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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, DC 20549

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**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of report (Date of earliest event reported) October 16, 2006**

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**MERITAGE HOMES CORPORATION**

(Exact Name of Registrant as Specified in Charter)

**Maryland**  
(State or Other Jurisdiction  
of Incorporation)

**1-9977**  
(Commission File  
Number)

**86-0611231**  
(IRS Employer  
Identification No.)

**17851 N. 85<sup>th</sup> Street, Suite 300, Scottsdale, Arizona**  
(Address of Principal Executive Offices)

**85255**  
(Zip Code)

**(480) 609-3330**  
(Registrant's telephone number, including area code)

**(Former Name or Former Address, if Changed Since Last Report)**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions *see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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ITEM 1.01 ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.

ITEM 5.02 DEPARTURE OF DIRECTORS OR PRINCIPAL OFFICERS; ELECTION OF DIRECTORS; APPOINTMENT OF PRINCIPAL OFFICERS; COMPENSATION ARRANGEMENTS OF CERTAIN OFFICERS.

Steven Davis has accepted the position of Executive Vice President—National Homebuilding Operations of Meritage Homes Corporation (the “Company”) effective October 16, 2006. Prior to joining Meritage, Mr. Davis, 48, was a regional manager with KB Home from 2000 to 2006 and served in other management roles at KB Home from 1995 to 2000.

In connection with Mr. Davis' appointment, the Executive Compensation Committee of the Board of Directors of the Company approved the terms of an Employment Agreement and a Change of Control Agreement with Mr. Davis. Pursuant to the Employment Agreement, Mr. Davis will receive an annual base salary of \$400,000 and will be eligible for a bonus in 2006 of up to \$400,000. The 2006 bonus is subject to repayment, on a decreasing sliding scale basis, to the Company if Mr. Davis' employment is terminated prior to October 16, 2009. The specific terms of the repayment schedule are set forth in the Employment Agreement filed herewith at Exhibit 10.1. In 2007, Mr. Davis will be eligible for annual bonus, which is targeted to be between 0.25% and 0.33% of EBITDA with the payout range based on his achievement of specific performance objectives to be agreed upon.

In addition, Mr. Davis will also receive a restricted stock grant of 25,000 shares pursuant to the Company's standard restricted stock award agreement. The restrictions applicable to the shares will lapse with respect to one-third of the shares on October 16, 2009, with respect to one-third of the shares on October 16, 2010 and respect to the remaining one-third of shares of October 16, 2011.

The Employment Agreement and Change of Control Agreement provides for a severance payment to Mr. Davis in the event he terminates his employment for good reason, is terminated by the Company without cause or upon certain events following a change of control, as each of those terms are defined in the agreements. The severance payment is approximately equal to Mr. Davis' base salary on the date of termination plus his bonus for the year preceding his termination. In addition, if Mr. Davis terminates his employment for good reason or is terminated by the Company without cause (i) at any time after October 16, 2007, the restrictions on his restricted stock will lapse and (ii) at any time after October 16, 2008, any options previously granted to Mr. Davis will vest. Upon the occurrence of a Change of Control (as defined in the agreements) any outstanding stock options granted to Mr. Davis will accelerate and become vested and any restrictions on restricted stock awarded to Mr. Davis will lapse.

The Employment Agreement and Change of Control Agreement are filed at Exhibits 10.1 and 10.2, respectively, of this Form 8-K and are incorporated by reference herein.

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ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS.

(d) Exhibits

- |      |   |                |
|------|---|----------------|
| 10.1 | Employment Agreement,<br>dated October 16, 2006, by and<br>between the Company and<br>Steven Davis        | Filed herewith |
| 10.2 | Change of Control Agreement,<br>dated October 16, 2006, by and<br>between the Company and<br>Steven Davis | Filed herewith |

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: October 16, 2006

MERITAGE HOMES CORPORATION

/s/ Larry W. Seay

By: Larry W. Seay  
Executive Vice President-Chief  
Financial Officer

## STEVEN DAVIS EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is effective as of October 16, 2006 by and between Meritage Homes Corporation, a Maryland corporation (the "Company") and Steven Davis, an individual ("Executive").

