollar Rate Request to Payee. Such Euro-Dollar Rate Request shall specify the Interest Period and the Euro-Dollar Amount and shall be irrevocable, subject to Payee's right to convert the rate of interest payable hereunder with respect to any Euro-Dollar Amount from the LIBOR Base Rate to the Commercial Base Rate

-3-

as hereinafter provided. In the event that Maker fails to submit a Euro-Dollar Rate Request with respect to an existing Euro-Dollar Amount not later than twelve o'clock noon (New York time) three (3) Euro-Dollar Business Days prior to the last day of the relevant Interest Period, then the applicable Euro-Dollar Amount shall bear interest, commencing at the end of such Interest Period, at the Commercial Base Rate.

In no event shall Maker have more than seven (7) Interest Periods involving Euro-Dollar Amounts in effect at any one time, whether or not any portion of the Principal Amount is then bearing interest at the Commercial Base Rate.

Any portion of the Principal Amount to which the LIBOR Base Rate is not (or pursuant to the terms hereof cannot be) applicable shall bear interest at the Commercial Base Rate.

Maker shall pay to Payee, promptly upon demand, such amounts as are necessary to compensate Payee for Additional Costs resulting from any Regulation which (i) subjects Payee to any tax, duty or other charge with respect to the Loan or this Note, or changes the basis of taxation of any amounts payable to Payee under the Loan or this Note (other than taxes imposed on the overall net income of Payee or of its applicable lending office by the jurisdiction in which Payee's principal office or such applicable lending office is located), (ii) imposes, modifies or deems applicable any reserve, special deposit or similar requirements relating to any extensions of credit or other assets of, or any deposits with or other liabilities of, Payee, or (iii) imposes on Payee or on the interbank Euro-Dollar market any other condition affecting the Loan or this Note, or any of such extensions of credit or liabilities. Payee will notify Maker of any event which would entitle Payee to compensation pursuant to this paragraph as promptly as practicable after Payee obtains knowledge thereof and determines to request such compensation.

Without limiting the effect of the immediately preceding paragraph, in the event that, by reason of any Regulation, (i) Payee incurs Additional Costs based on or measured by the amount of (1) a category of deposits or other liabilities of Payee which includes deposits by reference to which the LIBOR Rate is determined as provided in this Note and/or (2) a category of extensions of credit or other assets of Payee which includes loans the interest on which is determined on the basis of rates referred to in the definition of "LIBOR Rate" set forth above, (ii) Payee becomes subject to restrictions on the amount of such a category of liabilities or assets which it may hold, or (iii) it shall be unlawful or impractical for Payee to make or maintain the Loan (or any portion thereof) at the LIBOR Base Rate, then Payee's obligation to make or maintain the Loan (or portions thereof) at the LIBOR Base Rate (and Maker's right to request the same) shall be suspended and Payee shall give notice thereof to Maker and, upon the giving of such notice, interest payable hereunder at the LIBOR Base Rate shall be converted to the Commercial Base Rate, unless Payee may lawfully continue to maintain the Loan (or any portion thereof) then bearing interest at the LIBOR Base Rate to the end of the current Interest Period(s), at which time the interest rate shall convert to the Commercial Base Rate. If subsequently Payee determines that such Regulation has ceased to be in effect, Payee will so advise Maker and Maker may convert the rate of interest payable hereunder with respect to those portions of the Principal Amount bearing interest at the Commercial Base Rate to the LIBOR Base Rate by submitting a Euro-Dollar Rate Request in respect thereof and otherwise complying with the provisions of this Note with respect thereto.

Determinations by Payee of the existence or effect of any Regulation on its costs of making or maintaining the Loan, or portions thereof, at the LIBOR Base Rate, or on amounts receivable by it in respect thereof, and of the additional amounts required to compensate Payee with respect to Additional Costs and/or Assessments, shall be conclusive; provided, however, that such determinations are made without manifest error.

Anything herein to the contrary notwithstanding, if, at the time of or prior to the determination of the LIBOR Base Rate in respect of any Euro-Dollar Rate Request Amount as herein provided, Payee determines (which determination shall be conclusive [provided that such determination is made on a reasonable basis] absent manifest error) that (i) by reason of circumstances affecting the interbank Euro-Dollar market generally, adequate and fair means do not or will not exist for determining the LIBOR Base Rate applicable to an Interest Period, or (ii) the LIBOR Rate, as determined by Payee, will not accurately reflect the

-4-

cost to Payee of making or maintaining the Loan (or any portion thereof) at the LIBOR Base Rate, then Payee shall give Maker prompt notice thereof, and the applicable Euro-Dollar Rate Request Amount shall bear interest, or continue to bear interest, as the case may be, at the Commercial Base Rate. If at any time subsequent to the giving of such notice, Payee determines that because of a change in circumstances the LIBOR Base Rate is again available to Maker hereunder, Payee shall so advise Maker and Maker may convert the rate of interest payable hereunder from the Commercial Base Rate to the LIBOR Base Rate by submitting a Euro-Dollar Rate Request to Payee and otherwise complying with the provisions of this Note with respect thereto.

Maker shall pay to Payee, immediately upon request and notwithstanding

contrary provisions contained in the Deeds of Trust (as hereafter defined) or other Loan Instruments (as hereafter defined), such amounts as shall, in the conclusive judgment of Payee reasonably exercised, compensate Payee for any loss, cost or expense incurred by it as a result of (i) any payment or prepayment, under any circumstances whatsoever, of any portion of the Principal Amount bearing interest at the LIBOR Base Rate on a date other than the last day of an applicable Interest Period, (ii) the conversion, for any reason whatsoever, of the rate of interest payable hereunder from the LIBOR Base Rate to the Commercial Base Rate with respect to any portion of the Principal Amount then bearing interest at the LIBOR Base Rate on a date other than the last day of an applicable Interest Period, (iii) the failure of all or a portion of an advance, which was to have borne interest at the LIBOR Base Rate pursuant to a Euro-Dollar Rate Request, to be made under the Loan Agreement, or (iv) the failure of Maker to borrow in accordance with a Euro-Dollar Rate Request submitted by it to Payee, which amounts shall include, without limitation, lost profits.

Maker shall have the right to prepay, in whole or in part, the Principal Amount of this Note accruing interest at the Commercial Base Rate, without premium or penalty upon the payment of all accrued interest on the amount prepaid (and any interest which has accrued at the Default Rate (hereafter defined) and other sums that may be payable hereunder); provided, however, that any Euro-Dollar Amount may be prepaid only on the last day of the applicable Interest Period.

All payments of principal shall be credited first against principal amounts bearing interest at the Commercial Base Rate and then toward the payment of Euro-Dollar Amounts. Payments of Euro-Dollar Amounts shall be applied in such manner as Maker shall select; provided, however, that Maker shall select Euro-Dollar Amounts to be repaid in a manner designed to minimize any losses incurred by virtue of such payment. If Maker shall fail to select the Euro-Dollar Amounts to which such payments are to be applied, or if an event of default has occurred and is continuing at the time of payment, then Payee shall be entitled to apply the payment to such Euro-Dollar Amounts in the manner it deems appropriate. Maker shall compensate Payee for any losses incurred by virtue of any payment of those portions of the Loan accruing interest at the LIBOR Base Rate prior to the last day of the relevant Interest Period, which compensation shall be determined in accordance with the provisions set forth in this Note, and any payment received pursuant to this paragraph shall be applied first to losses incurred by Payee by reason of such payment.

If a default shall occur under the Deeds of Trust, interest on the Principal Amount shall, at the option of Payee, immediately and without notice to Maker, be converted to the Commercial Base Rate. The foregoing provisions shall not be construed as a waiver by Payee of its right to pursue any other remedies available to it under the Deeds of Trust or any other instrument evidencing or securing the Loan, nor shall it be construed to limit in any way the application of the Default Rate.

Maker hereby agrees that it shall be bound by any agreement extending the time or modifying the above terms of payment, made by Payee and the owner or owners of the Property, whether with or without notice to Maker, and Maker shall continue liable to pay the amount due hereunder, but with interest at a rate no greater than the LIBOR Base Rate or the Commercial Base Rate, as the case may be, according to the terms of any such agreement of extension or modification.

ALL OR ANY PORTION OF THE PRINCIPAL OF THIS NOTE MAY BE BORROWED, PAID, PREPAID, REPAID AND REBORROWED, FROM TIME TO TIME PRIOR TO MATURITY, IN ACCORDANCE WITH THE PROVISIONS OF THIS NOTE AND THE OTHER LOAN INSTRUMENTS (AS HEREFTER DEFINED). THE EXCESS OF BORROWING (ADVANCES AND READVANCES) OVER

-5-

REPAYMENTS SHALL EVIDENCE THE PRINCIPAL BALANCE DUE HEREON FROM TIME TO TIME AND AT ANY TIME. THE AGGREGATE OF ALL ADVANCES MADE UNDER THIS NOTE MAY EXCEED THE FACE AMOUNT OF THIS NOTE, BUT THE OUTSTANDING PRINCIPAL BALANCE OF THIS NOTE AT ANY TIME SHALL NEVER EXCEED THE FACE AMOUNT OF THIS NOTE.

At the option of the holder hereof, the entire principal balance and accrued interest owing hereon shall, subject to applicable laws, at once become due and payable without notice or demand upon the occurrence at any time of any of the following events ("EVENTS OF DEFAULT"):

1. Default in the payment of any installment of principal, interest or any other sum due hereunder or under any document evidencing, governing, securing or guaranteeing the Loan (individually and collectively, the "LOAN INSTRUMENTS") and the continuation of such default or a period of fifteen (.15) days following the due date thereof; or defaults in the performance of any of the covenants or provisions of any of the Loan Instruments other than those covenants or provisions involving the payment of the sums described in the preceding clause in this PARAGRAPH 1.
2. The liquidation, termination, dissolution or (if any of the undersigned is a natural person) the death of any of the undersigned or any guarantor hereof.



3. The bankruptcy or insolvency of, the assignment for the benefit of creditors by, or the appointment of a receiver for any of the property of any party liable for the payment of this Note, whether as maker, endorser, guarantor, surety or otherwise.
4. Default in the payment of any other indebtedness due the holder hereof, or default in the performance of any other obligation to the holder hereof by the undersigned or any other party liable for the payment hereof, whether as endorser, guarantor, surety or otherwise, it being reasonably contemplated by the undersigned that it may incur additional indebtedness owing to the holder hereof, from time to time, subsequent to the date hereof.
5. Notice of default given by any other lender or third party (the "OTHER LENDERS") to the undersigned or the acceleration of any indebtedness owed by the undersigned to the Other Lenders under any instruments evidencing, governing, guaranteeing or securing any other indebtedness or obligation, now or hereafter owed by the undersigned to the Other Lenders.

The failure to exercise the option to accelerate the maturity of this Note upon the happening of any one or more of the events of default hereunder shall not constitute a waiver of the right of the holder hereof to exercise the same or any other option at that time or at any subsequent time with respect to such uncured default or any other event of uncured default hereunder or under any other of the Loan Instruments. The remedies of the holder hereof, as provided in this Note and in any other of the Loan Instruments, shall be cumulative and concurrent and may be pursued separately, successively or together, as often as occasion therefor shall arise, at the sole discretion of the holder hereof. The acceptance by the holder hereof of any payment under this Note which is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of or impair, reduce, release or extinguish any of the rights or remedies of the holder hereof to exercise the foregoing option or any other option granted to the holder hereof or in any other of the Loan Instruments, at that time or at any subsequent time, or nullify any prior exercise of any such option.

The unpaid principal of and, to the extent permitted by applicable law, unpaid interest on this Note from time to time outstanding shall bear interest from and after maturity at the rate (hereafter called the "DEFAULT RATE") of five percent (5%) per annum above the Commercial Base Rate (as such rate may change from time to time as provided above), provided that in no event shall such interest rate be more than the Maximum Rate. Notwithstanding anything to the contrary contained in this Note, at the option of the holder hereof and upon notice to the undersigned at any time after the occurrence of a default, as defined in the Deeds of Trust, from and after such notice and during the continuance of such default, the unpaid principal of this Note from time to time

-6-

outstanding and all past due installments of interest shall, to the extent permitted by applicable law, bear interest at the Default Rate (as such rate may change from time to time with each change in the Commercial Base Rate), provided that in no event shall such interest rate be more than the Maximum Rate.

The undersigned and all other parties now or hereafter liable for the payment hereof, whether as endorser, guarantor, surety or otherwise, severally waive demand, presentment, notice of dishonor, notice of intention to accelerate the indebtedness evidenced hereby, notice of the acceleration of the maturity hereof, diligence in collecting, grace, notice and protest, and consent to all extensions which from time to time may be granted by the holder hereof and to all partial payments hereon, whether before or after maturity.

If this Note is not paid when due, whether at maturity or by acceleration, or if it is collected through a bankruptcy, probate or other court, whether before or after maturity, the undersigned agrees to pay all costs of collection, including but not limited to reasonable attorneys' fees and expenses, incurred by the holder hereof.

This Note is executed pursuant to a Master Loan Agreement, dated as of January 31, 1993, between the undersigned and the payee named herein (the "LOAN AGREEMENT"), which Loan Agreement contains provisions for acceleration of the maturity hereof upon the happening of certain events, and all advances made hereunder shall be made pursuant to the Loan Agreement. This Note is secured by one or more Deeds of Trust (With Security Agreement and Assignment of Rents and Leases) (collectively, the "DEEDS OF TRUST") covering certain property situated in various Counties in Texas. The proceeds of this Note are to be used for business, commercial, investment or other similar purposes and no portion thereof will be used for personal, family or household use.

This Note is given in renewal, replacement and rearrangement, and not in extinguishment of, the indebtedness evidenced by that certain (i) Revolving Promissory Note in the amount of \$17,000,000.00, dated May 31, 1993, as executed by Maker and payable to Payee, (ii) Revolving Promissory Note (Amended and Restated) in the amount of \$40,000,000.00 (as increased), dated as of May 31,

1993, as executed by Maker and payable to Payee, and (iii) Revolving Promissory Note (Second Amended and Restated) in the amount of \$50,000,000.00, dated as of May 31, 1993, as executed by Maker and payable to Payee, and (iv) and Revolving Promissory Note (Third Amended and Restated) in the amount of \$80,000,000.00 (as increased), dated as of May 31, 1993, as executed by Maker and payable to Payee.

All agreements between the undersigned and the holder hereof, whether now existing or hereafter arising and whether written or oral, are hereby limited so that in no contingency, whether by reason of acceleration of the maturity hereof or otherwise, shall the interest contracted for, charged, received, paid or agreed to be paid to the holder hereof exceed the Maximum Rate. If from any circumstance the holder hereof shall ever receive anything of value deemed interest by applicable law in excess of the Maximum Rate, an amount equal to any excessive interest shall be applied to the reduction of the principal hereof and not to the payment of interest, or if such excessive interest exceeds the unpaid balance of principal hereof, such excess shall be refunded to the undersigned. All interest paid or agreed to be paid to the holder hereof shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full period until payment in full of the principal so that the interest hereon for such full period shall not exceed the Maximum Rate. This paragraph shall control all agreements between the undersigned and the holder hereof.

The undersigned acknowledges and agrees that the holder hereof may, from time to time, sell or offer to sell interests in the Loan to one or more participants. The undersigned authorizes the holder hereof to disseminate any information it has pertaining to the Loan, including, without limitation, complete and current credit information on the undersigned, any of its principals and any guarantor of this Note, to any such participant or prospective participant.

-7-

EXCEPT WHERE FEDERAL LAW IS APPLICABLE (INCLUDING, WITHOUT LIMITATION, ANY FEDERAL USURY CEILING OR OTHER FEDERAL LAW WHICH, FROM TIME TO TIME, IS APPLICABLE TO THE INDEBTEDNESS EVIDENCED HEREIN AND WHICH PREEMPTS STATE USURY LAWS), THIS NOTE SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND THE LAWS OF THE UNITED STATES APPLICABLE TO TRANSACTIONS IN SUCH STATE. THE UNDERSIGNED ACKNOWLEDGES THAT THE LIEN OF THE DEEDS OF TRUST CONSTITUTES A FIRST LIEN ON RESIDENTIAL REAL PROPERTY WITHIN THE MEANING OF PART A, TITLE V, OF THE DEPOSITORY INSTITUTIONS DEREGULATION AND MONETARY CONTROL ACT OF 1980, AND THE REGULATIONS PROMULGATED THEREUNDER.

MAKER:

LEGACY/MONTEREY HOMES L.P.,  
an Arizona limited partnership

BY: MTH-TEXAS GP, INC.,  
an Arizona corporation,  
General Partner

By: /s/ Rick Morgan

-----  
Name: Rick Morgan  
Title: Vice President

-8-

CONSTRUCTION LOAN AGREEMENT

THIS AGREEMENT, made this 10th day of February, 2000, by and between, HULEN PARK VENTURE, LLC, a Texas limited liability company (the "BORROWER", whether one or more) and COMPASS BANK, (the "LENDER");

WITNESSETH:

WHEREAS, the Borrower is, or contemporaneously herewith shall become, the owner and holder of the fee simple title to the property described in EXHIBIT "A" attached hereto and made a part hereof by reference (the Property; together with the improvements, buildings and fixtures now or hereafter located on the Property, and other personal property located or to be located thereon, collectively, the "Premises"); and

WHEREAS, the Borrower has applied to the Lender for a construction first mortgage loan of THREE MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,300,000.00) (the "Loan"), to be advanced as hereinafter provided, and to be evidenced by a promissory note executed and delivered of even date herewith by the Borrower (the "Note"), which Note is secured by a first priority Deed of Trust, Assignment of Rents and Leases and Security Agreement on the Premises executed and delivered of even date herewith by the Borrower (the "Deed of Trust"); and

WHEREAS, the Borrower has represented to the Lender that the Premises are to be improved in the manner set forth in certain documents heretofore made available to the Lender by the Borrower, a schedule of which are attached hereto as EXHIBIT "B", which scheduled documents are made a part hereof by reference (the Premises as so improved are hereinafter referred to as the "Project"); and

WHEREAS, the Lender has agreed to provide construction financing for the Project, upon and subject to the terms, covenants, and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, the mutual promises hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

ARTICLE I

THE LOAN AND THE COLLATERAL

SECTION 1.01 THE LOAN AND THE COLLATERAL. The Lender shall make to the Borrower, and the Borrower shall accept from the Lender, the Loan in the maximum principal amount of THREE MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,300,000.00). The Loan shall be evidenced by the Note, shall bear interest and be payable as set forth in the Note, and shall be secured by the Deed of

CONSTRUCTION LOAN AGREEMENT - PAGE 1

Trust and all the other documents and instruments executed or delivered in connection with, or otherwise relating to, the Loan, including, without limitation, the documents and instruments, if any, set forth in subsection (b) below. The proceeds of the Loan shall be disbursed in accordance with the terms and provisions of this Agreement, the disbursement schedule attached hereto as EXHIBIT "C" and made a part hereof by reference (the "Disbursement Schedule"), and the project budget heretofore submitted to and approved by the Lender (the "Project Budget").

(a) The Note shall be endorsed by the following persons or entities (the "Endorsers"):-None

(b) In addition to the Deed of Trust, the Loan shall be secured by the following (the "Additional Security"):-None

(c) The Loan shall be guaranteed, jointly and severally, by the following persons or entities (the "Guarantors"), pursuant to continuing, unlimited guaranty agreements in form and substance satisfactory to Lender (the "Guaranties"), such Guaranties to be secured by the security, if any, listed in EXHIBIT "D", attached hereto (the "Guaranty Security"):

MTH-Texas GP, Inc., an Arizona corporation  
MTH-LP, Inc., an Arizona corporation  
Legacy/Monterey Homes, L.P., an Arizona Limited Partnership  
Meritage Corporation, a Maryland corporation

This Agreement, the Note, the Deed of Trust, the Additional Security, the Guaranties, the Guaranty Security, and all other documents and instruments evidencing, securing, guaranteeing, relating to, or executed or delivered in connection with the Loan are collectively referred to herein as the "Loan

Documents".