## RECITALS

WHEREAS, the Company desires to employ Steven Davis as its Executive Vice President - National Homebuilding Operations, and Executive desires to provide services to the Company, in accordance with the terms, conditions and provisions of this Agreement;

NOW THEREFORE, in consideration of the covenants and mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in reliance upon the representations, covenants and mutual agreements contained herein, the Company and Executive agree as follows:

1. **Employment.** Subject to the terms and conditions of this Agreement, the Company agrees to employ Executive as Executive Vice President - National Operations of the Company, and Executive agrees to diligently perform the duties associated with such positions. Executive will report directly to the Chief Executive Officer. Executive will devote substantially all of his business time, attention and energies to the business of the Company and will comply with the charters, policies and guidelines established by the Company from time to time applicable to its senior management executives.
2. **Term.** Executive will be employed under this Agreement until October 16, 2008, unless Executive's employment is terminated earlier pursuant to Section 6. The Agreement will renew for additional one year periods (the "Renewal Term(s)"), unless on or before June 15, 2008 (or June 15 of any Renewal Term), either Executive or the Company notifies the other in writing that it wishes to terminate employment under this Agreement at the end of the term then in effect.
3. **Salary.** The Company will pay Executive a base salary (the "Base Salary") at the annual rate of \$400,000. The Base Salary will increase 5% on November 1, 2007 and on November 1 of each Renewal Term thereafter. The Base Salary will be payable in accordance with the payroll practices of the Company in effect from time to time. The Base Salary may not be lowered without Executive's consent.
4. **Incentive Compensation.**
  - A. **Bonus.** Executive will be entitled to incentive compensation as specified in Exhibit A hereto (the "Bonus"). The Bonus will be due and payable in accordance with Exhibit A.
  - B. **Stock Options.** Effective on the date of your hire, you will be granted an option to acquire 15,000 shares of Meritage Homes Corporation common stock. In addition, commencing in 2007, during the term of this Agreement the Company will annually grant Executive options to acquire 15,000 shares (or equivalent consideration at the discretion of the Board of Directors). All options will have an exercise price equal to the fair market value on the date of grant as defined under the relevant plan. Subject to the provisions hereof and Executive's

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change of control agreement entered into on even date herewith, the options will be on the same terms and conditions as other standard option grants to other executives of the Company.

- C. **Restricted Stock Grant.** On the effective date of your hire, you will be granted a restricted stock award of 25,000 shares. These restricted shares will be subject to the terms and conditions of a separate award agreement.

- D. **Bonus Repayment.** If Executive's employment is terminated for any reason other than as set forth in Section 6A below, he will repay to the Company a pro-rated amount of the 2006 bonus set forth on Exhibit A (\$400,000) as follows: If Executive's employment is terminated before September 16, 2007, he will repay \$400,000; if Executive's employment is terminated on or after September 16, 2007, but before September 16, 2008, he will repay \$266,666; and if Executive's employment is terminated on or after September 16, 2008 but before September 16, 2009, he will repay \$133,333.

5. **Executive Benefits.** During the term of this Agreement, Executive will be entitled to reimbursement of reasonable and customary business expenses. The Company will also provide to Executive during the term of this Agreement a \$1,250 per month auto allowance, three weeks of annual paid vacation, and a Company paid annual physical at a first class facility such as the Mayo Clinic and such other fringe benefits and other Executive benefits as are regularly provided by the Company to its senior corporate management; provided, however, that nothing herein shall preclude the Company from amending or terminating any such other employee or general executive benefit plans or programs.

6. **Termination.**

- A. Voluntary Resignation by Executive (With Good Reason) or Termination Without Cause by the Company.

- (1) If Executive voluntarily terminates his employment with the Company with Good Reason, or if the Company terminates Executive without Cause, the Company will (i) pay to Executive his Base Salary through the Date of Termination; (ii) pay to Executive any unpaid bonus for the previous year; (iii) pay to Executive a severance payment in an amount equal to (x) Executive's base salary on the Date of Termination plus (y) Executive's Bonus for the year preceding the Date of Termination (the "Severance Payment"); and (iv) reimburse Executive for the cost of COBRA premiums for one year (including group health insurance and dental and vision). The amounts payable to Executive pursuant to this Section 6A(1) (other than the reimbursement set forth in clause (iv)) shall be paid to Executive by check within 15 business days of the Date of Termination.