SECTION 1.02 COMMITMENT FEE AND OTHER INFORMATION. The amount of the commitment fee, the name of the architect of the Project (if any), the name of the engineer for the Project (if any), the name of the general contractor for the Project, and information regarding the term loan commitment for the Project (if term financing is not being provided by the Lender) are set forth below:

(a) Commitment Fee of Lender: \$8,250 (Such fee shall be considered earned and non-refundable and shall be due and payable upon the acceptance of the Lender's commitment to make the Loan, regardless whether the Loan is funded. An additional fee may be required for a renewal.)

(b) Architect:

(c) Engineer:

(d) General Contractor:

SECTION 1.03 USE OF PROCEEDS. The proceeds of this Loan shall be used solely to (a) acquire the Premises if the Premises are not already owned by the Borrower, (b) equip and develop and/or construct the Project on the Property in accordance with the Plans (as defined below), and (c) pay expenses associated therewith, as set forth in the Disbursement Schedule and the Project Budget. Such proceeds may be commingled with other funds of Borrower only to the extent records are kept sufficient in the opinion of the Lender to trace the proceeds. The proceeds will not be used for any other work or project of the Borrower. Any

CONSTRUCTION LOAN AGREEMENT - PAGE 2

disbursements hereunder which are made directly to the Borrower shall be received by the Borrower as a trust fund to be used by the Borrower as provided herein.

SECTION 1.04 COMMENCEMENT AND CONTINUITY OF WORK. Development or construction of the Project shall be carried on continuously, diligently and with dispatch until completed, and shall be completed by SEPTEMBER 30, 2000 (the "Completion Date") (the period between the Commencement Date and the Completion Date shall be hereinafter referred to as the "Construction Period").

SECTION 1.05 DEVELOPMENT AND/OR CONSTRUCTION OF THE PROJECT. The Project shall comply with all restrictions, conditions, ordinances, codes, regulations, and laws of the governmental entities, departments and agencies having direction or jurisdiction over or an interest in the Project. The Project shall be developed and/or constructed in accordance with the plans and specifications, as approved by Lender and all governmental authorities having jurisdiction in respect thereof (the "Plans"). THIS LOAN IS FOR DEVELOPMENT OF A RESIDENTIAL SUBDIVISION, THE NATURE OF THE PROJECT AND ANY ADDITIONAL AGREEMENTS OR OBLIGATIONS SHALL BE SET FORTH IN EXHIBIT "E", WHICH IS MADE A PART HEREOF BY REFERENCE. No significant extra work or materials nor change in the Plans shall be ordered or authorized by the Borrower without the written consent of the Lender. The term "significant" in the preceding sentence means extra work or materials or changes in the Plans that exceed \$250,000 in the aggregate, when added to all prior extra work or materials or changes in the Plans.

The Borrower shall comply with every condition, requirement, regulation, or other restrictions that may be imposed upon the buildings and improvements being erected hereunder by the Federal Housing Administration ("FHA"), Veterans' Administration ("VA"), or any lending institution which may have committed itself to make or guarantee a long-term first mortgage loan on the Premises or any portion thereof being improved under this Agreement. If inspections of the Project are made by the FHA, VA, or any other such lender, the Borrower shall furnish the Lender with a copy of each such inspection report.

## ARTICLE II

### REPRESENTATIONS AND WARRANTIES

In order to induce the Lender to enter into this Agreement and to make the Loan for which provision is made herein, the Borrower and the other parties hereto make the following warranties and representations:

SECTION 2.01 FINANCIAL AND OTHER INFORMATION. The documents furnished in support of the Loan request are true and correct and accurately set out the facts contained therein. The financial statements provided in support of the Loan request were prepared in accordance with good accounting practice and are correct and complete and fairly present the financial position of the person or entity which each purports to reflect, and there has been no material adverse change in the financial positions of such persons or entities since the date of the last financial statements furnished to the Lender.

CONSTRUCTION LOAN AGREEMENT - PAGE 3

SECTION 2.02 LITIGATION. Except as disclosed in writing to the Lender on EXHIBIT "F" hereto, there are no actions, suits or proceedings pending or, to

the knowledge of the Borrower, threatened against or affecting (a) the Project or the Borrower, or (b) any Guarantor, or any Endorser or any properties or rights of any Guarantor or any Endorser and such actions, suits or proceedings materially and adversely affect such Guarantor's or Endorser's financial condition or ability to pay and perform its obligations under the Loan. A matter involving \$50,000 or more shall be deemed material. Borrower is not currently affected by any strike or other labor disturbance, and there are no outstanding and unpaid judgments or arbitration awards against the Borrower, any Guarantor, or any Endorser which would have a materially adverse effect on the financial condition or business or properties of the Borrower, any Guarantor, or any Endorser. Neither the Borrower nor any Guarantor or Endorser is in default with respect to any regulation, order, writ or decree of any court or governmental or municipal department, commission, board, bureau, agency or instrumentality.

SECTION 2.03 ORGANIZATION AND AUTHORITY. If the Borrower or any Guarantor or any Endorser is a corporation, partnership, or other entity, the Borrower and any such Guarantor or Endorser are duly organized, validly existing and in good standing under the laws of the state of their organization and are qualified and in good standing in all jurisdictions where qualification is necessary. The Borrower and any such Guarantor or Endorser have all corporate, partnership, association, trust, or other power and authority, and have obtained all authorizations of directors, stockholders, partners, members, or beneficiaries and other such authorizations as are necessary to enable them to own and operate the Project, to carry on their respective businesses, and to execute, deliver, and perform this Agreement, the Note, the Deed of Trust and the other Loan Documents. The disbursements and method for securing the disbursements herein provided for are within the corporate, partnership, association, trust, or other powers of the Borrower and have been duly authorized by all necessary and proper corporate, partnership, association, trust, or other proceedings of the Borrower. This Agreement, the Note, the Deed of Trust, the Guaranties, and the other Loan Documents have each been duly executed and delivered by the Borrower, the Guarantors, the Endorsers, and the other parties hereto and thereto, and each is in full force and effect and constitutes the legal, valid and binding obligation of the Borrower, the Guarantors, the Endorsers, and the other parties hereto and thereto, enforceable in accordance with their respective terms.

SECTION 2.04 NO VIOLATIONS. Neither the Borrower nor any Guarantor or Endorser is in default in any material respect under any agreement or instrument to which it is a party or by which it is or may be bound. The execution and delivery of this Agreement, the Note, the Deed of Trust, and the other Loan Documents and the consummation of the transactions contemplated hereby and thereby do not conflict with and will not result in the breach of any regulation, order, writ, injunction or decree of any court or governmental or municipal instrumentality to which the Borrower, any Guarantor, or any Endorser is subject, or in the breach of or default under any indenture, contract, agreement or other instrument to which the Borrower, any Guarantor, or any Endorser is a party or by which any one of them is or may be bound.

SECTION 2.05 TITLE TO COLLATERAL. The Borrower has, and at all times shall have, good and indefeasible title in fee simple to the Premises. Except as described on Exhibit "A" hereto, the Premises are subject to no liens, charges or encumbrances.

#### CONSTRUCTION LOAN AGREEMENT - PAGE 4

SECTION 2.06 NO COMMENCEMENT OF WORK. Except for certain grading work which has been disclosed to Lender, prior to the recordation of the Original Deed of Trust as defined in Paragraph 5.13 hereafter and Exhibit "E", no work of any kind incident to the proposed improvements on the Property shall have commenced, no equipment or material shall have been delivered to or stored upon the Property for any purpose whatsoever, and no contract (or memorandum or affidavit thereof) for the supplying of labor or materials for the construction of the proposed improvements nor any affidavit of commencement of construction shall have been executed or recorded in the real property records in the county where the Property is located.

SECTION 2.07 LICENSES AND PERMITS. The Borrower possesses such licenses and permits as are required for the conduct of its business. No approval, consent, or authorization of any governmental authority which has not heretofore been obtained is necessary for the execution or delivery by the Borrower of this Agreement, the Note, or the other Loan Documents or for the performance by the Borrower of any of the terms or conditions hereof or thereof.

SECTION 2.08 PAYMENT OF TAXES. The Borrower and, if Borrower is a partnership, each of Borrower's general partners, have filed or caused to be filed all federal, state and local tax returns, which are required to be filed, and have paid or caused to be paid all taxes as shown on said returns or on any assessment received by them, to the extent that such taxes have become due, except as otherwise permitted by the provisions hereof. The Borrower has no reason to believe that any additional taxes are due for prior calendar tax years that have not been audited by the respective tax authorities beyond the amounts provided in the financial statements heretofore furnished to Lender.

SECTION 2.09 ENVIRONMENTAL MATTERS. Borrower represents, warrants and covenants as follows:

(a) No Hazardous Materials (hereinafter defined) have been, are, or will be while any part of the indebtedness secured by the Deed of Trust remains unpaid, contained in, treated, stored, handled, located on, discharged from, or disposed of on, or constitute a part of, the Project. As used herein, the term "HAZARDOUS MATERIALS" include without limitation, any asbestos, urea formaldehyde foam insulation, flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related or unrelated substances or materials defined, regulated, controlled, limited or prohibited in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. Sections 9601, ET SEQ.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801 ET SEQ.), the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. Sections 6901, ET SEQ.), the Clean Water Act, as amended (33 U.S.C. Sections 1251, ET SEQ.), the Clean Air Act, as amended (42 U.S.C. Sections 7401, ET SEQ.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601 ET SEQ.), the Texas Solid Waste Disposal Act, as amended, the Texas Water Code, as amended, the Texas Clean Air Act, as amended, and in the rules and regulations adopted and publications promulgated pursuant thereto, and in the rules and regulations of the Occupational Safety and Health Administration (OSHA) pertaining to occupational exposure to asbestos, as amended, or in any other federal, state or local environmental law, ordinance, rule, or regulation now or hereafter in effect;

CONSTRUCTION LOAN AGREEMENT - PAGE 5

(b) No underground storage tanks, whether in use or not in use, are located in, on or under any part of the Property;

(c) All of the Project complies and will comply in all respects with applicable environmental laws, rules, regulations, and court or administrative orders;

(d) There are no pending claims or threats of claims by private or governmental or administrative authorities relating to environmental impairment, conditions, or regulatory requirements with respect to the Property; and

(e) The Borrower shall give immediate oral and written notice to the Lender of its receipt of any notice of a violation of any law, rule or regulation covered by this Section, or of any notice of other claim relating to the environmental condition of the Project, or of its discovery of any matter which would make the representations, warranties and/or covenants herein to be inaccurate or misleading in any respect.

The Borrower hereby agrees to indemnify and hold the Lender harmless from all loss, cost, damage, claim and expense incurred by the Lender on account of (i) the violation of any representation, warranty or covenant set forth in this Section, (ii) Borrower's failure to perform any obligations of this Section, (iii) Borrower's or the Project's failure to fully comply with all environmental laws, rules and regulations, or with all occupational health and safety laws, rules and regulations, or (iv) any other matter related to environmental conditions on, under or affecting the Project, specifically including, without limitation, any loss, cost, damage, claim and expense which is attributable in whole or in part to the alleged negligence of Lender, its agents or employees. This indemnification shall survive the closing of the Loan, payment of the Loan, the exercise of any right or remedy under any Loan Document, any subsequent sale or transfer of the Project, and all similar or related events or occurrences.

### ARTICLE III

#### CONDITIONS TO DISBURSEMENTS

SECTION 3.01 CONDITIONS PRECEDENT TO INITIAL DISBURSEMENT. Lender shall not be obligated to, but at Lender's sole option may, make the initial disbursement hereunder (the "Initial Disbursement") until each of the following conditions has been fully satisfied:

(a) Lender shall have received and approved a copy of a survey prepared by an approved surveyor, showing the total square footage of the Property, dimensions, means of ingress and egress, location of all existing and proposed improvements, boundaries, encroachments, setback lines, rights of way and easements, whether the Property is situated within a designated flood hazard area and, if requested by Lender, a surveyor's certificate in substantially the form of EXHIBIT "G" hereto;

(b) Lender shall have received UCC-11 reports and an acceptable title policy binder from a title insurance company qualified to do business in the state in which the Property is situated, in the amount of the Loan and covering the Project, with any exceptions contained in such policies or reports to be subject to approval of Lender and its counsel;

(c) Lender shall have received the properly executed Note, together with the other Loan Documents and such other documents as Lender may require;

(d) If the Property or any part thereof is located in a designated flood zone, a flood insurance policy shall have been obtained on the Project, naming Lender in the mortgagee clause;

(e) Borrower shall be in compliance with all of the terms and provisions set forth herein and no Event of Default specified herein, nor any event or condition which upon notice or lapse of time, or both, would constitute such an Event of Default, shall have occurred and be continuing;

(f) A copy of the Plans shall have been furnished to and approved by Lender;

(g) Lender shall have received satisfactory evidence that a proper building permit and/or any required development permits have been obtained;

(h) Lender shall have received and approved evidence satisfactory to Lender that Borrower has obtained liability, workmen's compensation, hazard and builder's risk insurance with respect to the Project (as applicable), issued by such companies and in such amounts as are satisfactory to Lender, covering all development, construction, and improvements, with mortgagee or loss payable clause(s) in New York standard form in favor of Lender;

(i) Lender shall have received a certificate of compliance with applicable restrictive or protective covenants, and certifications by appropriate governmental agencies, in forms acceptable to Lender, that the planned development and/or construction and the use of the Property conform with all federal, state and municipal laws, restrictions and requirements including, without limitation, applicable zoning regulations;

(j) Lender shall have received and approved copies of the duly executed development and/or construction contract(s) covering all improvements and costs to be incurred in the Project, the duly executed contract for architectural services relating to the erection of the Project, the duly executed engineering contract for the Project (all as applicable), contractors' lien subordinations from those contractors and subs required by Lender and an assignment to Lender of the construction contract, the architectural contract, and/or the engineering contract, together with the general contractor's, the Project architect's and/or the Project engineer's consents to such assignments;

(k) A copy of the engineering and soil report shall have been received and approved by Lender;

(l) Lender shall have received and approved certificates of the engineer, contractor and/or architect for the Project, or other evidence satisfactory to Lender, that there are no Hazardous Materials on the Project or on or in any improvements existing or to be constructed thereon and that the Project, the Plans and the proposed and existing improvements comply with all laws, governmental standards and regulations applicable to Borrower and the Project relating to occupational health and safety, hazardous waste and substances and environmental matters;

(m) Lender, and if applicable, Lender's construction consultant, shall have received and approved the Project Budget;

(n) Lender shall have received and approved a current appraisal of the Project, addressed to the Lender and prepared by an appraiser approved by the Lender, reflecting an appraised value satisfactory to Lender and otherwise in form and substance satisfactory to Lender;

(o) Lender shall have received and approved all payment and performance bonds required by the City of Fort Worth related to the Facilities Agreements executed by the City and the Borrower. The Lender shall not be expected to issue any such bonds;

(p) Lender shall have received such further documents and opinions as Lender reasonably may request.

SECTION 3.02 CONDITIONS TO DISBURSEMENTS AFTER INITIAL DISBURSEMENT. Disbursements under the Note after the Initial Disbursement shall be made monthly and at such other times as Borrower and Lender shall agree; provided, however, that in no event shall Lender be obligated to make disbursements after the Initial Disbursement, prior to the full satisfaction of all of the following conditions:

(a) Lender shall have been furnished draw request in for acceptable to Lender, properly completed and executed by the general contractor and the Project architect or engineer, as applicable, certifying as to the percentage of completion of each item of development and/or construction, and that the advance requested is for work actually done and materials actually incorporated into the Project and, to the extent approved by Lender, materials actually located and stored on the Property, during the period preceding the date of the disbursement and the value thereof;

(b) Lender shall have been furnished evidence satisfactory to it that the Project architect or engineer, as applicable, has inspected the Project and approved development and/or construction to the date of the disbursement;

(c) Lender shall have received a mechanic's and materialman's lien waiver from the general contractor and any other subcontractors engaged in work upon the Property, waiving their lien rights through the date of the last previous disbursement (provided however, that with respect to any subcontractor, the lien release shall not be required until the final payment to such subcontractor);

(d) Upon request of Lender, Borrower shall exhibit or cause to be exhibited to Lender satisfactory evidence, by receipts, certificates or vouchers, that there are no outstanding overdue claims or demands for labor and materials used in the Project or improvements on the Property, and if any notice of lien be filed against any of the collateral securing the Loan, under any mechanic's or other lien law, Lender may suspend further disbursements under this Agreement until such lien shall have been discharged of record, or Lender may satisfy such lien by disbursement hereunder if such lien is not discharged of record within thirty (30) days after Lender requests Borrower to have such lien discharged of record;

(e) All work which is usually done at the stage of development and/or construction when the disbursement is requested must, in the judgment of the Project architect or engineer, as applicable, or in the judgment of an approved representative of Lender (at Lender's election), be done in a good and workmanlike manner, and all materials and fixtures usually furnished and installed at such time shall be furnished and installed;

(f) Borrower shall furnish Lender with a certification by Borrower showing full payment of all labor, materials and supplies furnished or delivered to the Project for which a request for a disbursement has been made, or used thereon, as of the date of the last previous disbursement;

(g) Borrower shall furnish Lender with an endorsement to the title insurance policy binder showing title free and clear of materialmen's or mechanics' liens or any other encumbrances as of a date not more than five (5) days prior to the date of the disbursement request;

(h) All other conditions described in Section 3.01 hereof shall have been and shall continue to be fully satisfied, and all other items or documents described in Section 3.01 hereof shall have been obtained and approved by Lender and shall be in full force and effect and unmodified, and no event shall have occurred or failed to occur which, upon notice or lapse of time or both, would result in the termination of any of such items or documents;

#### CONSTRUCTION LOAN AGREEMENT - PAGE 8

(i) No event shall have occurred or failed to occur which would be a default or Event of Default under this Agreement, the Note, or any of the other Loan Documents or which upon notice or lapse of time or both would constitute such a default or Event of Default; and

(j) Lender shall have received and approved such further documents and information as Lender may reasonably require, including, without limitation, if applicable, an FHA/VA compliance inspection report.

SECTION 3.03 ADDITIONAL CONDITIONS FOR FINAL DISBURSEMENT. In addition to the conditions contained in Sections 3.01 and 3.02 hereof, prior to and as a condition precedent to Lender's obligation to make the final disbursement hereunder:

(a) Borrower shall have exhibited or cause to be exhibited to Lender the final certificate of approval of the various governmental authorities having jurisdiction over the Project, including, without limitation, as applicable, a certificate of occupancy, a final record map recorded in the real estate records of the county where the Project is located, any necessary development and/or construction certificates, and certificates of the full payment and discharge of all costs, expenses, contract payments and charges relating to development and/or construction;

(b) Borrower shall have submitted the architect's and/or engineer's final certificate of substantial completion and other appropriate development and/or construction certificates relating to the completion of the Project;

(c) Lender shall have received and approved a final survey of the Project as completed, prepared by a surveyor acceptable to Lender;

(d) Lender shall have inspected and approved the Project, if they shall elect to do so;

(e) Lender shall have received a final mechanic's and materialman's lien waiver and release from the general contractor and any other contractors engaged in work upon the Property; and



(f) In addition, the final disbursement hereunder shall, at Lender's option, be withheld until thirty (30) days after (i) the "completion" (as such term is defined in Section 53.106 of the Texas Property Code) of the Project and (ii) an affidavit of completion has been filed with the County Clerk of the county in which the Property is located in compliance with Section 53.106 of the Texas Property Code.

SECTION 3.04 ADDITIONAL REQUIREMENTS REGARDING DISBURSEMENTS. Lender may require three (3) business days' notice in writing from Borrower prior to a disbursement hereunder. The person or persons authorized to execute or otherwise make disbursement requests shall be specified in a resolution of the board of directors of Borrower or a similar authorization document, if Borrower is a corporation or other entity, or shall be the individuals signing this Agreement as "Borrower". Lender shall not be obligated to disburse more than ninety percent (90%) of each requisition for direct construction costs until each of the conditions for final disbursement in Section 3.03 hereof have been and remain fully satisfied.

SECTION 3.05 CERTAIN DISBURSEMENTS. Prior to the satisfaction of the conditions set forth in Sections 3.01, 3.02, 3.03 and 3.04 hereof, Lender may at its sole option, but shall have no obligation to, disburse such sums as Lender may elect, including without limitation amounts owed for expenses to Lender by

#### CONSTRUCTION LOAN AGREEMENT - PAGE 9

Borrower under Section 4.05 hereof, and all such disbursements or payments shall be deemed to have been made pursuant to this Agreement and not in modification hereof.

SECTION 3.06 JOINT LIABILITY. The Borrower specifically authorizes and directs the Lender to make disbursements on this Loan upon the request of the person or persons designated in Section 3.04 hereof. Each Borrower whose name is signed to this Agreement shall be liable for all such disbursements made upon request of the above-described person or persons notwithstanding the failure of each of the Borrowers to execute any request for disbursement, it being the intention of each Borrower to appoint each of the above-described persons as the agent and attorney-in-fact of the Borrower to make such requests for disbursements. The Borrower does specifically ratify and confirm to the Lender the Borrower's liability for disbursements made pursuant to this Section.

SECTION 3.07 LOAN PROCEEDS. The Lender shall not be required to segregate the Loan proceeds or to ear-mark such proceeds in any manner. The sole obligation of the Lender shall be to disburse the proceeds as set forth herein, provided Borrower satisfies the conditions precedent to the disbursement and provided no event has occurred or failed to occur which would constitute a default or Event of Default (as defined herein and therein) under this Agreement, the Note, the Deed of Trust, or any of the other Loan Documents, or which upon notice or lapse of time, or both, would constitute such a default or Event of Default.

### ARTICLE IV

#### AFFIRMATIVE COVENANTS

SECTION 4.01 DEFICIENCY IN AMOUNT OF UNDISBURSED LOAN PROCEEDS. If and whenever the Lender shall determine and notify the Borrower that the amount of monies remaining undisbursed is less than the amount required fully to complete and pay for the improvements contemplated under this Loan, and the Lender shall demand that the Borrower deposit with the Lender an amount equal to such deficiency as determined by the Lender, then and in that event the Borrower shall comply with such demand within ten (10) days from the date thereof. The judgment and determination of the Lender under this Section shall be final and conclusive. A budgetary savings in one category of the Project Budget will allow an increase in another budgeted category. In determining the amount of monies required to fully complete the improvements contemplated by the Loan, it is acknowledged that the Borrower will conduct certain off-site work that will be funded by the Borrower directly. The Borrower shall keep the Lender informed of the status of the off-site work, as well as the completion schedule, the budget and payment schedule for the off-site work and provide from time to time such information as the Lender shall reasonably require.

SECTION 4.02 INTEREST RESERVE. If, due to high interest rates or other various factors, any interest reserve of the Project Budget appears to Lender to be inadequate, Borrower shall fund the equity necessary to cure the inadequacy. The interest reserve sufficiency is to be determined by projecting the interest rate at the then current rate applied to the anticipated Loan balance for the remaining term.

SECTION 4.03 INSURANCE COVERAGE AND APPLICATION OF PROCEEDS. The interest of the Lender shall, at all times, be protected by adequate fire and multiple perils insurance covering all development and/or construction work, buildings,

and off-site and on-site materials related to the Project through a company or companies acceptable to the Lender and in an amount equal to the full insurable value of such work, buildings and improvements, fixtures, personal property, and materials. Such fire and multiple perils insurance policies shall contain mortgagee or loss payable clause(s) in New York standard form in favor of Lender. The proceeds from any loss covered by insurance shall be, at the option of the Lender, applied to the replacement of the loss or toward the repayment of the Loan. The Borrower also shall provide workmen's compensation and general liability insurance with respect to the Premises through companies acceptable to Lender and in such amounts as are satisfactory to Lender. Lender shall be named as an additional insured on all liability insurance policies and as a certificate holder on all workmen's compensation insurance policies. The originals of all insurance policies required by this Section shall be in the possession of the Lender no later than the commencement of development work or construction, and Lender shall have no obligation to disburse any funds for development work or construction costs until Lender shall have received such policies and satisfactory evidence of the payment of the premiums thereon.

SECTION 4.04 PAYMENT OF TAXES AND DEBTS. The Borrower agrees to promptly pay and discharge any taxes, assessments or indebtedness upon the Project which may become due or payable during the existence of this Loan.

SECTION 4.05 PAYMENT OF EXPENSES OF LENDER. The Borrower agrees to pay any and all taxes, insurance premiums, recording fees, abstract or title policy costs, attorneys' fees and all other expenses and costs of every kind which may reasonably be incurred by the Lender in the making, processing, collecting, protecting and servicing of this Loan and in maintaining unimpaired its security and lien, or otherwise connected with or growing out of this transaction. Lender may reimburse itself out of any disbursement hereunder, and such reimbursement shall be deemed to be a disbursement under this Agreement covered by the Note and secured by the Loan Documents.

SECTION 4.06 REMOVAL OF MECHANICS' AND MATERIALMEN'S LIENS. The Borrower specifically agrees to have any mechanics' and materialmen's liens which may be filed against the Premises released or bonded (in compliance with the requirements of Section 53.171 et seq. of the Texas Property Code) within ten (10) days of the date of filing of the same, time being of the essence.

SECTION 4.07 PROGRESS REPORTS. The Borrower shall deliver to the Lender a report of the progress of the contemplated improvements to the Premises, the cost of said improvements compared to estimates, and/or contracts, the promotion and merchandising efforts for the sale of the Project, current sales reports, and such other data and information concerning the Project as may be required by the Lender. Such reports shall be required on a monthly basis unless circumstances dictate more frequent reports in the judgment of the Lender.

SECTION 4.08 REVISED SURVEY. The Borrower agrees to locate and develop and/or construct the improvements on the Property so as to comply with and violate no building and use restrictions on, against or applicable to the Property and agrees to furnish the Lender, upon request, a survey locating roadways and other improvements, in the form and made by a competent surveyor meeting the approval of the Lender, showing full compliance with the recorded plat. Lender shall have no obligation to make further disbursements hereunder until such "as built" survey is provided to and approved by Lender.

CONSTRUCTION LOAN AGREEMENT - PAGE 11

SECTION 4.09 INSPECTIONS. (a) Lender shall have the right, and Borrower shall allow Lender, at all times to inspect the Project and all collateral securing the Loan. The Borrower also shall permit Lender and any of its authorized representatives, and shall cause such persons and entities to be permitted: (i) to visit, examine, inspect and make extracts from books and records of the Borrower and will discuss with Lender or its representatives the affairs, finances and accounts of the Borrower; and (ii) to inspect all collateral securing the Loan, all at such reasonable times and as often as may be reasonably requested;

(b) Lender's construction or development consultants, if any shall be employed, shall have the right at all times to inspect the Project and the status of construction and/or development and to review all architectural, engineering, and construction drawings and other documents. The consultants shall make such reports as required by Lender, including without limitation, reports concerning the status of construction and/or development, compliance of the construction and/or development with the Plans, determinations with respect to status of compliance with construction and/or development schedules and cost estimates, and compliance with all provisions of this Agreement. All costs and expenses incurred by Lender in connection with the employment of a consultant shall be reimbursed by Borrower;

(c) Any such inspections and reports made pursuant to this Section shall be solely for the benefit of Lender, and neither Borrower nor any Guarantor, any Endorser, or any third party shall be entitled to claim any loss or damage as the result either of such inspections or the failure to make the same.

SECTION 4.10 SIGN. The Lender shall have the right to erect a sign on the

Project stating that financing for the Project is being provided by the Lender.

SECTION 4.11 FINANCIAL STATEMENTS. Upon request by Lender, Borrower shall furnish or cause to be furnished to Lender such financial statements on and other information concerning the Borrower, any Guarantor, any Endorser, and the Project in a form suitable to, and containing such information as, Lender may require.

SECTION 4.12 ACCESS TO BORROWER'S BOOKS AND RECORDS. The Lender, or its agents, shall have unrestricted access to the records, accounting books, contracts, subcontracts, bills and statements of the Borrower, including any supporting or related vouchers or other instruments, and shall have the right to make copies of the same. If the Lender so requires, the records, books, vouchers, or other instruments shall be delivered to an accountant of the Lender's choice for audit, examination, inspection, and photocopying or other type of duplication.

SECTION 4.13 CONDEMNATION. The Borrower, for the Borrower and the Borrower's heirs, executors, administrators, successors and assigns, does hereby assign unto the Lender, its successors and assigns, any and all award and awards hereto made and hereafter to be made by any federal, state or municipal authorities to the present and all subsequent owners of the Premises, including any award or awards for any change or changes of grade of streets affecting the Premises, which award or awards are hereby assigned to the Lender, and the

CONSTRUCTION LOAN AGREEMENT - PAGE 12

Lender, for itself, its successors and assigns (at its or their option) is hereby authorized, directed and empowered to collect and receive the proceeds of any such award or awards from the authorities making the same and to give proper receipts and acquittances therefor, and to apply the same toward the payment of the amount owing on account of the Note and Deed of Trust, notwithstanding the fact that the amount owing on account of the Note and Deed of Trust may not then be due and payable. The Borrower, for the Borrower and the Borrower's heirs, executors, administrators, successors and assigns, hereby covenants and agrees to and with the Lender, its successors and assigns, upon request, to make, execute and deliver any and all assignments and other instruments sufficient for the purpose of assigning such award or awards to the holder of the Note and Deed of Trust, free, clear and discharged of any and all encumbrances of any kind or nature whatsoever.

SECTION 4.14 NOTICE OF DEFAULTS UNDER THIS AGREEMENT AND OTHER CREDIT ARRANGEMENTS. Borrower shall give prompt notice to Lender of any defaults by Borrower hereunder or under any other Loan Document, and of any notice of default received by Borrower under any other credit arrangement of Borrower.

SECTION 4.15 FURTHER ASSURANCES. Borrower shall do, make, execute, record and deliver, or will cause to be done, made, executed, recorded, and delivered, all such additional and further acts, things, deeds, assurances and instruments as Lender may require to effect, confirm, assure to, or more completely to vest in Lender the rights, remedies, liens and conveyances intended to be granted or conveyed to Lender under this Agreement, the Note, the other Loan Documents, or in the collateral securing the Loan, including without limitation, estoppel certificates stating that the Loan is in full force and effect and that there are no defenses or offsets thereto.

#### ARTICLE V

##### DEFAULTS AND REMEDIES UPON DEFAULT

SECTION 5.01 EVENTS OF DEFAULT. The happening of any one or more of the following events shall constitute an event of default ("Event of Default") under this Agreement, the Note, the Deed of Trust and the other Loan Documents:

(a) If the Borrower fails to make any payment of the principal of, or interest on, or any other charge under, the Note, as and when the same becomes due and payable and the continuance of such failure for a period of five(5) days after such date;

(b) If the Borrower or any other person or entity violates or fails to observe or perform any covenant, term, or condition contained in this Agreement, and the continuation of such failure for a period of fifteen (15) days after written notice to the Borrower. Nothing contained in this subsection (b) shall be construed or deemed to require any notice or opportunity to cure for an other Event of Default set forth in this section unless a specific notice and cure periods is expressly provided in the subsection describing such Event of Default. Any default or Event of Default under the Note, the Deed of Trust or any of the other Loan Documents shall be an Event of Default hereunder;

CONSTRUCTION LOAN AGREEMENT - PAGE 13

(c) If any representation or warranty made herein or in any of the other Loan Documents, or if any report, certificate, financial statement or other instrument furnished in connection with this Agreement or the borrowing hereunder shall prove to be false or misleading in any material respect;

(d) If in the judgment of the Lender the proceeds of the Loan or any part thereof are being or shall at any time have been diverted to a purpose other than the payment and discharge of the cost of the materials and labor entering into the Project, and other expenses relating solely to the Project which have been approved by the Lender;

(e) If the construction and/or development work is substantially discontinued without cause, in the sole determination of the Lender, for a period of forty-five (45) days, in the aggregate, or if Borrower fails to prosecute the work on the Project with diligence and dispatch as may be reasonably required by the Lender;

(f) If a voluntary or involuntary petition is filed by or against the Borrower, any Guarantor or any Endorser under any provision of the bankruptcy laws or any other similar state or federal law, or if the Borrower, any Guarantor or any Endorser makes any assignment for the benefit of creditors, or if the Borrower, any Guarantor, or any Endorser becomes insolvent or admits in writing its inability to pay its debts as they become due, or if a receiver or trustee shall be appointed by any court of Borrower, any Guarantor or any Endorser or of the property of Borrower, any Guarantor or any Endorser, or any part thereof;

(g) If a foreclosure action shall be instituted against the Premises, or if a lien shall be filed against the Premises which is not removed of record, bonded or dismissed within fifteen (15) days after such filing;

(h) If an unreasonable delay shall occur in the construction and/or development of the Project, as a direct or indirect result of energy shortages, or municipal, county, state, federal or other governmental law, order, rule or regulation relating to environmental protection, sewage treatment, zoning, or energy conservation, or lack of utilities (which includes, but is not limited to, gas, electricity, water and sewage treatment) or if it reasonably appears to Lender that, upon completion of such improvements, energy (including all utilities) will not be available in sufficient quantities to permit the operation of the Project;

(i) If in Lender's sole judgment, the Project cannot be completed by the Completion Date;

(j) If the Deed of Trust shall not provide Lender with a first lien on the Project, or if any of the property described in the Deed of Trust is encumbered in any way without the prior written consent of Lender;

(k) If the Project improvements are damaged or destroyed by fire or otherwise to an extent such that Lender determines, in its sole judgment, that the Project cannot be completed on or before the Completion Date, or that there are insufficient funds remaining in the construction budget to complete the Project, taking into account any insurance proceeds received because of the damage;

(l) If any claim, allegation or litigation shall be made or filed against Borrower, which claim, allegation or litigation is reasonably determined by Lender to be material to Borrower's financial condition or ability to pay the Loan. Any claim, allegation or litigation shall be made against any Guarantor, or any Endorser or any properties or rights of any Guarantor or any Endorser and such actions, suits or proceedings materially and adversely affect such Guarantor's or Endorser's financial condition or ability to pay and perform its obligations under the Loan and in any event a matter involving \$50,000 or more shall be deemed material;

(m) If the Borrower, any Guarantor or any Endorser shall die or be declared incompetent;

CONSTRUCTION LOAN AGREEMENT - PAGE 14

(n) If Borrower fails to comply with any requirement of any governmental authority having jurisdiction within fifteen (15) days after notice in writing of such requirement shall have been given to Borrower;

(o) If Borrower does not disclose to Lender any and all demands or notices of default to Borrower from subcontractors or persons or parties furnishing labor or materials on the Property within ten (10) business days after receipt of such notice by Borrower;

(p) If Borrower is a limited liability company, if any of the managers shall cease to be such managers, or if any of them shall die, or any action shall be taken or if there shall be any occurrence which could or does have the effect of terminating, dissolving, or winding-up the business of any such manager;

(q) If any action whatsoever shall be taken, or if there shall be any occurrence which could or does have the effect of, terminating, dissolving or winding-up the business of the Borrower;

(r) If there shall occur any default with respect to any indebtedness (other than the Note) of the Borrower, any Guarantor or any Endorser or with respect to the performance of any other obligation incurred in connection with any indebtedness for borrowed money of the Borrower, any Guarantor or any Endorser, if the effect of such default is to accelerate the maturity of such indebtedness or to permit the holder thereof to cause such indebtedness to become due prior to its stated maturity, or if any such indebtedness shall not be paid when due.

SECTION 5.02 LENDER'S REMEDIES. Upon the occurrence of any Event of Default hereunder, then the Lender shall have the absolute right, at its option and election, without notice to Borrower or any other person or entity (other than such notice as may been required for an Event of Default or event of default to occur), to do any one or more or all of the following:

(a) Institute appropriate proceedings to specifically enforce performance hereof;

(b) Withhold further disbursements hereunder;

(c) Accelerate the maturity of the Note and demand payment of the principal sums due thereunder, with interest, charges, advances, whereupon the same shall be due and payable without notice of any kind, including, but not limited to, notice of intention to accelerate or notice of acceleration, all of which notices are waived by Borrower, and costs, and in default of said payment or any part thereof, exercise all other rights and remedies available to Lender under the laws of the State of Texas or any other state and under this Agreement, the Note, the Deed of Trust, and the other Loan Documents, including, without limitation, the right to foreclose and enforce collection of such payment by foreclosure and/or other appropriate action in any court of competent jurisdiction; or

(d) Exercise the right of setoff described in Section 5.03 below.

SECTION 5.03 SETOFF. Lender is hereby given a continuing lien as additional security for the Note and all other liabilities and indebtedness of Borrower to Lender upon any and all moneys, securities, and other property of Borrower, and the proceeds thereof, now or hereafter held or received by or in transit to the Lender from or for Borrower, whether for safekeeping, custody, pledge, transmission, collection, or otherwise, and also upon any and all deposit balances (general or special) and credits of Borrower with, and any and all claims of Borrower against the Lender at any time existing, and upon the occurrence of any Event of Default hereunder, the Lender may apply or set off the same against the indebtedness and liabilities secured by the Deed of Trust and other Loan Documents.

#### CONSTRUCTION LOAN AGREEMENT - PAGE 15

SECTION 5.04 DISBURSEMENTS AFTER DEFAULT. Upon the occurrence of any one or more of the above-listed Events of Default, all obligations on the part of Lender to make loans and disbursements hereunder shall, if Lender so elects, cease and terminate; provided, however, that Lender may, in its sole discretion, make additional disbursements without becoming liable to make any other disbursements, notwithstanding anything to the contrary contained or implied herein or in any other Loan Document.

### ARTICLE VI

#### MISCELLANEOUS PROVISIONS

SECTION 6.01 NO THIRD PARTY BENEFICIARIES. There are no third party beneficiaries to this Agreement or to any of the other Loan Documents. All conditions to Lender's obligations to make disbursements under this Agreement are imposed solely and exclusively for the benefit of Lender. Neither Borrower nor any other person or entity shall have standing to require satisfaction of any such condition or be entitled to assume that Lender will refuse to make disbursements in the absence of strict compliance with any or all such conditions, and neither Borrower nor any other person or entity shall, under any circumstances, be deemed to be a beneficiary of any conditions hereof, any or all of which conditions may be waived freely, in whole or in part by Lender at any time if, in its sole discretion, Lender deems it advisable so to do. Lender makes no representations or warranties and assumes no obligation or responsibility with respect to the quality of the development and/or construction of the improvements or any part of the Project. This Agreement shall not benefit, and may not be relied upon by, any person or entity other than the Borrower and the Lender.

SECTION 6.02 WAIVERS BY BORROWER, GUARANTORS, AND ENDORSERS. This Loan may be extended or renewed in whole or in part or the rate of interest thereon may be changed or fees in consideration of loan extensions may be imposed, and any related right or security therefor may be waived, exchanged, surrendered or otherwise dealt with by the Borrower and the Lender without notice to the co-makers, Endorsers and Guarantors of this Loan, all without affecting the liability of the Borrower and all other obligors under this Agreement, the Note, the Deed of Trust and the other Loan Documents. The release of any party liable

upon or in respect of the Note shall not release any other such party. The Borrower, and each of them, hereby waives presentment, demand, protest, notice of nonpayment and of protest, notice of intent to accelerate, notice of acceleration, and any and all other notices and demands whatsoever, excluding, however, any notice of default required by this Agreement.

SECTION 6.03 DELAY; NO WAIVER. No delay or failure of Lender to exercise any option or right herein given or reserved shall constitute a waiver of such option or right or estop Lender thereafter to exercise the same or any other option or right at any time, and Lender's payment or contracting to pay anything Borrower has herein agreed to pay shall not constitute a waiver of the default of Borrower in failing to make any such payment. A waiver by Lender of any option or right herein given or reserved on any one occasion shall not be deemed a waiver of said option or right on any future occasion. Lender may in its discretion extend the time of payment of the principal evidenced and secured by the Note and other Loan Documents and any extension so granted shall be deemed to be made in pursuance of this Agreement and not in modification thereof.