- (2) Upon termination of Executive's employment pursuant to this Section 6A at any time after October 16, 2007, the restrictions on the restricted stock awarded to Executive on the effective date of his hire (as referenced in Section 4C of this Agreement) shall lapse.

- (3) Upon termination of Executive's employment pursuant to this Section 6A at any time after October 16, 2008, any options previously granted to

B. **Termination upon Death or Disability.** If Executive's employment is terminated as a result of Executive's death or Disability, then the Company will be obligated to pay to Executive (or his heirs or estate) (i) Executive's then current Base Salary through the Date of Termination, (ii) any unpaid bonus for the previous year and a pro rated amount of Executive's Bonus for the year in which the Date of Termination occurs, which amount shall be payable at the time set forth in Exhibit A. In addition, upon such a termination, (i) any options previously granted to Executive shall accelerate and become vested (ii) any restrictions on any restricted stock awards shall lapse, without further action and, to the extent permitted under the plan's governing documents, Executive (or his heirs or estate) shall have a period of one year from the Date of Termination to exercise such options, and (iii) the Company shall reimburse Executive (or his heirs or estate) for the cost of Executive's COBRA premiums for one year following such termination.

C. **Voluntary Termination by Executive (Without Good Reason) or Termination for Cause by the Company.** If Executive resigns without Good Reason, it being understood that Executive shall have the right to do so at any time, or if the Company discharges Executive for Cause, then the Company will be obligated to pay Executive's Base Salary through the Date of Termination and any unpaid bonus for the previous year and no bonus will be payable with respect to the year in which the Date of Termination occurs. Such amounts shall be payable to Executive within 15 business days of the Date of Termination.

D. **Definitions.** For purposes of this Agreement:

(1) **"Cause"** will exist in the following circumstances: (i) you are convicted of a felony, (ii) you engage in any fraudulent or dishonest act to the detriment of the Company, (iii) you fail to report for work on a regular basis, except for periods of authorized illness 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.

(2) **"Change of Control"** shall mean to include the following transactions or situations:

(a) A sale, transfer, or other disposition by the Company through a single transaction or a series of transactions of securities of the Company representing 33% or more of the combined voting power of the Company's then outstanding securities to any "Unrelated Person" or "Unrelated Persons" acting in concert with one another. For purposes of this definition, 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 definition, the term "Unrelated Person" shall mean and include any person other than the Company, or an employee benefit plan of the Company.

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

(c) Any consolidation or merger of the Company with or into an Unrelated Person, unless immediately after the consolidation or merger the holders of the common stock of the Company immediately prior to the consolidation or merger are the beneficial owners or securities of the surviving corporation's then outstanding securities.

(3) **"Date of Termination"** shall mean (i) if this Agreement is terminated as a result of Executive's death, the date of Executive's death, (ii) if this Agreement is terminated by Executive, the date on which he notifies the Company in writing, (iii) if this Agreement is terminated by the Company for Disability, the date a notice of termination is given, (iv) if this Agreement is terminated by the Company for Cause, the date a notice of termination is given to Executive by the Company, or (v) if this Agreement is terminated by the Company without Cause, the date notice of termination is given to Executive by the Company.

(4) **"Disability"** shall mean a disability that results in Executive being medically unable to fulfill his duties under this Agreement for six consecutive months.

(5) **"Good Reason"** shall mean if following a Change of Control you are either (i) not offered a comparable position in the surviving corporation or (ii) required to relocate to any employment location that is more than thirty (30) miles from the Company's Scottsdale, Arizona headquarters.

7. **Non-Solicitation Covenant.** In consideration of the benefits provided in Section 6 of this Agreement, during the period of employment and for a period of eighteen (18) months following the Date of Termination, Executive hereby covenants and agrees that he will not directly or indirectly solicit for employment (whether as an employee, consultant, independent contractor, or otherwise) or encourage the termination of their relationship with the Company, any person who is an employee of the Company or any of its subsidiaries, or any person who was an employee of the Company during Executive's final year of employment with the Company, unless Company gives its advance written consent to such solicitation. The covenants set forth in this Section 7 shall begin as of the date hereof and will survive the termination of employment under Section 6. This Section 7 shall not prohibit the general solicitation of employment in a widely circulated media (such as the newspaper or internet job posting sites) and that are not directly targeted to any Company employee.

If a court of competent jurisdiction determines that the eighteen-month non-solicitation period identified in this Section 7 is too broad to be enforced, the parties agree that the non-solicitation period shall be the twelve (12) months following the Date of Termination, whether such termination is voluntary or involuntary. If a court of competent jurisdiction determines that this non-solicitation period as modified is still too broad to be enforced, the parties agree that the non-solicitation period shall be the nine (9) months following the Date of Termination, whether such termination is voluntary or involuntary.

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## 8. **Non-Disclosure of Confidential Information.**

A. It is understood that in the course of Executive's employment with Company, he will become acquainted with Company Confidential Information (as defined below). Executive recognizes that Company Confidential Information has been developed or acquired at great expense, is proprietary to the Company, and is and shall remain the exclusive property of the Company. Accordingly, Executive agrees that he will not, disclose to others, copy, make any use of, or remove from Company's premises any Company Confidential Information, except as Executive's duties may specifically require, without the express written consent of the Company, during Executive's employment with the Company and thereafter until such time as Company Confidential Information becomes generally disclosed or known, or readily ascertainable by proper means by persons unrelated to the Company.

B. Upon any termination of employment, Executive shall promptly deliver to the Company the originals and all copies of any and all materials, documents, notes, manuals, or lists containing or embodying Company Confidential Information, or relating directly or indirectly to the business of the Company, in the possession or control of Executive.

C. Executive hereby agrees that the period of time provided for in this Section 8 and other provisions and restrictions set forth herein are reasonable and necessary to protect the Company and its successors and assigns in the use and employment of the goodwill of the business conducted by Executive. Executive further agrees that damages cannot compensate the Company in the event of a violation of this Section 8 and that, if such violation should occur, injunctive relief shall be essential for the protection of the Company and its successors and assigns. Accordingly, Executive hereby covenants and agrees that, in the event any of the provisions of this Section 8 shall be violated or breached, the Company shall be entitled to obtain injunctive relief against the party or parties violating such covenants, without bond but upon due notice, in addition to such further or other relief as may be available at equity or law. Obtainment of such an injunction by the Company shall not be considered an election of remedies or a waiver of any right to assert any other remedies which the Company has at law or in equity. No waiver of any breach or violation hereof shall be implied from forbearance or failure by the Company to take action thereof. The prevailing party in any litigation, arbitration or similar dispute resolution proceeding to enforce this provision will recover any and all reasonable costs and expenses, including attorneys' fees.

D. "**Company Confidential Information**" shall mean confidential, proprietary information or trade secrets of Company and its subsidiaries and affiliates including without limitation the following: (1) customer lists and customer information as compiled by Company; (2) Company's internal practices and procedures; (3) Company's financial condition and financial results of operation; (4) supply of materials information, including sources and costs, designs, information on land and lot inventories, and current and prospective projects; (5) strategic planning, manufacturing, engineering, purchasing, finance, marketing, promotion, distribution and selling activities; (6) all other information which Executive has a reasonable basis to consider confidential or which is treated by Company as confidential; and (7) all information having independent economic value to Company that is not generally disclosed or known to, and not readily ascertainable by proper means by, persons who can obtain economic value from its disclosure or use. Notwithstanding the foregoing provisions, information which

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becomes available on a non-confidential basis from a source other than Executive which source is not prohibited from disclosing such confidential information by legal, contractual or other obligation shall not be considered "Company Confidential Information."

9. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any applicable law, then such provision will be deemed to be modified to the extent necessary to render it legal, valid and enforceable, and if no such modification will make the provision legal, valid and enforceable, then this Agreement will be construed as if not containing the provision held to be invalid, and the rights and obligations of the parties will be construed and enforced accordingly.