CONSTRUCTION LOAN AGREEMENT - PAGE 16

SECTION 6.04 SURVIVAL OF COVENANTS AND REPRESENTATIONS AND WARRANTIES. All covenants, agreements, representations and warranties made herein and in documents delivered in support of the Loan request shall be deemed to have been material and relied on by the Lender and shall survive the execution and delivery to the Lender of the Note and the disbursements hereunder.

SECTION 6.05 NUMBER; SUCCESSORS AND ASSIGNS. Plural or singular words used herein to designate the Borrower shall be construed to refer to the person or persons, partnership, corporation or other entity, whether one or more than one, obtaining the Loan from the Lender; and all covenants and agreements herein made by the undersigned Borrower shall bind the heirs, personal representatives, successors and assigns of all those undersigned designated as Borrower; and every option, right and privilege herein reserved or secured to the Lender, shall inure to the benefit of the Lender's successors and assigns.

SECTION 6.06 MODIFICATIONS; WAIVER. Neither this Agreement nor any provision hereof may be changed, modified, amended, waived, discharged, abandoned or terminated except by an instrument in writing signed by the party against whom enforcement of the change, modification, amendment, waiver, discharge, abandonment or termination is sought. In the event that Lender shall waive in writing any provision or requirement hereunder, such waiver shall be effective only for the specific purposes, circumstances and duration stated in said waiver.

SECTION 6.07 ASSIGNMENTS. The Lender may assign this Loan or any parts thereof. The Borrower shall not assign this Agreement or any part of any disbursement to be made hereunder, nor convey, nor encumber the Premises by mortgage or other liens without the prior written consent of the Lender. Any assignment, conveyance or encumbrance without such consent of the Lender shall constitute an immediate default under this Agreement, the Note, the Deed of Trust, and the other Loan Documents.

SECTION 6.08 LENDER'S RIGHT TO APPEAR IN LITIGATION. The Lender shall have the right, but not the obligation, to appear in, or to defend any action or proceeding purporting to affect the rights or duties of the parties hereunder and in connection therewith pay out of the Loan proceeds all necessary expenses, employ counsel and pay reasonable attorneys' fees, all of which the Borrower agrees to repay to the Lender upon demand.

SECTION 6.09 RIGHT TO PARTIAL RELEASES. If applicable, provided there is no default under this Agreement, the Deed of Trust, the Note, or any of the other Loan Documents, the Lender agrees that it will release from the lien and operation of the Deed of Trust any unit, lot, parcel or other portion of Premises in accordance with the Release Schedule attached hereto as EXHIBIT "H". Any payment made for the release of any portion of the Premises hereunder shall apply against the reduction of principal, and, unless otherwise agreed on EXHIBIT "H" hereto, shall not reduce or otherwise affect any scheduled payments to become due under the terms of this Agreement, the Note, the Deed of Trust, and the other Loan Documents.

CONSTRUCTION LOAN AGREEMENT - PAGE 17

SECTION 6.10 NOTICE TO PARTIES. All notices provided for herein shall be by ordinary mail (except that all notices of default shall be by certified mail, return receipt requested) addressed to the Lender at P.O. BOX 650561, DALLAS, DALLAS COUNTY, TEXAS 75265-0561, or such other address as the Lender may designate in writing, and to the Borrower at 4050 WEST PARK BLVD., PLANO, TEXAS 75093. Notice shall be completed by depositing the same in the mail addressed to the party at such address with the proper amount of postage affixed thereto. Actual receipt of notice shall not be required to effect notice hereunder.

SECTION 6.11 HEADINGS; AMENDMENTS. All sections and descriptive headings are inserted for convenience only, and shall not affect any construction or interpretation hereof. This Agreement may not be amended except by written agreement between Borrower and Lender.

SECTION 6.12 INVALID PROVISIONS. Unenforceability for any reason of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement.

SECTION 6.13 SURVIVAL OF COMMITMENT. All requirements of any commitment letter executed by Lender and Borrower relating to the Loan, and Borrower's obligation to perform the same, except to the extent that such requirements and obligations are inconsistent with this Agreement, the Note, or the other Loan Documents, shall survive the execution of this Agreement and shall continue in full force and effect until the Loan is paid in full.

SECTION 6.14 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

SECTION 6.15 GOVERNING LAW. THIS AGREEMENT, THE NOTE, THE DEED OF TRUST, AND THE OTHER LOAN DOCUMENTS ARE EXECUTED AND DELIVERED IN THE STATE OF TEXAS, AND THE LAWS OF THE STATE OF TEXAS SHALL GOVERN IN THE INTERPRETATION, ENFORCEMENT, AND ALL OTHER ASPECTS OF THE OBLIGATIONS AND DUTIES CREATED UNDER THIS LOAN. Borrower acknowledges that the negotiation of the provisions of this Agreement, the Note, the Deed of Trust and the other Loan Documents took place in the State of Texas; that all such documents were executed in Dallas County, Texas, or if executed elsewhere, will become effective only upon Lender's receipt and acceptance thereof in said county and state (provided, however, that Lender shall have no obligation to give, nor shall Borrower be entitled to receive, notice of such receipt and acceptance in order for said Loan Documents to become effective and valid and binding obligations of the Borrower); and that all of such documents were or will be executed and delivered to Lender to induce Lender to make the Loan to Borrower. Borrower hereby submits itself to jurisdiction in the State of Texas for any action or cause of action arising out of or in connection with the Loan Documents, agrees that venue for any such action shall be in Dallas County, Texas and waives any and all rights under the law of any state to object to jurisdiction or venue within Dallas County, Texas. Notwithstanding the foregoing, nothing contained in this Section shall prevent Lender from bringing any action or exercising any right in any other county, state or jurisdiction against Borrower, any security for the Loan, any Collateral or any of Borrower's properties. Initiating such action or proceeding or taking any such action in any other state shall in no event constitute a waiver by Lender of any of the foregoing.

CONSTRUCTION LOAN AGREEMENT - PAGE 18

SECTION 6.16 CONFLICT IN LOAN DOCUMENTS. In the event of conflict in the terms of any provision in this Agreement, the Note, the Deed of Trust or the other Loan Documents, the terms of the provision most favorable to Lender shall apply.

SECTION 6.17 NO PARTNERSHIP OR JOINT VENTURE. Notwithstanding anything to the contrary herein contained or implied, Lender, by this Agreement, or by any action pursuant thereto or hereto, shall not be deemed a partner, joint venturer or participant in the venture with Borrower, and Borrower hereby indemnifies and agrees to defend and hold Lender harmless (including the payment of reasonable attorneys' fees) from any and all damages resulting from such a construction of the parties' relationship. Without limitation, it is the intention of Borrower and Borrower agrees that the foregoing indemnity shall apply with respect to such claims, charges, losses, expenses and costs which in whole or in part are caused by or arise out of the alleged negligence of Lender, its agents or employees. The requirements herein, and the restrictions imposed in this Agreement, are for the sole protection and benefit of Lender.

SECTION 6.18 REMEDIES CUMULATIVE. No right or remedy conferred upon Lender in this Agreement is intended to be exclusive of any other right or remedy contained in the Note, this Agreement, or any other Loan Document, and every such right or remedy shall be cumulative and in addition to every other right or remedy contained herein or therein or now or hereafter available to the Lender at law, in equity, by statute or otherwise.

SECTION 6.19 INDEMNIFICATION. Borrower shall and does hereby indemnify and hold harmless Lender from and against any and all claims, charges, losses, expenses and costs, including without limitation reasonable attorneys' fees, resulting from any claims, actions or proceedings in connection with the execution, delivery and performance of this Agreement, the Note or the other Loan Documents. Without limitation, it is the intention of Borrower and Borrower agrees that the foregoing indemnity shall apply with respect to such claims, charges, losses, expenses and costs which in whole or in part are caused by or arise out of the alleged negligence of Lender, its agents or employees, excluding however any act or omission determined by a court of competent jurisdiction to be gross negligence or willful misconduct. The indemnification provided in this section shall survive the payment in full of the Loan.

SECTION 6.20 THIS AGREEMENT PART OF NOTE AND DEED OF TRUST. The Note and Deed of Trust provided for herein shall specifically incorporate this Agreement by reference and in the event that the Note and Deed of Trust are duly assigned by Lender, this Agreement shall be considered assigned in like manner.

SECTION 6.21 USURY NOT INTENDED; SAVINGS PROVISIONS. Notwithstanding any provision to the contrary contained herein or in any other Loan Document, it is expressly provided that in no case or event shall the aggregate of any amounts accrued or paid pursuant to this Agreement which under applicable laws are or may be deemed to constitute interest ever exceed the maximum non-usurious interest rate permitted by applicable Texas or federal laws, whichever permit the higher rate. In this connection, Borrower and Lender stipulate and agree that it is their common and overriding intent to contract in strict compliance

CONSTRUCTION LOAN AGREEMENT - PAGE 19

with applicable usury laws. In furtherance thereof, none of the terms of this Agreement shall ever be construed to create a contract to pay, as consideration for the use, forbearance or detention of money, interest at a rate in excess of the maximum rate permitted by applicable laws. Borrower shall never be liable for interest in excess of the maximum rate permitted by applicable laws. If, for any reason whatever, such interest paid or received during the full term of the applicable indebtedness produces a rate which exceeds the maximum rate permitted by applicable laws, Lender shall credit against the principal of such indebtedness (or, if such indebtedness shall have been paid in full, shall refund to the payor of such interest) such portion of said interest as shall be necessary to cause the interest paid to produce a rate equal to the maximum rate permitted by applicable laws. All sums paid or agreed to be paid to Lender for the use, forbearance or detention of money shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread in equal parts throughout the full term of the applicable indebtedness, so that the interest rate is uniform throughout the full term of such indebtedness. The provisions of this Section 6.22 shall control all agreements, whether now or hereafter existing and whether written or oral, between Borrower and Lender.

SECTION 6.22 ADDITIONAL PROVISIONS. Attached hereto as EXHIBIT "I" are additional terms and provisions of this Agreement, if any, which are specifically made a part hereof by reference.

SECTION 6.23 STATUTE OF FRAUDS NOTICE. Lender and Borrower hereby take notice of and agree to the following:

PURSUANT TO SUBSECTION 26.02(b) OF THE TEXAS BUSINESS AND COMMERCE CODE, A LOAN AGREEMENT IN WHICH THE AMOUNT INVOLVED THEREIN EXCEEDS \$50,000 IN VALUE IS NOT ENFORCEABLE UNLESS THE AGREEMENT IS IN WRITING AND SIGNED BY THE PARTY TO BE BOUND OR BY THAT PARTY'S AUTHORIZED REPRESENTATIVE. PURSUANT TO SUBSECTION 26.02(c) OF THE TEXAS BUSINESS AND COMMERCE CODE, THE RIGHTS AND OBLIGATIONS OF THE PARTIES TO THE LOAN DOCUMENTS SHALL BE DETERMINED SOLELY FROM THE LOAN DOCUMENTS, AND ANY PRIOR ORAL AGREEMENTS BETWEEN THE PARTIES ARE SUPERSEDED BY AND MERGED INTO THE LOAN DOCUMENTS.

THIS AGREEMENT AND THE OTHER WRITTEN LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

CONSTRUCTION LOAN AGREEMENT - PAGE 20

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first above written.

LENDER:

COMPASS BANK

By: /s/ Steve Eberhardt

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Name: Steve Eberhardt  
Title: Vice President

BORROWER:

HULEN PARK VENTURE, LLC,  
a Texas limited liability company

By: /s/ Rick Morgan

-----  
Name: Rick Morgan  
Title: Vice President

GUARANTORS:

MTH-TEXAS GP, INC.,  
an Arizona corporation

By: /s/ Rick Morgan



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Name: Rick Morgan  
Its: Vice President

MTH-TEXAS LP, INC.,  
an Arizona corporation

By: /s/ Rick Morgan

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Name: Rick Morgan  
Its: Vice President

CONSTRUCTION LOAN AGREEMENT - PAGE 21  
LEGACY/MONTEREY HOMES, L.P.,  
an Arizona limited partnership

By: MTH-TEXAS GP, INC.  
an Arizona Corporation, its sole general partner

By: /s/ Rick Morgan

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Name: Rick Morgan  
Title: Vice President

MERITAGE CORPORATION,  
a Maryland corporation

By: /s/ John R. Landon

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Name: John R. Landon  
Its: Co-CEO

CONSTRUCTION LOAN AGREEMENT - PAGE 22

COMPASS BANK  
HULEN PARK

PROMISSORY NOTE - CONSTRUCTION

\$3,300,000.00

February 10, 2000  
Dallas, Texas

FOR VALUE RECEIVED, the undersigned, HULEN PARK VENTURE, a Texas limited liability company (the "Borrower", whether one or more), jointly and severally if more than one, hereby promises to pay to the order of COMPASS BANK (the "BANK"; Bank and any subsequent holder hereof, as applicable, are referred to herein as the "HOLDER"), without grace at the Bank's office at P. O. Box 650561, Dallas, Dallas County, Texas 75265-0561, or such other place as Holder may direct, in lawful money of the United States of America, the principal amount of THREE MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,300,000.00) or so much thereof as may be advanced hereunder, with interest at the rate and calculated in the manner described herein. Payment of principal and interest shall be in accordance with the following provisions:

1. PAYMENT. Borrower promises to pay interest monthly, on or before the tenth (10th) day of each month, with the first interest payment due and payable on or before the first (1st) day of April, 2000. The unpaid balance of the principal and all accrued and unpaid interest on this Note and all charges hereunder and under the Loan Documents (as defined herein) shall be due and payable on August 9, 2002, which is the maturity date of this Note.

2. INTEREST. Interest from date on the outstanding unpaid principal balance shall be calculated by multiplying the product of the principal amount and the applicable rate set forth herein by the actual number of days elapsed, and dividing by 360; provided, however, that if the Maximum Allowable Rate (as defined below) would be exceeded by virtue of the calculation of interest based upon a 360-day year, to the extent necessary to avoid exceeding the Maximum Allowable Rate, interest shall be computed on the basis of the actual number of days elapsed in the applicable calendar year in which it accrued. The applicable rate shall be equal to -ZERO- PERCENTAGE POINT (0%) in excess of COMPASS BANK Index Rate, which is adjusted by Bank from time to time. Any change in said rate resulting from a change in COMPASS BANK Index Rate shall take effect on the day of such change. "COMPASS BANK Index Rate," as used herein, is a reference rate established by the Bank for use in computing and adjusting interest. COMPASS BANK Index Rate is subject to increase, decrease or change at the Bank's discretion, and is only one of the reference rates or indices that the Bank uses. The Bank may lend to others at rates of interest at, or greater or less than, COMPASS BANK Index Rate or the rate provided herein. Any principal amounts outstanding hereunder after maturity or acceleration of this Note shall bear interest at an applicable rate equal to -ZERO- PERCENTAGE POINT (00.0%) in excess of COMPASS BANK Index Rate from time to time prevailing, calculated in

the manner set forth herein. Notwithstanding the applicable interest rates specified herein, if on any day the use of any such rate would result in an

NOTE - PAGE 1

interest rate on this Note which exceeds the Maximum Allowable Rate for that day, then the applicable interest rate hereunder shall be the Maximum Allowable Rate on such day, but any subsequent reductions in the COMPASS BANK Index Rate shall not reduce the applicable interest rate hereunder below the Maximum Allowable Rate until the total amount of interest accrued on this Note equals the total amount of interest which would have accrued at the applicable rate hereunder if the applicable rate had at all times been in effect and there was no limitation by the Maximum Allowable Rate. "Maximum Allowable Rate" means, on any day, the maximum non-usurious rate of interest permitted for that day by whichever of applicable federal or Texas law permits the higher interest rate, stated as a rate per annum. On each day, if any, that Chapter One ("Chapter One") of Title 79, Texas Revised Civil Statutes, 1925, as amended (the "Texas Credit Code"), establishes the Maximum Allowable Rate, the Maximum Allowable Rate shall be the "indicated rate ceiling" (as defined in Chapter One) for that day. To the extent that the Maximum Allowable Rate under applicable law is subject to fluctuation, without notice to Borrower or any other person or entity, the Maximum Allowable Rate hereunder shall automatically fluctuate upward and downward as, and in the amount by which, the maximum non-usurious rate of interest permitted by applicable law fluctuates.

In no event shall the rate of interest calculated and charged hereunder exceed the Maximum Allowable Rate. All agreements between Borrower and Bank, or any subsequent Holder of this Note, whether now existing or hereafter arising and whether written or oral, are expressly limited so that in no contingency or event whatsoever, whether by reason of acceleration of the maturity of this Note or otherwise, shall the aggregate of all amounts paid or agreed to be paid to the Holder of this Note for the use, forbearance or detention of the funds advanced pursuant to this Note or for the performance or payment of any covenant or obligation contained herein or in any other document evidencing, securing or pertaining to this Note or of any other debt evidenced hereby exceed the Maximum Allowable Rate. If from any circumstances whatsoever, fulfillment of any provision hereof or of any such other document, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by applicable law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity, and if from any circumstance or reason whatsoever, the interest paid or received on this Note during its full term produces a rate which exceeds the Maximum Allowable Rate, Bank or any subsequent Holder of this Note shall refund to the payor or, at Bank's or such Holder's option, credit against the unpaid principal of this Note, if any, such portion of said interest as shall be necessary to cause the interest paid on this Note to produce a rate equal to the Maximum Allowable Rate. All sums paid or agreed to be paid to any Holder of this Note for the use, forbearance or detention of the indebtedness evidenced by this Note shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread in equal parts throughout the full term of this Note so that the interest is uniform throughout the full term of this Note. The terms and provisions of this paragraph shall control and supersede every other provision of all agreements between Borrower and any Holder of this Note.

3. SECURITY. The indebtedness evidenced hereby is secured by, among other things, the Loan Documents defined in the Construction Loan Agreement (the "Loan Agreement") executed by the Borrower in favor of the Bank dated as of the date hereof (collectively the "Loan Documents").

NOTE - PAGE 2

This Note is included in the indebtedness referred to in the Loan Documents and is entitled to the benefits of the Loan Documents, but neither this reference to the Loan Documents nor any provisions thereof shall affect or impair the absolute and unconditional obligation of the Borrower to pay the principal of and interest on this Note when due.

4. PURPOSE. The Borrower represents, warrants and covenants to and with the Bank and any other Holder of this Note that the loan evidenced by this Note and all advances hereunder and under the other Loan Documents are and shall be for business, commercial, investment or other similar purposes and not primarily for personal, family, household or agricultural use, as such terms are used in Chapter One of the Texas Credit Code.

5. DEFAULT. The happening of any one or more of the following events shall constitute an event of default hereunder:

(a) Default in the payment of the principal of or interest on this Note when the same becomes due and payable and the continuance of such failure for a period of five(5) days after such date;

(b) The occurrence of any Event of Default specified in the Loan Agreement or other Loan Documents or in any other instrument executed in connection with or securing this Note, and the failure to cure same within any applicable cure period specifically provided in any Loan Document;

(c) The failure by the Borrower or any other person or entity to observe any covenant or obligation contained in the Loan Agreement or other Loan Documents or in any other instrument executed in connection with or securing this Note and the failure to cure same within any applicable cure period specifically provided in any Loan Document.

Upon the occurrence of an event of default, or at any time thereafter, the Holder may, with or without notice to the Borrower (other than such notice as may be required for an Event of Default or event of default to occur), declare this Note to be forthwith due and payable, whereupon this Note and the indebtedness evidenced hereby shall forthwith be due and payable, both as to principal and interest, without presentment, demand, protest, or other notice of any kind, all of which are hereby expressly waived, anything contained herein or in any of the Loan Documents or in any other instrument executed in connection with or securing this Note to the contrary notwithstanding.

6. WAIVERS. Borrower and any endorser or guarantor of this Note hereby waive demand, presentment for payment, notice of dishonor, protest, notice of intent to accelerate, notice of acceleration, and notice of protest and diligence in collection or bringing suit and agree that the Holder hereof may accept partial payment, or release or exchange security or collateral, without discharging or releasing any unreleased collateral or the obligations evidenced hereby. Borrower and each such endorser and guarantor further waive any and all rights of exemption, both as to personal and real property, under the Constitution or laws of the United States, the State of Texas or any other state. No failure of any Holder of this Note to accelerate the indebtedness evidenced hereby or to exercise any other right hereunder shall be construed as a novation or modification of this Note or a waiver of the Holder's right to thereafter insist upon strict compliance with the terms of this Note without prior notice of such intention being given to the Borrower.

NOTE - PAGE 3

7. ATTORNEYS' FEES. Borrower and each endorser or guarantor of this Note agree to pay reasonable attorneys' fees and costs incurred by the Holder hereof in collecting or attempting to collect this Note, whether by suit or otherwise.

8. PREPAYMENT. Borrower may prepay this Note, in whole or in part, without penalty. Unless being paid in full or waived by Holder, prepayment shall be in multiples of \$5,000.00. Unless otherwise elected by Holder, any prepayment shall be applied first to accrued interest, and then to principal.

9. APPLICABLE LAW; VENUE; PARTIES. THIS NOTE IS BEING DELIVERED TO, AND ACCEPTED BY, BANK IN THE STATE OF TEXAS AND THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND THE UNITED STATES OF AMERICA FROM TIME TO TIME IN EFFECT. The Borrower and the Bank expressly agree, pursuant to Article 15.10(b) of Chapter 15 ("Chapter 15") of the Texas Credit Code, that Chapter 15 shall not apply to this Note or to the loan evidenced by this Note or any advance thereunder and that neither this Note nor any such loan or advance shall be governed by or subject to the provisions of Chapter 15 in any manner whatsoever. As used herein, the terms "Borrower", "Bank" and "Holder" shall be deemed to include their respective successors, legal representatives, heirs and assigns, whether by voluntary action of the parties or by operation of law.

10. STATUTE OF FRAUDS NOTICE. THE LOAN AGREEMENT, THIS NOTE AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

11. MODIFICATION, EXTENSION AND RESTATEMENT. This Promissory Note is a modification, extension and restatement of that certain "Promissory Note - Construction" dated November 18, 1999, in the original principal amount of \$250,000.00, payable to the order of the Lender. Borrower covenants and warrants that there are no defenses, counterclaims or offsets to the Original Note. Borrower waives and releases any and all such claims, known and unknown, present and future, arising out of the transactions with the Lender as of the date hereof.

NOTE - PAGE 4

IN WITNESS WHEREOF, Borrower has executed, sealed and delivered this Note in Dallas, Texas, as of the 10th day of January, 2000.

BORROWER:

HULEN PARK VENTURE, LLC  
a Texas limited liability company

By: /s/ Rick Morgan

-----  
Name: Rick Morgan  
Title: Manager

[ACKNOWLEDGMENT]

STATE OF TEXAS  
COUNTY OF COLLIN

This instrument was acknowledged before me on this the 10th day of February, 2000, by Rick Morgan, Manager of HULEN PARK VENTURE, LLC, a Texas limited liability company, on behalf of said limited liability company.

Ana Patterson  
-----  
Notary Public, State of Texas

[Seal]

NOTE - PAGE 5

February 1, 2000

CHANGE OF CONTROL AGREEMENT

Dear Steve:

The Board of Directors believes that it is in the best interests of Meritage Corporation ("Meritage"), and its shareholders to take appropriate steps to allay any concerns you may have about your future employment opportunities with Meritage and its subsidiaries (Meritage and its subsidiaries are collectively referred to as the "Company"). As a result, the Board has decided to offer to you the benefits described below.

Please bear in mind that these benefits are being offered only to a few, selected employees and we accordingly ask that you refrain from discussing this program with others. Also, please note that the benefits described below will only be effective if you sign the extra copy of this Change of Control Agreement (the "Agreement") which is enclosed and return it to me on or before February 20, 2000.

1. TERM OF AGREEMENT.

This Agreement is effective immediately and will continue in effect as long as you are actively employed by Meritage, unless you and Meritage agree in writing to its termination.

2. SEVERANCE PAYMENT.

If your employment with the Company is terminated without "Cause" (as defined in Section 8) at any time within two years following a "Change of Control" (as defined in Section 6), you will receive the "Severance Payment" described below. You will also receive the Severance Payment if you terminate your employment for "Good Reason" (as defined in Section 7) at any time within two years following a Change of Control.

The Severance Payment equals the sum of (i) two times the higher of (x) your base salary on the date of your termination of employment, or (y) your base salary on the date preceding the Change in Control, and (ii) two times the average of the higher of (x) your incentive compensation for the two years prior to your termination of employment, or (y) your incentive compensation on the date preceding the Change in Control.

The Severance Payment will be paid in one lump sum as soon as administratively feasible following your termination of employment, but in no event more than 90 days following your termination of employment.

You are not entitled to receive the Severance Payment if your employment is terminated for Cause, if you terminate your employment without Good Reason, or if your employment is terminated by reason of your "Disability" (as defined in Section 10(d)) or your death. In addition, you are not entitled to receive the Severance Payment if your employment is terminated by you or the Company for any or no reason before a Change of Control occurs or more than two years after a Change of Control has occurred.

In order to receive the Severance Payment, you must execute any release reasonably requested by the Company.

The Severance Payment will be paid to you without regard to whether you look for or obtain alternative employment following your termination of employment with the Company.

3. BENEFITS CONTINUATION.

If you are entitled to severance under Section 2, you will continue to receive life, disability, accident and group health insurance benefits substantially similar to those which you were receiving immediately prior to your termination of employment for a period of 24 months following your termination of employment. Such benefits shall be provided on substantially the same terms and conditions as they were provided prior to the Change of Control.

The Company does not intend to provide duplicative benefits. As a result, benefits otherwise receivable pursuant to this Section shall be reduced or eliminated if and to the extent that you receive such benefits pursuant to any employment agreement you may have with the Company.

Benefits otherwise receivable pursuant to this Section also shall be reduced or eliminated if and to the extent that you receive comparable benefits from any other source (for example, another employer); provided, however, you shall have no obligation to seek, solicit or accept employment from another employer in order to receive such benefits.

4. INCENTIVE COMPENSATION.

If you are employed by the Company on the day on which a Change of Control

occurs, the incentive compensation to which you will be entitled (pursuant to any performance-based incentive compensation program established by the Company) for the calendar year in which the Change of Control occurs will equal at least the "Minimum Incentive Compensation Amount." The "Minimum Incentive Compensation Amount" will equal the incentive compensation to which you would have been entitled if the year were to end on the day on which the Change of Control occurs, based upon performance up to that date. In measuring financial performance, financial results through the date of the Change of Control will be annualized.

2

#### 5. STOCK OPTION ACCELERATION.

Notwithstanding anything in this Agreement or in any option agreement to the contrary, upon a Change of Control, any stock options granted to you under any of the Company's stock option plans shall become immediately vested and exercisable.

#### 6. CHANGE OF CONTROL DEFINED.

For purposes of this Agreement, the term Change of Control shall mean and include the following transactions or situations:

(a) A sale, transfer, or other disposition by Meritage through a single transaction or a series of transactions of securities of Meritage representing 50% or more of the combined voting power of Meritage's then outstanding securities to any "Unrelated Person" or "Unrelated Persons" acting in concert with one another. For purposes of this Section, the term "Person" shall mean and include any individual, partnership, joint venture, association, trust, corporation, or other entity (including a "group" as referred to in Section 13(d)(3) of the Securities Exchange Act of 1934 (the "Act")). For purposes of this Section, the term "Unrelated Person" shall mean and include any Person other than the Company, or an employee benefit plan of the Company, or any officer, director, or 10% or more shareholder of the Company as of the date of this Agreement.

(b) A sale, transfer, or other disposition through a single transaction or a series of transactions of all or substantially all of the assets of Meritage to an Unrelated Person or Unrelated Persons acting in concert with one another,

(c) Any consolidation or merger of Meritage with or into an Unrelated Person, unless immediately after the consolidation or merger the holders of the common stock of Meritage immediately prior to the consolidation or merger are the Beneficial Owners of securities of the surviving corporation representing at least 50% of the combined voting power of the surviving corporation's then outstanding securities.

#### 7. GOOD REASON DEFINED.

For purposes of this Agreement, the term "Good Reason" shall include the following circumstances: (a) if the Company assigns you duties that are materially inconsistent with, or the material reduction of powers or functions associated with, your position, duties, or responsibilities with the Company, or an adverse change in your titles, authority, or reporting responsibilities, or in conditions of your employment, (b) if your base salary is reduced or the potential incentive compensation (or bonus) to which you may become entitled to at any level of performance by you or the Company is reduced, (c) if the Company fails to cause any successor to expressly assume and agree to be bound by the terms of this Agreement, (d) any purported termination by the Company of your employment for grounds other than for "Cause," (e) if the Company relieves you of your duties other than for "Cause," or (f) if you are required to relocate to an employment location that is more than fifty (50) miles from Scottsdale, AZ.

3

#### 8. CAUSE DEFINED.

For purposes of this Agreement, the term "Cause" will exist in the following circumstances: (i) you are convicted of a felony, (ii) you engage in any fraudulent or other dishonest act to the detriment of the Company, (iii) you fail to report for work on a regular basis, except for periods of authorized absence or bona fide illness, (iv) you misappropriate trade secrets, customer lists, or other proprietary information belonging to the Company for your own benefit or for the benefit of a competitor, (v) you engage in any willful misconduct designed to harm the Company or its stockholders, or (vi) you fail to perform properly your assigned duties.

#### 9. CEILING ON BENEFITS.

The Internal Revenue Code (the "Code") places significant tax burdens on you and the Company if the total payments made to you due to a Change of Control exceed prescribed limits. For example, if your limit is \$749,999 (because your "Base Period Income" (as defined below) is \$250,000) and the "Total Payments" (as defined below) exceed the limit by even \$1.00, you are subject to an excise tax under Section 4999 of the Code of 20% of all amounts paid to you in excess

of \$250,000. If your limit is \$749,999, you will not be subject to an excise tax if you receive exactly \$749,999. If you receive \$750,000, you will be subject to an excise tax of \$100,000 (20% of \$500,000).

In order to avoid this excise tax and the related adverse tax consequences for the Company, by signing this Agreement, you agree that the present value of your Total Payments will not exceed an amount equal to 2.99 times your Base Period Income. This is the maximum amount which you may receive without becoming subject to the excise tax imposed by Section 4999 of the Code or which the Company may pay without loss of deduction under Section 280G of the Code.

"Base Period Income" is an amount equal to your "annualized includible compensation" for the "base period" as defined in Sections 280G(d)(1) and (2) of the Code and the regulations adopted thereunder. Generally, your "annualized includible compensation" is the average of your annual taxable income from the Company for the "base period," which is the five calendar years prior to the year in which the Change of Control occurs. These concepts are complicated and technical and all of the rules set forth in the applicable regulations apply for purposes of this Agreement.

Your "Total Payments" include the sum of the Severance Payment and any other "payments in the nature of compensation" (as defined in Section 280G of the Code and the regulations adopted thereunder).

If Meritage believes that these rules will result in a reduction of the payments to which you are entitled under this Agreement, it will so notify you within 60 days following delivery of the "Notice of Termination" described in Section 10. You and Meritage will then, at Meritage's expense, retain legal counsel, certified public accountants, and/or a firm of recognized executive compensation consultants to provide an opinion or opinions concerning whether your Total Payments exceed the limit discussed above.

4

Meritage will select the legal counsel, certified public accountants and executive compensation consultants. If you do not accept one or more of the parties selected by Meritage you may provide Meritage with the names of legal counsel, certified public accountants and/or executive compensation consultants acceptable to you. If Meritage does not accept the party or parties selected by you, the legal counsel, certified public accountants and/or executive compensation consultants selected by you and Meritage, respectively, will select the legal counsel, certified public accountants and/or executive compensation consultants to provide the opinions required.

At a minimum, the opinions required by this Section must set forth (a) the amount of your Base Period Income, (b) the present value of the Total Payments and (c) the amount and present value of any excess parachute payments.

If the opinions state that there would be an excess parachute payment, your payments under this Agreement will be reduced to the extent necessary to eliminate the excess.

You will be allowed to choose which payment should be reduced or eliminated, but the payment you choose to reduce or eliminate must be a payment determined by such legal counsel, certified public accountants, and/or executive compensation consultants to be includible in Total Payments. You will make your decision in writing and deliver it to Meritage within 30 days of your receipt of such opinions. If you fail to so notify Meritage, it will decide which payments to reduce or eliminate.

If the legal counsel, certified public accountants, and/or executive compensation consultants selected to provide the opinions referred to above so requests in connection with the opinion required by this Section, a firm of recognized executive compensation consultants, selected by you and Meritage pursuant to the procedures set forth above, shall provide an opinion, upon which such legal counsel, certified public accountants, and/or executive compensation consultants may rely, as to the reasonableness of any item of compensation as reasonable compensation for services rendered before or after the Change of Control.

If Meritage believes that your Total Payments will exceed the limitations of this Section, it will nonetheless make payments to you, at the times stated above, in the maximum amount that it believes may be paid without exceeding such limitations. The balance, if any, will then be paid after the opinions called for above have been received.

If the amount paid to you by Meritage is ultimately determined, pursuant to the opinion referred to above or by the Internal Revenue Service, to have exceeded the limitation of this Section, the excess will be treated as a loan to you by Meritage and shall be repayable on the 90th day following demand by Meritage, together with interest at the "applicable federal rate" provided in Section 1274(d) of the Code.

In the event that the provisions of Sections 280G and 4999 of the Code are repealed without succession, this Section shall be of no further force or effect.

## 10. TERMINATION NOTICE AND PROCEDURE.

Any termination by the Company or you of your employment shall be communicated by written Notice of Termination to you if such Notice of Termination is delivered by the Company and to the Company if such Notice of Termination is delivered by you, all in accordance with the following procedures:

(a) The Notice of Termination shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances alleged to provide a basis for termination.

(b) Any Notice of Termination by the Company shall be in writing signed by the Chairman of the Board of Meritage specifying in detail the basis for such termination.

(c) If the Company shall furnish a Notice of Termination for Cause and you in good faith notify the Company that a dispute exists concerning such termination within the 15-day period following your receipt of such notice, you may elect to continue your employment during such dispute. If it is thereafter determined that (i) Cause did exist, your "Termination Date" shall be the earlier of (A) the date on which the dispute is finally determined, either by mutual written agreement of the parties or pursuant to the alternative dispute resolution provisions of Section 17, or (B) the date of your death; or (ii) Cause did not exist, your employment shall continue as if the Company had not delivered its Notice of Termination and there shall be no Termination Date arising out of such notice.

(d) If the Company shall furnish a Notice of Termination by reason of Disability and you in good faith notify the Company that a dispute exists concerning such termination within the 15-day period following your receipt of such notice, you may elect to continue your employment during such dispute. The dispute relating to the existence of a Disability shall be resolved by the opinion of the licensed physician selected by Meritage, provided, however, that if you do not accept the opinion of the licensed physician selected by Meritage, the dispute shall be resolved by the opinion of a licensed physician who shall be selected by you; provided further, however, that if Meritage does not accept the opinion of the licensed physician selected by you, the dispute shall be finally resolved by the opinion of a licensed physician selected by the licensed physicians selected by Meritage and you, respectively. If it is thereafter determined that (i) a Disability did exist, your Termination Date shall be the earlier of (A) the date on which the dispute is resolved, or (B) the date of your death, or (ii) a Disability did not exist, your employment shall continue as if the Company had not delivered its Notice of Termination and there shall be no Termination Date arising out of such notice. For purposes of this Agreement, "Disability" shall be given the meaning ascribed to such term in your Employment Agreement at the time the Disability determination is being made.

(e) If you in good faith furnish a Notice of Termination for Good Reason and the Company notifies you that a dispute exists concerning the termination within the 15-day period following the Company's receipt of such notice, you may elect to continue your employment during such dispute. If it is thereafter determined that (i) Good Reason did exist, your Termination Date shall be the earlier of (A) the date on which the dispute is finally determined, either by mutual written agreement of the parties or pursuant to the alternative

dispute resolution provisions of Section 17, (B) the date of your death, or (C) one day prior to the second anniversary of a Change of Control, and your payments hereunder shall reflect events occurring after you delivered Notice of Termination; or (ii) Good Reason did not exist, your employment shall continue after such determination as if you had not delivered the Notice of Termination asserting Good Reason.

(f) If you do not elect to continue employment pending resolution of a dispute regarding a Notice of Termination, and it is finally determined that the reason for termination set forth in such Notice of Termination did not exist, if such notice was delivered by you, you shall be deemed to have voluntarily terminated your employment other than for Good Reason and if delivered by the Company, the Company will be deemed to have terminated you other than by reason of Disability or Cause.

(g) For purposes of this Agreement, a transfer from Meritage to one of its subsidiaries or a transfer from a subsidiary to Meritage or another subsidiary shall not be treated as a termination of employment.

## 11. SUCCESSORS.

Meritage will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of Meritage or any of its subsidiaries to expressly assume and agree to perform this Agreement in the same manner and to the same extent that Meritage or any subsidiary would be required to perform it if no



such succession had taken place. Failure of Meritage to obtain such assumption and agreement prior to the effectiveness of any such succession shall be a breach of this Agreement and shall entitle you to compensation in the same amount and on the same terms to which you would be entitled hereunder if you terminate your employment for Good Reason following a Change of Control, except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Termination Date. As used in this agreement "Company" shall mean Company, as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law or otherwise.

#### 12. BINDING AGREEMENT.

This Agreement shall inure to the benefit of and be enforceable by you and your personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If you should die while any amount would still be payable to you hereunder had you continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to your devisee, legatee or other designee or, if there is no such designee, to your estate.

#### 13. NOTICE.

For purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States certified or registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth on the first page of this Agreement, provided that all notices to Meritage shall be directed to the attention of the Chairman of the Board of Meritage with a copy to the Secretary of Meritage, or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

#### 14. MISCELLANEOUS.

No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by you and the Chairman of the Board of Meritage. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No agreement or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Delaware without regard to its conflicts of law principles. All references to sections of the Act or the Code shall be deemed also to refer to any successor provisions to such sections. Any payments provided for hereunder shall be paid net of any applicable withholding required under federal, state or local law. The obligations of Meritage that arise prior to the expiration of this Agreement shall survive the expiration of the term of this Agreement.

#### 15. VALIDITY.

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

#### 16. COUNTERPARTS.

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

#### 17. ALTERNATIVE DISPUTE RESOLUTION.

All claims, disputes and other matters in question between the parties arising under this Agreement shall, unless otherwise provided herein (such as in Sections 9 and 10(d)), be resolved in accordance with the arbitration or alternative dispute resolution provisions included in your Employment Agreement.

#### 18. EXPENSES AND INTEREST.

If a good faith dispute shall arise with respect to the enforcement of your rights under this Agreement or if any arbitration or legal proceeding shall be brought in good faith to enforce or interpret any provision contained herein, or to recover damages for breach hereof, and you are the prevailing party, you shall recover from the Company any reasonable attorneys' fees and necessary costs and disbursements incurred as a result of such dispute or legal proceeding, and prejudgment interest on any money judgment obtained by you calculated at the rate of interest announced by Bank of America, Arizona from time to time as its prime rate from the date that payments to you should have been made under this Agreement. It is expressly provided that the Company shall

in no event recover from you any attorneys' fees, costs, disbursements or interest as a result of any dispute or legal proceeding involving the Company and you.

19. PAYMENT OBLIGATIONS ABSOLUTE.

Meritage's obligation to pay you the compensation and to make the arrangements in accordance with the provisions herein shall be absolute and unconditional and shall not be affected by any circumstances; provided, however, that Meritage may apply amounts payable under this Agreement to any debts owed to the Company by you on your Termination Date. All amounts payable by Meritage in accordance with this Agreement shall be paid without notice or demand. If Meritage has paid you more than the amount to which you are entitled under this Agreement, Meritage shall have the right to recover all or any part of such overpayment from you or from whomsoever has received such amount.

20. EFFECT ON EMPLOYMENT AGREEMENT.

This Agreement supplements, and does not replace, your Employment Agreement, as it may be amended or replaced from time to time (the "Employment Agreement"). You will be entitled to receive all amounts due to you pursuant to your Employment Agreement; but some payments under your Employment Agreement may reduce your Severance Payments as provided in Section 2 and benefits due pursuant to your Employment Agreement may reduce the benefits due pursuant to Section 3. In addition, payments under your Employment Agreement may, in some limited circumstances, be considered as part of your Total Payment and result in a reduction in payments as provided in Section 9. If there is any conflict between the provisions of this Agreement and your Employment Agreement, the provisions of this Agreement shall control.

21. ENTIRE AGREEMENT.

This Agreement and your Employment Agreement set forth the entire agreement between you and the Company concerning the subject matter discussed in this Agreement and supersede all prior agreements, promises, covenants, arrangements, communications, representations, or warranties, whether written or oral, by any officer, employee or representative of the Company. Any prior agreements or understandings with respect to the subject matter set forth in this Agreement are hereby terminated and canceled.

22. DEFERRAL OF PAYMENTS.

To the extent that any payment under this Agreement, when combined with all other payments received during the year that are subject to the limitations on deductibility under Section 162(m) of the Code, exceeds the limitations on deductibility under Section 162(m) of the Code, such payment shall, in the discretion of Meritage, be deferred to the next succeeding calendar year. Such deferred amounts shall be paid no later than the 60th day after the end of such next succeeding calendar year, provided that such payment, when combined with any other payments subject to the Section 162(m) limitations received during the year, does not exceed the limitations on deductibility under Section 162(m) of the Code.

23. PARTIES.

This Agreement is an agreement between you and Meritage. In certain cases, though, obligations imposed upon Meritage may be satisfied by a subsidiary of Meritage. Any payment made or action taken by a subsidiary of Meritage shall be considered to be a payment made or action taken by Meritage for purposes of determining whether Meritage has satisfied its obligations under this Agreement.

If you would like to participate in this special benefits program, please sign and return the extra copy of this letter which is enclosed.

Sincerely,

MERITAGE CORPORATION

By: /s/ Larry W. Seay

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Name: Larry W. Seay

Its: Vice President

Enclosure

ACCEPTANCE

I hereby accept the offer to participate in this special benefits program and I agree to be bound by all of the provisions noted above.

Dated: February 3, 2000

/s/ Steven J. Hilton  
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February 1, 2000

CHANGE OF CONTROL AGREEMENT

Dear John:

The Board of Directors believes that it is in the best interests of Meritage Corporation ("Meritage"), and its shareholders to take appropriate steps to allay any concerns you may have about your future employment opportunities with Meritage and its subsidiaries (Meritage and its subsidiaries are collectively referred to as the "Company"). As a result, the Board has decided to offer to you the benefits described below.

Please bear in mind that these benefits are being offered only to a few, selected employees and we accordingly ask that you refrain from discussing this program with others. Also, please note that the benefits described below will only be effective if you sign the extra copy of this Change of Control Agreement (the "Agreement") which is enclosed and return it to me on or before February 20, 2000.

1. TERM OF AGREEMENT.

This Agreement is effective immediately and will continue in effect as long as you are actively employed by Meritage, unless you and Meritage agree in writing to its termination.

2. SEVERANCE PAYMENT.

If your employment with the Company is terminated without "Cause" (as defined in Section 8) at any time within two years following a "Change of Control" (as defined in Section 6), you will receive the "Severance Payment" described below. You will also receive the Severance Payment if you terminate your employment for "Good Reason" (as defined in Section 7) at any time within two years following a Change of Control.

The Severance Payment equals the sum of (i) two times the higher of (x) your base salary on the date of your termination of employment, or (y) your base salary on the date preceding the Change in Control, and (ii) two times the average of the higher of (x) your incentive compensation for the two years prior to your termination of employment, or (y) your incentive compensation on the date preceding the Change in Control.

The Severance Payment will be paid in one lump sum as soon as administratively feasible following your termination of employment, but in no event more than 90 days following your termination of employment.

You are not entitled to receive the Severance Payment if your employment is terminated for Cause, if you terminate your employment without Good Reason, or if your employment is terminated by reason of your "Disability" (as defined in Section 10(d)) or your death. In addition, you are not entitled to receive the Severance Payment if your employment is terminated by you or the Company for any or no reason before a Change of Control occurs or more than two years after a Change of Control has occurred.

In order to receive the Severance Payment, you must execute any release reasonably requested by the Company.

The Severance Payment will be paid to you without regard to whether you look for or obtain alternative employment following your termination of employment with the Company.

3. BENEFITS CONTINUATION.

If you are entitled to severance under Section 2, you will continue to receive life, disability, accident and group health insurance benefits substantially similar to those which you were receiving immediately prior to your termination of employment for a period of 24 months following your termination of employment. Such benefits shall be provided on substantially the same terms and conditions as they were provided prior to the Change of Control.

The Company does not intend to provide duplicative benefits. As a result, benefits otherwise receivable pursuant to this Section shall be reduced or eliminated if and to the extent that you receive such benefits pursuant to any employment agreement you may have with the Company.

Benefits otherwise receivable pursuant to this Section also shall be reduced or eliminated if and to the extent that you receive comparable benefits from any other source (for example, another employer); provided, however, you shall have no obligation to seek, solicit or accept employment from another employer in order to receive such benefits.

4. INCENTIVE COMPENSATION.

If you are employed by the Company on the day on which a Change of Control

occurs, the incentive compensation to which you will be entitled (pursuant to any performance-based incentive compensation program established by the Company) for the calendar year in which the Change of Control occurs will equal at least the "Minimum Incentive Compensation Amount." The "Minimum Incentive Compensation Amount" will equal the incentive compensation to which you would have been entitled if the year were to end on the day on which the Change of Control occurs, based upon performance up to that date. In measuring financial performance, financial results through the date of the Change of Control will be annualized.

2

#### 5. STOCK OPTION ACCELERATION.

Notwithstanding anything in this Agreement or in any option agreement to the contrary, upon a Change of Control, any stock options granted to you under any of the Company's stock option plans shall become immediately vested and exercisable.

#### 6. CHANGE OF CONTROL DEFINED.

For purposes of this Agreement, the term Change of Control shall mean and include the following transactions or situations:

(a) A sale, transfer, or other disposition by Meritage through a single transaction or a series of transactions of securities of Meritage representing 50% or more of the combined voting power of Meritage's then outstanding securities to any "Unrelated Person" or "Unrelated Persons" acting in concert with one another. For purposes of this Section, the term "Person" shall mean and include any individual, partnership, joint venture, association, trust, corporation, or other entity (including a "group" as referred to in Section 13(d)(3) of the Securities Exchange Act of 1934 (the "Act")). For purposes of this Section, the term "Unrelated Person" shall mean and include any Person other than the Company, or an employee benefit plan of the Company, or any officer, director, or 10% or more shareholder of the Company as of the date of this Agreement.

(b) A sale, transfer, or other disposition through a single transaction or a series of transactions of all or substantially all of the assets of Meritage to an Unrelated Person or Unrelated Persons acting in concert with one another,

(c) Any consolidation or merger of Meritage with or into an Unrelated Person, unless immediately after the consolidation or merger the holders of the common stock of Meritage immediately prior to the consolidation or merger are the Beneficial Owners of securities of the surviving corporation representing at least 50% of the combined voting power of the surviving corporation's then outstanding securities.

#### 7. GOOD REASON DEFINED.

For purposes of this Agreement, the term "Good Reason" shall include the following circumstances: (a) if the Company assigns you duties that are materially inconsistent with, or the material reduction of powers or functions associated with, your position, duties, or responsibilities with the Company, or an adverse change in your titles, authority, or reporting responsibilities, or in conditions of your employment, (b) if your base salary is reduced or the potential incentive compensation (or bonus) to which you may become entitled to at any level of performance by you or the Company is reduced, (c) if the Company fails to cause any successor to expressly assume and agree to be bound by the terms of this Agreement, (d) any purported termination by the Company of your employment for grounds other than for "Cause," (e) if the Company relieves you of your duties other than for "Cause," or (f) if you are required to relocate to an employment location that is more than fifty (50) miles from Dallas, TX.

3

#### 8. CAUSE DEFINED.

For purposes of this Agreement, the term "Cause" will exist in the following circumstances: (i) you are convicted of a felony, (ii) you engage in any fraudulent or other dishonest act to the detriment of the Company, (iii) you fail to report for work on a regular basis, except for periods of authorized absence or bona fide illness, (iv) you misappropriate trade secrets, customer lists, or other proprietary information belonging to the Company for your own benefit or for the benefit of a competitor, (v) you engage in any willful misconduct designed to harm the Company or its stockholders, or (vi) you fail to perform properly your assigned duties.

#### 9. CEILING ON BENEFITS.

The Internal Revenue Code (the "Code") places significant tax burdens on you and the Company if the total payments made to you due to a Change of Control exceed prescribed limits. For example, if your limit is \$749,999 (because your "Base Period Income" (as defined below) is \$250,000) and the "Total Payments" (as defined below) exceed the limit by even \$1.00, you are subject to an excise tax under Section 4999 of the Code of 20% of all amounts paid to you in excess

of \$250,000. If your limit is \$749,999, you will not be subject to an excise tax if you receive exactly \$749,999. If you receive \$750,000, you will be subject to an excise tax of \$100,000 (20% of \$500,000).

In order to avoid this excise tax and the related adverse tax consequences for the Company, by signing this Agreement, you agree that the present value of your Total Payments will not exceed an amount equal to 2.99 times your Base Period Income. This is the maximum amount which you may receive without becoming subject to the excise tax imposed by Section 4999 of the Code or which the Company may pay without loss of deduction under Section 280G of the Code.

"Base Period Income" is an amount equal to your "annualized includible compensation" for the "base period" as defined in Sections 280G(d)(1) and (2) of the Code and the regulations adopted thereunder. Generally, your "annualized includible compensation" is the average of your annual taxable income from the Company for the "base period," which is the five calendar years prior to the year in which the Change of Control occurs. These concepts are complicated and technical and all of the rules set forth in the applicable regulations apply for purposes of this Agreement.

Your "Total Payments" include the sum of the Severance Payment and any other "payments in the nature of compensation" (as defined in Section 280G of the Code and the regulations adopted thereunder).

If Meritage believes that these rules will result in a reduction of the payments to which you are entitled under this Agreement, it will so notify you within 60 days following delivery of the "Notice of Termination" described in Section 10. You and Meritage will then, at Meritage's expense, retain legal counsel, certified public accountants, and/or a firm of recognized executive compensation consultants to provide an opinion or opinions concerning whether your Total Payments exceed the limit discussed above.

4

Meritage will select the legal counsel, certified public accountants and executive compensation consultants. If you do not accept one or more of the parties selected by Meritage you may provide Meritage with the names of legal counsel, certified public accountants and/or executive compensation consultants acceptable to you. If Meritage does not accept the party or parties selected by you, the legal counsel, certified public accountants and/or executive compensation consultants selected by you and Meritage, respectively, will select the legal counsel, certified public accountants and/or executive compensation consultants to provide the opinions required.

At a minimum, the opinions required by this Section must set forth (a) the amount of your Base Period Income, (b) the present value of the Total Payments and (c) the amount and present value of any excess parachute payments.

If the opinions state that there would be an excess parachute payment, your payments under this Agreement will be reduced to the extent necessary to eliminate the excess.

You will be allowed to choose which payment should be reduced or eliminated, but the payment you choose to reduce or eliminate must be a payment determined by such legal counsel, certified public accountants, and/or executive compensation consultants to be includible in Total Payments. You will make your decision in writing and deliver it to Meritage within 30 days of your receipt of such opinions. If you fail to so notify Meritage, it will decide which payments to reduce or eliminate.

If the legal counsel, certified public accountants, and/or executive compensation consultants selected to provide the opinions referred to above so requests in connection with the opinion required by this Section, a firm of recognized executive compensation consultants, selected by you and Meritage pursuant to the procedures set forth above, shall provide an opinion, upon which such legal counsel, certified public accountants, and/or executive compensation consultants may rely, as to the reasonableness of any item of compensation as reasonable compensation for services rendered before or after the Change of Control.

If Meritage believes that your Total Payments will exceed the limitations of this Section, it will nonetheless make payments to you, at the times stated above, in the maximum amount that it believes may be paid without exceeding such limitations. The balance, if any, will then be paid after the opinions called for above have been received.

If the amount paid to you by Meritage is ultimately determined, pursuant to the opinion referred to above or by the Internal Revenue Service, to have exceeded the limitation of this Section, the excess will be treated as a loan to you by Meritage and shall be repayable on the 90th day following demand by Meritage, together with interest at the "applicable federal rate" provided in Section 1274(d) of the Code.

In the event that the provisions of Sections 280G and 4999 of the Code are repealed without succession, this Section shall be of no further force or effect.

## 10. TERMINATION NOTICE AND PROCEDURE.

Any termination by the Company or you of your employment shall be communicated by written Notice of Termination to you if such Notice of Termination is delivered by the Company and to the Company if such Notice of Termination is delivered by you, all in accordance with the following procedures:

(a) The Notice of Termination shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances alleged to provide a basis for termination.

(b) Any Notice of Termination by the Company shall be in writing signed by the Chairman of the Board of Meritage specifying in detail the basis for such termination.

(c) If the Company shall furnish a Notice of Termination for Cause and you in good faith notify the Company that a dispute exists concerning such termination within the 15-day period following your receipt of such notice, you may elect to continue your employment during such dispute. If it is thereafter determined that (i) Cause did exist, your "Termination Date" shall be the earlier of (A) the date on which the dispute is finally determined, either by mutual written agreement of the parties or pursuant to the alternative dispute resolution provisions of Section 17, or (B) the date of your death; or (ii) Cause did not exist, your employment shall continue as if the Company had not delivered its Notice of Termination and there shall be no Termination Date arising out of such notice.

(d) If the Company shall furnish a Notice of Termination by reason of Disability and you in good faith notify the Company that a dispute exists concerning such termination within the 15-day period following your receipt of such notice, you may elect to continue your employment during such dispute. The dispute relating to the existence of a Disability shall be resolved by the opinion of the licensed physician selected by Meritage, provided, however, that if you do not accept the opinion of the licensed physician selected by Meritage, the dispute shall be resolved by the opinion of a licensed physician who shall be selected by you; provided further, however, that if Meritage does not accept the opinion of the licensed physician selected by you, the dispute shall be finally resolved by the opinion of a licensed physician selected by the licensed physicians selected by Meritage and you, respectively. If it is thereafter determined that (i) a Disability did exist, your Termination Date shall be the earlier of (A) the date on which the dispute is resolved, or (B) the date of your death, or (ii) a Disability did not exist, your employment shall continue as if the Company had not delivered its Notice of Termination and there shall be no Termination Date arising out of such notice. For purposes of this Agreement, "Disability" shall be given the meaning ascribed to such term in your Employment Agreement at the time the Disability determination is being made.

(e) If you in good faith furnish a Notice of Termination for Good Reason and the Company notifies you that a dispute exists concerning the termination within the 15-day period following the Company's receipt of such notice, you may elect to continue your employment during such dispute. If it is thereafter determined that (i) Good Reason did exist, your Termination Date shall be the earlier of (A) the date on which the dispute is finally determined, either by mutual written agreement of the parties or pursuant to the alternative

dispute resolution provisions of Section 17, (B) the date of your death, or (C) one day prior to the second anniversary of a Change of Control, and your payments hereunder shall reflect events occurring after you delivered Notice of Termination; or (ii) Good Reason did not exist, your employment shall continue after such determination as if you had not delivered the Notice of Termination asserting Good Reason.

(f) If you do not elect to continue employment pending resolution of a dispute regarding a Notice of Termination, and it is finally determined that the reason for termination set forth in such Notice of Termination did not exist, if such notice was delivered by you, you shall be deemed to have voluntarily terminated your employment other than for Good Reason and if delivered by the Company, the Company will be deemed to have terminated you other than by reason of Disability or Cause.

(g) For purposes of this Agreement, a transfer from Meritage to one of its subsidiaries or a transfer from a subsidiary to Meritage or another subsidiary shall not be treated as a termination of employment.

## 11. SUCCESSORS.

Meritage will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of Meritage or any of its subsidiaries to expressly assume and agree to perform this Agreement in the same manner and to the same extent that Meritage or any subsidiary would be required to perform it if no

such succession had taken place. Failure of Meritage to obtain such assumption and agreement prior to the effectiveness of any such succession shall be a breach of this Agreement and shall entitle you to compensation in the same amount and on the same terms to which you would be entitled hereunder if you terminate your employment for Good Reason following a Change of Control, except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Termination Date. As used in this agreement "Company" shall mean Company, as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law or otherwise.

12. BINDING AGREEMENT.

This Agreement shall inure to the benefit of and be enforceable by you and your personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If you should die while any amount would still be payable to you hereunder had you continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to your devisee, legatee or other designee or, if there is no such designee, to your estate.

13. NOTICE.

For purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States certified or registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth on the first page of this Agreement, provided

7

that all notices to Meritage shall be directed to the attention of the Chairman of the Board of Meritage with a copy to the Secretary of Meritage, or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

14. MISCELLANEOUS.

No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by you and the Chairman of the Board of Meritage. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No agreement or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Delaware without regard to its conflicts of law principles. All references to sections of the Act or the Code shall be deemed also to refer to any successor provisions to such sections. Any payments provided for hereunder shall be paid net of any applicable withholding required under federal, state or local law. The obligations of Meritage that arise prior to the expiration of this Agreement shall survive the expiration of the term of this Agreement.

15. VALIDITY.

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

16. COUNTERPARTS.

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

17. ALTERNATIVE DISPUTE RESOLUTION.

All claims, disputes and other matters in question between the parties arising under this Agreement shall, unless otherwise provided herein (such as in Sections 9 and 10(d)), be resolved in accordance with the arbitration or alternative dispute resolution provisions included in your Employment Agreement.

18. EXPENSES AND INTEREST.

If a good faith dispute shall arise with respect to the enforcement of your rights under this Agreement or if any arbitration or legal proceeding shall be brought in good faith to enforce or interpret any provision contained herein, or to recover damages for breach hereof, and you are the prevailing party, you shall recover from the Company any reasonable attorneys' fees and necessary costs and disbursements incurred as a result of such dispute or legal proceeding, and prejudgment interest on any money judgment obtained by you calculated at the rate of interest announced by Bank of America, Arizona from



time to time as its prime rate from the date that payments to you should have been made under this Agreement. It is expressly provided that the Company shall in no event recover from you any attorneys' fees, costs, disbursements or interest as a result of any dispute or legal proceeding involving the Company and you.

19. PAYMENT OBLIGATIONS ABSOLUTE.

Meritage's obligation to pay you the compensation and to make the arrangements in accordance with the provisions herein shall be absolute and unconditional and shall not be affected by any circumstances; provided, however, that Meritage may apply amounts payable under this Agreement to any debts owed to the Company by you on your Termination Date. All amounts payable by Meritage in accordance with this Agreement shall be paid without notice or demand. If Meritage has paid you more than the amount to which you are entitled under this Agreement, Meritage shall have the right to recover all or any part of such overpayment from you or from whomsoever has received such amount.

20. EFFECT ON EMPLOYMENT AGREEMENT.

This Agreement supplements, and does not replace, your Employment Agreement, as it may be amended or replaced from time to time (the "Employment Agreement"). You will be entitled to receive all amounts due to you pursuant to your Employment Agreement; but some payments under your Employment Agreement may reduce your Severance Payments as provided in Section 2 and benefits due pursuant to your Employment Agreement may reduce the benefits due pursuant to Section 3. In addition, payments under your Employment Agreement may, in some limited circumstances, be considered as part of your Total Payment and result in a reduction in payments as provided in Section 9. If there is any conflict between the provisions of this Agreement and your Employment Agreement, the provisions of this Agreement shall control.

21. ENTIRE AGREEMENT.

This Agreement and your Employment Agreement set forth the entire agreement between you and the Company concerning the subject matter discussed in this Agreement and supersede all prior agreements, promises, covenants, arrangements, communications, representations, or warranties, whether written or oral, by any officer, employee or representative of the Company. Any prior agreements or understandings with respect to the subject matter set forth in this Agreement are hereby terminated and canceled.

22. DEFERRAL OF PAYMENTS.

To the extent that any payment under this Agreement, when combined with all other payments received during the year that are subject to the limitations on deductibility under Section 162(m) of the Code, exceeds the limitations on deductibility under Section 162(m) of the Code, such payment shall, in the discretion of Meritage, be deferred to the next succeeding calendar year. Such deferred amounts shall be paid no later than the 60th day after the end of such next succeeding calendar year, provided that such payment, when combined with any other payments subject to the Section 162(m) limitations received during the year, does not exceed the limitations on deductibility under Section 162(m) of the Code.

23. PARTIES.

This Agreement is an agreement between you and Meritage. In certain cases, though, obligations imposed upon Meritage may be satisfied by a subsidiary of Meritage. Any payment made or action taken by a subsidiary of Meritage shall be considered to be a payment made or action taken by Meritage for purposes of determining whether Meritage has satisfied its obligations under this Agreement.

If you would like to participate in this special benefits program, please sign and return the extra copy of this letter which is enclosed.

Sincerely,

MERITAGE CORPORATION

By: /s/ Larry W. Seay

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Name: Larry W. Seay

Its: Vice President

Enclosure

ACCEPTANCE

I hereby accept the offer to participate in this special benefits program and I agree to be bound by all of the provisions noted above.

Dated: February 24, 2000

/s/ John R. Landon

-----  
John R. Landon

February 1, 2000

CHANGE OF CONTROL AGREEMENT

Dear Larry:

The Board of Directors believes that it is in the best interests of Meritage Corporation ("Meritage"), and its shareholders to take appropriate steps to allay any concerns you may have about your future employment opportunities with Meritage and its subsidiaries (Meritage and its subsidiaries are collectively referred to as the "Company"). As a result, the Board has decided to offer to you the benefits described below.

Please bear in mind that these benefits are being offered only to a few, selected employees and we accordingly ask that you refrain from discussing this program with others. Also, please note that the benefits described below will only be effective if you sign the extra copy of this Change of Control Agreement (the "Agreement") which is enclosed and return it to me on or before February 20, 2000.

1. TERM OF AGREEMENT.

This Agreement is effective immediately and will continue in effect as long as you are actively employed by Meritage, unless you and Meritage agree in writing to its termination.

2. SEVERANCE PAYMENT.

If your employment with the Company is terminated without "Cause" (as defined in Section 8) at any time within two years following a "Change of Control" (as defined in Section 6), you will receive the "Severance Payment" described below. You will also receive the Severance Payment if you terminate your employment for "Good Reason" (as defined in Section 7) at any time within two years following a Change of Control.

The Severance Payment equals the sum of (i) one times the higher of (x) your base salary on the date of your termination of employment, or (y) your base salary on the date preceding the Change in Control, and (ii) one times the average of the higher of (x) your incentive compensation for the two years prior to your termination of employment, or (y) your incentive compensation on the date preceding the Change in Control.

The Severance Payment will be paid in one lump sum as soon as administratively feasible following your termination of employment, but in no event more than 90 days following your termination of employment.

You are not entitled to receive the Severance Payment if your employment is terminated for Cause, if you terminate your employment without Good Reason, or if your employment is terminated by reason of your "Disability" (as defined in Section 10(d)) or your death. In addition, you are not entitled to receive the Severance Payment if your employment is terminated by you or the Company for any or no reason before a Change of Control occurs or more than two years after a Change of Control has occurred.

In order to receive the Severance Payment, you must execute any release reasonably requested by the Company.

The Severance Payment will be paid to you without regard to whether you look for or obtain alternative employment following your termination of employment with the Company.

3. BENEFITS CONTINUATION.

If you are entitled to severance under Section 2, you will continue to receive life, disability, accident and group health insurance benefits substantially similar to those which you were receiving immediately prior to your termination of employment for a period of 24 months following your termination of employment. Such benefits shall be provided on substantially the same terms and conditions as they were provided prior to the Change of Control.

The Company does not intend to provide duplicative benefits. As a result, benefits otherwise receivable pursuant to this Section shall be reduced or eliminated if and to the extent that you receive such benefits pursuant to any employment agreement you may have with the Company.

Benefits otherwise receivable pursuant to this Section also shall be reduced or eliminated if and to the extent that you receive comparable benefits from any other source (for example, another employer); provided, however, you shall have no obligation to seek, solicit or accept employment from another employer in order to receive such benefits.

4. INCENTIVE COMPENSATION.

If you are employed by the Company on the day on which a Change of Control

occurs, the incentive compensation to which you will be entitled (pursuant to any performance-based incentive compensation program established by the Company) for the calendar year in which the Change of Control occurs will equal at least the "Minimum Incentive Compensation Amount." The "Minimum Incentive Compensation Amount" will equal the incentive compensation to which you would have been entitled if the year were to end on the day on which the Change of Control occurs, based upon performance up to that date. In measuring financial performance, financial results through the date of the Change of Control will be annualized.

2

#### 5. STOCK OPTION ACCELERATION.

Notwithstanding anything in this Agreement or in any option agreement to the contrary, upon a Change of Control, any stock options granted to you under any of the Company's stock option plans shall become immediately vested and exercisable.

#### 6. CHANGE OF CONTROL DEFINED.

For purposes of this Agreement, the term Change of Control shall mean and include the following transactions or situations:

(a) A sale, transfer, or other disposition by Meritage through a single transaction or a series of transactions of securities of Meritage representing 50% or more of the combined voting power of Meritage's then outstanding securities to any "Unrelated Person" or "Unrelated Persons" acting in concert with one another. For purposes of this Section, the term "Person" shall mean and include any individual, partnership, joint venture, association, trust, corporation, or other entity (including a "group" as referred to in Section 13(d)(3) of the Securities Exchange Act of 1934 (the "Act")). For purposes of this Section, the term "Unrelated Person" shall mean and include any Person other than the Company, or an employee benefit plan of the Company, or any officer, director, or 10% or more shareholder of the Company as of the date of this Agreement.

(b) A sale, transfer, or other disposition through a single transaction or a series of transactions of all or substantially all of the assets of Meritage to an Unrelated Person or Unrelated Persons acting in concert with one another,

(c) Any consolidation or merger of Meritage with or into an Unrelated Person, unless immediately after the consolidation or merger the holders of the common stock of Meritage immediately prior to the consolidation or merger are the Beneficial Owners of securities of the surviving corporation representing at least 50% of the combined voting power of the surviving corporation's then outstanding securities.

#### 7. GOOD REASON DEFINED.

For purposes of this Agreement, the term "Good Reason" shall include the following circumstances: (a) if the Company assigns you duties that are materially inconsistent with, or the material reduction of powers or functions associated with, your position, duties, or responsibilities with the Company, or an adverse change in your titles, authority, or reporting responsibilities, or in conditions of your employment, (b) if your base salary is reduced or the potential incentive compensation (or bonus) to which you may become entitled to at any level of performance by you or the Company is reduced, (c) if the Company fails to cause any successor to expressly assume and agree to be bound by the terms of this Agreement, (d) any purported termination by the Company of your employment for grounds other than for "Cause," (e) if the Company relieves you of your duties other than for "Cause," or (f) if you are required to relocate to an employment location that is more than fifty (50) miles from Scottsdale, AZ.

3

#### 8. CAUSE DEFINED.

For purposes of this Agreement, the term "Cause" will exist in the following circumstances: (i) you are convicted of a felony, (ii) you engage in any fraudulent or other dishonest act to the detriment of the Company, (iii) you fail to report for work on a regular basis, except for periods of authorized absence or bona fide illness, (iv) you misappropriate trade secrets, customer lists, or other proprietary information belonging to the Company for your own benefit or for the benefit of a competitor, (v) you engage in any willful misconduct designed to harm the Company or its stockholders, or (vi) you fail to perform properly your assigned duties.

#### 9. CEILING ON BENEFITS.

The Internal Revenue Code (the "Code") places significant tax burdens on you and the Company if the total payments made to you due to a Change of Control exceed prescribed limits. For example, if your limit is \$749,999 (because your "Base Period Income" (as defined below) is \$250,000) and the "Total Payments" (as defined below) exceed the limit by even \$1.00, you are subject to an excise tax under Section 4999 of the Code of 20% of all amounts paid to you in excess

of \$250,000. If your limit is \$749,999, you will not be subject to an excise tax if you receive exactly \$749,999. If you receive \$750,000, you will be subject to an excise tax of \$100,000 (20% of \$500,000).

In order to avoid this excise tax and the related adverse tax consequences for the Company, by signing this Agreement, you agree that the present value of your Total Payments will not exceed an amount equal to 2.99 times your Base Period Income. This is the maximum amount which you may receive without becoming subject to the excise tax imposed by Section 4999 of the Code or which the Company may pay without loss of deduction under Section 280G of the Code.

"Base Period Income" is an amount equal to your "annualized includible compensation" for the "base period" as defined in Sections 280G(d)(1) and (2) of the Code and the regulations adopted thereunder. Generally, your "annualized includible compensation" is the average of your annual taxable income from the Company for the "base period," which is the five calendar years prior to the year in which the Change of Control occurs. These concepts are complicated and technical and all of the rules set forth in the applicable regulations apply for purposes of this Agreement.

Your "Total Payments" include the sum of the Severance Payment and any other "payments in the nature of compensation" (as defined in Section 280G of the Code and the regulations adopted thereunder).

If Meritage believes that these rules will result in a reduction of the payments to which you are entitled under this Agreement, it will so notify you within 60 days following delivery of the "Notice of Termination" described in Section 10. You and Meritage will then, at Meritage's expense, retain legal counsel, certified public accountants, and/or a firm of recognized executive compensation consultants to provide an opinion or opinions concerning whether your Total Payments exceed the limit discussed above.

4

Meritage will select the legal counsel, certified public accountants and executive compensation consultants. If you do not accept one or more of the parties selected by Meritage you may provide Meritage with the names of legal counsel, certified public accountants and/or executive compensation consultants acceptable to you. If Meritage does not accept the party or parties selected by you, the legal counsel, certified public accountants and/or executive compensation consultants selected by you and Meritage, respectively, will select the legal counsel, certified public accountants and/or executive compensation consultants to provide the opinions required.

At a minimum, the opinions required by this Section must set forth (a) the amount of your Base Period Income, (b) the present value of the Total Payments and (c) the amount and present value of any excess parachute payments.

If the opinions state that there would be an excess parachute payment, your payments under this Agreement will be reduced to the extent necessary to eliminate the excess.

You will be allowed to choose which payment should be reduced or eliminated, but the payment you choose to reduce or eliminate must be a payment determined by such legal counsel, certified public accountants, and/or executive compensation consultants to be includible in Total Payments. You will make your decision in writing and deliver it to Meritage within 30 days of your receipt of such opinions. If you fail to so notify Meritage, it will decide which payments to reduce or eliminate.

If the legal counsel, certified public accountants, and/or executive compensation consultants selected to provide the opinions referred to above so requests in connection with the opinion required by this Section, a firm of recognized executive compensation consultants, selected by you and Meritage pursuant to the procedures set forth above, shall provide an opinion, upon which such legal counsel, certified public accountants, and/or executive compensation consultants may rely, as to the reasonableness of any item of compensation as reasonable compensation for services rendered before or after the Change of Control.

If Meritage believes that your Total Payments will exceed the limitations of this Section, it will nonetheless make payments to you, at the times stated above, in the maximum amount that it believes may be paid without exceeding such limitations. The balance, if any, will then be paid after the opinions called for above have been received.

If the amount paid to you by Meritage is ultimately determined, pursuant to the opinion referred to above or by the Internal Revenue Service, to have exceeded the limitation of this Section, the excess will be treated as a loan to you by Meritage and shall be repayable on the 90th day following demand by Meritage, together with interest at the "applicable federal rate" provided in Section 1274(d) of the Code.

In the event that the provisions of Sections 280G and 4999 of the Code are repealed without succession, this Section shall be of no further force or effect.

## 10. TERMINATION NOTICE AND PROCEDURE.

Any termination by the Company or you of your employment shall be communicated by written Notice of Termination to you if such Notice of Termination is delivered by the Company and to the Company if such Notice of Termination is delivered by you, all in accordance with the following procedures:

(a) The Notice of Termination shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances alleged to provide a basis for termination.

(b) Any Notice of Termination by the Company shall be in writing signed by the Chairman of the Board of Meritage specifying in detail the basis for such termination.

(c) If the Company shall furnish a Notice of Termination for Cause and you in good faith notify the Company that a dispute exists concerning such termination within the 15-day period following your receipt of such notice, you may elect to continue your employment during such dispute. If it is thereafter determined that (i) Cause did exist, your "Termination Date" shall be the earlier of (A) the date on which the dispute is finally determined, either by mutual written agreement of the parties or pursuant to the alternative dispute resolution provisions of Section 17, or (B) the date of your death; or (ii) Cause did not exist, your employment shall continue as if the Company had not delivered its Notice of Termination and there shall be no Termination Date arising out of such notice.

(d) If the Company shall furnish a Notice of Termination by reason of Disability and you in good faith notify the Company that a dispute exists concerning such termination within the 15-day period following your receipt of such notice, you may elect to continue your employment during such dispute. The dispute relating to the existence of a Disability shall be resolved by the opinion of the licensed physician selected by Meritage, provided, however, that if you do not accept the opinion of the licensed physician selected by Meritage, the dispute shall be resolved by the opinion of a licensed physician who shall be selected by you; provided further, however, that if Meritage does not accept the opinion of the licensed physician selected by you, the dispute shall be finally resolved by the opinion of a licensed physician selected by the licensed physicians selected by Meritage and you, respectively. If it is thereafter determined that (i) a Disability did exist, your Termination Date shall be the earlier of (A) the date on which the dispute is resolved, or (B) the date of your death, or (ii) a Disability did not exist, your employment shall continue as if the Company had not delivered its Notice of Termination and there shall be no Termination Date arising out of such notice. For purposes of this Agreement, "Disability" shall be given the meaning ascribed to such term in your Employment Agreement at the time the Disability determination is being made.

(e) If you in good faith furnish a Notice of Termination for Good Reason and the Company notifies you that a dispute exists concerning the termination within the 15-day period following the Company's receipt of such notice, you may elect to continue your employment during such dispute. If it is thereafter determined that (i) Good Reason did exist, your Termination Date shall be the earlier of (A) the date on which the dispute is finally determined, either by mutual written agreement of the parties or pursuant to the alternative

dispute resolution provisions of Section 17, (B) the date of your death, or (C) one day prior to the second anniversary of a Change of Control, and your payments hereunder shall reflect events occurring after you delivered Notice of Termination; or (ii) Good Reason did not exist, your employment shall continue after such determination as if you had not delivered the Notice of Termination asserting Good Reason.

(f) If you do not elect to continue employment pending resolution of a dispute regarding a Notice of Termination, and it is finally determined that the reason for termination set forth in such Notice of Termination did not exist, if such notice was delivered by you, you shall be deemed to have voluntarily terminated your employment other than for Good Reason and if delivered by the Company, the Company will be deemed to have terminated you other than by reason of Disability or Cause.

(g) For purposes of this Agreement, a transfer from Meritage to one of its subsidiaries or a transfer from a subsidiary to Meritage or another subsidiary shall not be treated as a termination of employment.

## 11. SUCCESSORS.

Meritage will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of Meritage or any of its subsidiaries to expressly assume and agree to perform this Agreement in the same manner and to the same extent that Meritage or any subsidiary would be required to perform it if no

such succession had taken place. Failure of Meritage to obtain such assumption and agreement prior to the effectiveness of any such succession shall be a breach of this Agreement and shall entitle you to compensation in the same amount and on the same terms to which you would be entitled hereunder if you terminate your employment for Good Reason following a Change of Control, except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Termination Date. As used in this agreement "Company" shall mean Company, as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law or otherwise.

12. BINDING AGREEMENT.

This Agreement shall inure to the benefit of and be enforceable by you and your personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If you should die while any amount would still be payable to you hereunder had you continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to your devisee, legatee or other designee or, if there is no such designee, to your estate.

13. NOTICE.

For purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States certified or registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth on the first page of this Agreement, provided

7

that all notices to Meritage shall be directed to the attention of the Chairman of the Board of Meritage with a copy to the Secretary of Meritage, or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

14. MISCELLANEOUS.

No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by you and the Chairman of the Board of Meritage. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No agreement or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Delaware without regard to its conflicts of law principles. All references to sections of the Act or the Code shall be deemed also to refer to any successor provisions to such sections. Any payments provided for hereunder shall be paid net of any applicable withholding required under federal, state or local law. The obligations of Meritage that arise prior to the expiration of this Agreement shall survive the expiration of the term of this Agreement.

15. VALIDITY.

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

16. COUNTERPARTS.

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

17. ALTERNATIVE DISPUTE RESOLUTION.

All claims, disputes and other matters in question between the parties arising under this Agreement shall, unless otherwise provided herein (such as in Sections 9 and 10(d)), be resolved in accordance with the arbitration or alternative dispute resolution provisions included in your Employment Agreement.

18. EXPENSES AND INTEREST.

If a good faith dispute shall arise with respect to the enforcement of your rights under this Agreement or if any arbitration or legal proceeding shall be brought in good faith to enforce or interpret any provision contained herein, or to recover damages for breach hereof, and you are the prevailing party, you shall recover from the Company any reasonable attorneys' fees and necessary costs and disbursements incurred as a result of such dispute or legal proceeding, and prejudgment interest on any money judgment obtained by you calculated at the rate of interest announced by Bank of America, Arizona from

time to time as its prime rate from the date that payments to you should have been made under this Agreement. It is expressly provided that the Company shall in no event recover from you any attorneys' fees, costs, disbursements or interest as a result of any dispute or legal proceeding involving the Company and you.

19. PAYMENT OBLIGATIONS ABSOLUTE.

Meritage's obligation to pay you the compensation and to make the arrangements in accordance with the provisions herein shall be absolute and unconditional and shall not be affected by any circumstances; provided, however, that Meritage may apply amounts payable under this Agreement to any debts owed to the Company by you on your Termination Date. All amounts payable by Meritage in accordance with this Agreement shall be paid without notice or demand. If Meritage has paid you more than the amount to which you are entitled under this Agreement, Meritage shall have the right to recover all or any part of such overpayment from you or from whomsoever has received such amount.

20. ENTIRE AGREEMENT.

This Agreement and your Employment Agreement set forth the entire agreement between you and the Company concerning the subject matter discussed in this Agreement and supersede all prior agreements, promises, covenants, arrangements, communications, representations, or warranties, whether written or oral, by any officer, employee or representative of the Company. Any prior agreements or understandings with respect to the subject matter set forth in this Agreement are hereby terminated and canceled.

21. DEFERRAL OF PAYMENTS.

To the extent that any payment under this Agreement, when combined with all other payments received during the year that are subject to the limitations on deductibility under Section 162(m) of the Code, exceeds the limitations on deductibility under Section 162(m) of the Code, such payment shall, in the discretion of Meritage, be deferred to the next succeeding calendar year. Such deferred amounts shall be paid no later than the 60th day after the end of such next succeeding calendar year, provided that such payment, when combined with any other payments subject to the Section 162(m) limitations received during the year, does not exceed the limitations on deductibility under Section 162(m) of the Code.

22. PARTIES.

This Agreement is an agreement between you and Meritage. In certain cases, though, obligations imposed upon Meritage may be satisfied by a subsidiary of Meritage. Any payment made or action taken by a subsidiary of Meritage shall be considered to be a payment made or action taken by Meritage for purposes of determining whether Meritage has satisfied its obligations under this Agreement.

If you would like to participate in this special benefits program, please sign and return the extra copy of this letter which is enclosed.

Sincerely,

MERITAGE CORPORATION

By: /s/ Steven J. Hilton

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Name: Steven J. Hilton  
Its: Co-CEO

Enclosure

ACCEPTANCE

I hereby accept the offer to participate in this special benefits program and I agree to be bound by all of the provisions noted above.

Dated: February 2, 2000

/s/ Larry W. Seay

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Larry W. Seay



February 1, 2000

CHANGE OF CONTROL AGREEMENT

Dear Rick:

The Board of Directors believes that it is in the best interests of Meritage Corporation ("Meritage"), and its shareholders to take appropriate steps to allay any concerns you may have about your future employment opportunities with Meritage and its subsidiaries (Meritage and its subsidiaries are collectively referred to as the "Company"). As a result, the Board has decided to offer to you the benefits described below.

Please bear in mind that these benefits are being offered only to a few, selected employees and we accordingly ask that you refrain from discussing this program with others. Also, please note that the benefits described below will only be effective if you sign the extra copy of this Change of Control Agreement (the "Agreement") which is enclosed and return it to me on or before February 20, 2000.

1. TERM OF AGREEMENT.

This Agreement is effective immediately and will continue in effect as long as you are actively employed by Meritage, unless you and Meritage agree in writing to its termination.

2. SEVERANCE PAYMENT.

If your employment with the Company is terminated without "Cause" (as defined in Section 8) at any time within two years following a "Change of Control" (as defined in Section 6), you will receive the "Severance Payment" described below. You will also receive the Severance Payment if you terminate your employment for "Good Reason" (as defined in Section 7) at any time within two years following a Change of Control.

The Severance Payment equals the sum of (i) one times the higher of (x) your base salary on the date of your termination of employment, or (y) your base salary on the date preceding the Change in Control, and (ii) one times the average of the higher of (x) your incentive compensation for the two years prior to your termination of employment, or (y) your incentive compensation on the date preceding the Change in Control.

The Severance Payment will be paid in one lump sum as soon as administratively feasible following your termination of employment, but in no event more than 90 days following your termination of employment.

You are not entitled to receive the Severance Payment if your employment is terminated for Cause, if you terminate your employment without Good Reason, or if your employment is terminated by reason of your "Disability" (as defined in Section 10(d)) or your death. In addition, you are not entitled to receive the Severance Payment if your employment is terminated by you or the Company for any or no reason before a Change of Control occurs or more than two years after a Change of Control has occurred.

In order to receive the Severance Payment, you must execute any release reasonably requested by the Company.

The Severance Payment will be paid to you without regard to whether you look for or obtain alternative employment following your termination of employment with the Company.

3. BENEFITS CONTINUATION.

If you are entitled to severance under Section 2, you will continue to receive life, disability, accident and group health insurance benefits substantially similar to those which you were receiving immediately prior to your termination of employment for a period of 24 months following your termination of employment. Such benefits shall be provided on substantially the same terms and conditions as they were provided prior to the Change of Control.

The Company does not intend to provide duplicative benefits. As a result, benefits otherwise receivable pursuant to this Section shall be reduced or eliminated if and to the extent that you receive such benefits pursuant to any employment agreement you may have with the Company.

Benefits otherwise receivable pursuant to this Section also shall be reduced or eliminated if and to the extent that you receive comparable benefits from any other source (for example, another employer); provided, however, you shall have no obligation to seek, solicit or accept employment from another employer in order to receive such benefits.

4. INCENTIVE COMPENSATION.

If you are employed by the Company on the day on which a Change of Control

occurs, the incentive compensation to which you will be entitled (pursuant to any performance-based incentive compensation program established by the Company) for the calendar year in which the Change of Control occurs will equal at least the "Minimum Incentive Compensation Amount." The "Minimum Incentive Compensation Amount" will equal the incentive compensation to which you would have been entitled if the year were to end on the day on which the Change of Control occurs, based upon performance up to that date. In measuring financial performance, financial results through the date of the Change of Control will be annualized.

2

#### 5. STOCK OPTION ACCELERATION.

Notwithstanding anything in this Agreement or in any option agreement to the contrary, upon a Change of Control, any stock options granted to you under any of the Company's stock option plans shall become immediately vested and exercisable.

#### 6. CHANGE OF CONTROL DEFINED.

For purposes of this Agreement, the term Change of Control shall mean and include the following transactions or situations:

(a) A sale, transfer, or other disposition by Meritage through a single transaction or a series of transactions of securities of Meritage representing 50% or more of the combined voting power of Meritage's then outstanding securities to any "Unrelated Person" or "Unrelated Persons" acting in concert with one another. For purposes of this Section, the term "Person" shall mean and include any individual, partnership, joint venture, association, trust, corporation, or other entity (including a "group" as referred to in Section 13(d)(3) of the Securities Exchange Act of 1934 (the "Act")). For purposes of this Section, the term "Unrelated Person" shall mean and include any Person other than the Company, or an employee benefit plan of the Company, or any officer, director, or 10% or more shareholder of the Company as of the date of this Agreement.

(b) A sale, transfer, or other disposition through a single transaction or a series of transactions of all or substantially all of the assets of Meritage to an Unrelated Person or Unrelated Persons acting in concert with one another,

(c) Any consolidation or merger of Meritage with or into an Unrelated Person, unless immediately after the consolidation or merger the holders of the common stock of Meritage immediately prior to the consolidation or merger are the Beneficial Owners of securities of the surviving corporation representing at least 50% of the combined voting power of the surviving corporation's then outstanding securities.

#### 7. GOOD REASON DEFINED.

For purposes of this Agreement, the term "Good Reason" shall include the following circumstances: (a) if the Company assigns you duties that are materially inconsistent with, or the material reduction of powers or functions associated with, your position, duties, or responsibilities with the Company, or an adverse change in your titles, authority, or reporting responsibilities, or in conditions of your employment, (b) if your base salary is reduced or the potential incentive compensation (or bonus) to which you may become entitled to at any level of performance by you or the Company is reduced, (c) if the Company fails to cause any successor to expressly assume and agree to be bound by the terms of this Agreement, (d) any purported termination by the Company of your employment for grounds other than for "Cause," (e) if the Company relieves you of your duties other than for "Cause," or (f) if you are required to relocate to an employment location that is more than fifty (50) miles from Dallas, TX.

3

#### 8. CAUSE DEFINED.

For purposes of this Agreement, the term "Cause" will exist in the following circumstances: (i) you are convicted of a felony, (ii) you engage in any fraudulent or other dishonest act to the detriment of the Company, (iii) you fail to report for work on a regular basis, except for periods of authorized absence or bona fide illness, (iv) you misappropriate trade secrets, customer lists, or other proprietary information belonging to the Company for your own benefit or for the benefit of a competitor, (v) you engage in any willful misconduct designed to harm the Company or its stockholders, or (vi) you fail to perform properly your assigned duties.

#### 9. CEILING ON BENEFITS.

The Internal Revenue Code (the "Code") places significant tax burdens on you and the Company if the total payments made to you due to a Change of Control exceed prescribed limits. For example, if your limit is \$749,999 (because your "Base Period Income" (as defined below) is \$250,000) and the "Total Payments" (as defined below) exceed the limit by even \$1.00, you are subject to an excise tax under Section 4999 of the Code of 20% of all amounts paid to you in excess

of \$250,000. If your limit is \$749,999, you will not be subject to an excise tax if you receive exactly \$749,999. If you receive \$750,000, you will be subject to an excise tax of \$100,000 (20% of \$500,000).

In order to avoid this excise tax and the related adverse tax consequences for the Company, by signing this Agreement, you agree that the present value of your Total Payments will not exceed an amount equal to 2.99 times your Base Period Income. This is the maximum amount which you may receive without becoming subject to the excise tax imposed by Section 4999 of the Code or which the Company may pay without loss of deduction under Section 280G of the Code.

"Base Period Income" is an amount equal to your "annualized includible compensation" for the "base period" as defined in Sections 280G(d)(1) and (2) of the Code and the regulations adopted thereunder. Generally, your "annualized includible compensation" is the average of your annual taxable income from the Company for the "base period," which is the five calendar years prior to the year in which the Change of Control occurs. These concepts are complicated and technical and all of the rules set forth in the applicable regulations apply for purposes of this Agreement.

Your "Total Payments" include the sum of the Severance Payment and any other "payments in the nature of compensation" (as defined in Section 280G of the Code and the regulations adopted thereunder).

If Meritage believes that these rules will result in a reduction of the payments to which you are entitled under this Agreement, it will so notify you within 60 days following delivery of the "Notice of Termination" described in Section 10. You and Meritage will then, at Meritage's expense, retain legal counsel, certified public accountants, and/or a firm of recognized executive compensation consultants to provide an opinion or opinions concerning whether your Total Payments exceed the limit discussed above.

4

Meritage will select the legal counsel, certified public accountants and executive compensation consultants. If you do not accept one or more of the parties selected by Meritage you may provide Meritage with the names of legal counsel, certified public accountants and/or executive compensation consultants acceptable to you. If Meritage does not accept the party or parties selected by you, the legal counsel, certified public accountants and/or executive compensation consultants selected by you and Meritage, respectively, will select the legal counsel, certified public accountants and/or executive compensation consultants to provide the opinions required.

At a minimum, the opinions required by this Section must set forth (a) the amount of your Base Period Income, (b) the present value of the Total Payments and (c) the amount and present value of any excess parachute payments.

If the opinions state that there would be an excess parachute payment, your payments under this Agreement will be reduced to the extent necessary to eliminate the excess.

You will be allowed to choose which payment should be reduced or eliminated, but the payment you choose to reduce or eliminate must be a payment determined by such legal counsel, certified public accountants, and/or executive compensation consultants to be includible in Total Payments. You will make your decision in writing and deliver it to Meritage within 30 days of your receipt of such opinions. If you fail to so notify Meritage, it will decide which payments to reduce or eliminate.

If the legal counsel, certified public accountants, and/or executive compensation consultants selected to provide the opinions referred to above so requests in connection with the opinion required by this Section, a firm of recognized executive compensation consultants, selected by you and Meritage pursuant to the procedures set forth above, shall provide an opinion, upon which such legal counsel, certified public accountants, and/or executive compensation consultants may rely, as to the reasonableness of any item of compensation as reasonable compensation for services rendered before or after the Change of Control.

If Meritage believes that your Total Payments will exceed the limitations of this Section, it will nonetheless make payments to you, at the times stated above, in the maximum amount that it believes may be paid without exceeding such limitations. The balance, if any, will then be paid after the opinions called for above have been received.

If the amount paid to you by Meritage is ultimately determined, pursuant to the opinion referred to above or by the Internal Revenue Service, to have exceeded the limitation of this Section, the excess will be treated as a loan to you by Meritage and shall be repayable on the 90th day following demand by Meritage, together with interest at the "applicable federal rate" provided in Section 1274(d) of the Code.

In the event that the provisions of Sections 280G and 4999 of the Code are repealed without succession, this Section shall be of no further force or effect.

## 10. TERMINATION NOTICE AND PROCEDURE.

Any termination by the Company or you of your employment shall be communicated by written Notice of Termination to you if such Notice of Termination is delivered by the Company and to the Company if such Notice of Termination is delivered by you, all in accordance with the following procedures:

(a) The Notice of Termination shall indicate the specific termination provision in this Agreement relied upon and shall set forth in reasonable detail the facts and circumstances alleged to provide a basis for termination.

(b) Any Notice of Termination by the Company shall be in writing signed by the Chairman of the Board of Meritage specifying in detail the basis for such termination.

(c) If the Company shall furnish a Notice of Termination for Cause and you in good faith notify the Company that a dispute exists concerning such termination within the 15-day period following your receipt of such notice, you may elect to continue your employment during such dispute. If it is thereafter determined that (i) Cause did exist, your "Termination Date" shall be the earlier of (A) the date on which the dispute is finally determined, either by mutual written agreement of the parties or pursuant to the alternative dispute resolution provisions of Section 17, or (B) the date of your death; or (ii) Cause did not exist, your employment shall continue as if the Company had not delivered its Notice of Termination and there shall be no Termination Date arising out of such notice.

(d) If the Company shall furnish a Notice of Termination by reason of Disability and you in good faith notify the Company that a dispute exists concerning such termination within the 15-day period following your receipt of such notice, you may elect to continue your employment during such dispute. The dispute relating to the existence of a Disability shall be resolved by the opinion of the licensed physician selected by Meritage, provided, however, that if you do not accept the opinion of the licensed physician selected by Meritage, the dispute shall be resolved by the opinion of a licensed physician who shall be selected by you; provided further, however, that if Meritage does not accept the opinion of the licensed physician selected by you, the dispute shall be finally resolved by the opinion of a licensed physician selected by the licensed physicians selected by Meritage and you, respectively. If it is thereafter determined that (i) a Disability did exist, your Termination Date shall be the earlier of (A) the date on which the dispute is resolved, or (B) the date of your death, or (ii) a Disability did not exist, your employment shall continue as if the Company had not delivered its Notice of Termination and there shall be no Termination Date arising out of such notice. For purposes of this Agreement, "Disability" shall be given the meaning ascribed to such term in your Employment Agreement at the time the Disability determination is being made.

(e) If you in good faith furnish a Notice of Termination for Good Reason and the Company notifies you that a dispute exists concerning the termination within the 15-day period following the Company's receipt of such notice, you may elect to continue your employment during such dispute. If it is thereafter determined that (i) Good Reason did exist, your Termination Date shall be the earlier of (A) the date on which the dispute is finally determined, either by mutual written agreement of the parties or pursuant to the alternative

dispute resolution provisions of Section 17, (B) the date of your death, or (C) one day prior to the second anniversary of a Change of Control, and your payments hereunder shall reflect events occurring after you delivered Notice of Termination; or (ii) Good Reason did not exist, your employment shall continue after such determination as if you had not delivered the Notice of Termination asserting Good Reason.

(f) If you do not elect to continue employment pending resolution of a dispute regarding a Notice of Termination, and it is finally determined that the reason for termination set forth in such Notice of Termination did not exist, if such notice was delivered by you, you shall be deemed to have voluntarily terminated your employment other than for Good Reason and if delivered by the Company, the Company will be deemed to have terminated you other than by reason of Disability or Cause.

(g) For purposes of this Agreement, a transfer from Meritage to one of its subsidiaries or a transfer from a subsidiary to Meritage or another subsidiary shall not be treated as a termination of employment.

## 11. SUCCESSORS.

Meritage will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of Meritage or any of its subsidiaries to expressly assume and agree to perform this Agreement in the same manner and to the same extent that Meritage or any subsidiary would be required to perform it if no

such succession had taken place. Failure of Meritage to obtain such assumption and agreement prior to the effectiveness of any such succession shall be a breach of this Agreement and shall entitle you to compensation in the same amount and on the same terms to which you would be entitled hereunder if you terminate your employment for Good Reason following a Change of Control, except that for purposes of implementing the foregoing, the date on which any such succession becomes effective shall be deemed the Termination Date. As used in this agreement "Company" shall mean Company, as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law or otherwise.

12. BINDING AGREEMENT.

This Agreement shall inure to the benefit of and be enforceable by you and your personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees. If you should die while any amount would still be payable to you hereunder had you continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement to your devisee, legatee or other designee or, if there is no such designee, to your estate.

13. NOTICE.

For purposes of this Agreement, notices and all other communications provided for in this Agreement shall be in writing and shall be deemed to have been duly given when delivered or mailed by United States certified or registered mail, return receipt requested, postage prepaid, addressed to the respective addresses set forth on the first page of this Agreement, provided

7

that all notices to Meritage shall be directed to the attention of the Chairman of the Board of Meritage with a copy to the Secretary of Meritage, or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

14. MISCELLANEOUS.

No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by you and the Chairman of the Board of Meritage. No waiver by either party hereto at any time of any breach by the other party hereto of, or compliance with, any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No agreement or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by either party which are not expressly set forth in this Agreement. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Delaware without regard to its conflicts of law principles. All references to sections of the Act or the Code shall be deemed also to refer to any successor provisions to such sections. Any payments provided for hereunder shall be paid net of any applicable withholding required under federal, state or local law. The obligations of Meritage that arise prior to the expiration of this Agreement shall survive the expiration of the term of this Agreement.

15. VALIDITY.

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

16. COUNTERPARTS.

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

17. ALTERNATIVE DISPUTE RESOLUTION.

All claims, disputes and other matters in question between the parties arising under this Agreement shall, unless otherwise provided herein (such as in Sections 9 and 10(d)), be resolved in accordance with the arbitration or alternative dispute resolution provisions included in your Employment Agreement.

18. EXPENSES AND INTEREST.

If a good faith dispute shall arise with respect to the enforcement of your rights under this Agreement or if any arbitration or legal proceeding shall be brought in good faith to enforce or interpret any provision contained herein, or to recover damages for breach hereof, and you are the prevailing party, you shall recover from the Company any reasonable attorneys' fees and necessary costs and disbursements incurred as a result of such dispute or legal proceeding, and prejudgment interest on any money judgment obtained by you calculated at the rate of interest announced by Bank of America, Arizona from

time to time as its prime rate from the date that payments to you should have been made under this Agreement. It is expressly provided that the Company shall in no event recover from you any attorneys' fees, costs, disbursements or interest as a result of any dispute or legal proceeding involving the Company and you.

19. PAYMENT OBLIGATIONS ABSOLUTE.

Meritage's obligation to pay you the compensation and to make the arrangements in accordance with the provisions herein shall be absolute and unconditional and shall not be affected by any circumstances; provided, however, that Meritage may apply amounts payable under this Agreement to any debts owed to the Company by you on your Termination Date. All amounts payable by Meritage in accordance with this Agreement shall be paid without notice or demand. If Meritage has paid you more than the amount to which you are entitled under this Agreement, Meritage shall have the right to recover all or any part of such overpayment from you or from whomsoever has received such amount.

20. ENTIRE AGREEMENT.

This Agreement and your Employment Agreement set forth the entire agreement between you and the Company concerning the subject matter discussed in this Agreement and supersede all prior agreements, promises, covenants, arrangements, communications, representations, or warranties, whether written or oral, by any officer, employee or representative of the Company. Any prior agreements or understandings with respect to the subject matter set forth in this Agreement are hereby terminated and canceled.

21. DEFERRAL OF PAYMENTS.

To the extent that any payment under this Agreement, when combined with all other payments received during the year that are subject to the limitations on deductibility under Section 162(m) of the Code, exceeds the limitations on deductibility under Section 162(m) of the Code, such payment shall, in the discretion of Meritage, be deferred to the next succeeding calendar year. Such deferred amounts shall be paid no later than the 60th day after the end of such next succeeding calendar year, provided that such payment, when combined with any other payments subject to the Section 162(m) limitations received during the year, does not exceed the limitations on deductibility under Section 162(m) of the Code.

22. PARTIES.

This Agreement is an agreement between you and Meritage. In certain cases, though, obligations imposed upon Meritage may be satisfied by a subsidiary of Meritage. Any payment made or action taken by a subsidiary of Meritage shall be considered to be a payment made or action taken by Meritage for purposes of determining whether Meritage has satisfied its obligations under this Agreement.

If you would like to participate in this special benefits program, please sign and return the extra copy of this letter which is enclosed.

Sincerely,

MERITAGE CORPORATION

By: /s/ John R. Landon

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Name: John R. Landon  
Its: Co-CEO

Enclosure

ACCEPTANCE

I hereby accept the offer to participate in this special benefits program and I agree to be bound by all of the provisions noted above.

Dated: February 25, 2000

/s/ Richard T. Morgan

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Richard T. Morgan