10. **Assignment by Company.** Nothing in this Agreement shall preclude the Company from consolidating or merging into or with, or transferring all or substantially all of its assets to, another corporation or entity that assumes this Agreement and all obligations and undertakings hereunder. Upon such consolidation, merger or transfer of assets and assumption, the term "Company" as used herein shall mean such other corporation or entity, as appropriate, and this Agreement shall continue in full force and effect.

11. **Entire Agreement.** This Agreement, along with the change of control agreement with Executive and the restricted stock agreement and stock option agreement entered into on even date herewith, embody the complete agreement of the parties hereto with respect to the subject matter hereof and supersede any prior written, or prior or contemporaneous oral, understandings or agreements between the parties that may have related in any way to the subject matter hereof. This Agreement may be amended only in writing executed by the Company and Executive.

12. **Governing Law.** This Agreement and all questions relating to its validity, interpretation, performance and enforcement, shall be governed by and construed in accordance with the internal laws, and not the law of conflicts, of the State of Arizona.

13. **Notice.** Any notice required or permitted under this Agreement must be in writing and will be deemed to have been given when delivered personally or by overnight courier service or three days after being sent by mail, postage prepaid, at the address indicated below or to such changed address as such person may subsequently give such notice of:

if to Parent or Company: Meritage Homes Corporation  
17851 N. 85<sup>th</sup> Street, Suite 300  
Scottsdale, Arizona 85255  
Attention: Chief Executive Officer

With a copy to: Meritage Homes Corporation  
17851 N. 85<sup>th</sup> Street, Suite 300  
Scottsdale, Arizona 85255  
Attention: General Counsel

if to Executive: Steven Davis  
To the address listed in the Company's  
Employment Records

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14. **Arbitration.** Any dispute, controversy, or claim, whether contractual or non-contractual, between the parties hereto arising directly or indirectly out of or connected with this Agreement, relating to the breach or alleged breach of any representation, warranty, agreement, or covenant under this Agreement, unless mutually settled by the parties hereto, shall be resolved by binding arbitration in accordance with the Employment Arbitration Rules of the American Arbitration Association (the "AAA"). Any arbitration shall be conducted by arbitrators approved by the AAA and mutually acceptable to Company and Executive. All such disputes, controversies, or claims shall be conducted by a single arbitrator, unless the dispute involves more than \$50,000 in the aggregate in which case the arbitration shall be conducted by a panel of three arbitrators. If the parties hereto are unable to agree on the arbitrator(s), then the AAA shall select the arbitrator(s). The resolution of the dispute by the arbitrator(s) shall be final, binding, nonappealable, and fully enforceable by a court of competent jurisdiction under the Federal Arbitration Act. The arbitrator(s) shall award damages, reasonable attorneys' fees and costs to the prevailing party. The arbitration award shall be in writing and shall include a statement of the reasons for the award. The arbitration shall be held in the Phoenix, Arizona metropolitan area. The only exception is that the Company may proceed in any court of competent jurisdiction to obtain equitable relief under Sections 7 and 8 of this Agreement, but any claim for monetary damages thereunder is subject to binding arbitration.

15. **Withholding; Release; No Duplication of Benefits.** All of Executive's compensation under this Agreement will be subject to deduction and withholding authorized or required by applicable law. The Company's obligation to make any post-termination payments hereunder (other than salary and bonus payments and expense reimbursements through the date of termination), shall be subject to receipt by the Company from Executive of a mutually agreeable release, and compliance by Executive with the covenants set forth in Sections 7 and 8 hereof. If there is any conflict between the provisions of the change of control agreement and this Agreement, such conflict shall be resolved so as to provide the greater benefit to Executive. However, in order to avoid duplication of any monetary benefits, any payments or benefits due under

Executive's change of control agreement, will be reduced by any payments or benefits (not including salary and bonus payments) provided in Section 6 of this Agreement.

16. **Successors and Assigns.** This Agreement is solely for the benefit of the parties and their respective successors, assigns, heirs and legatees. Nothing herein shall be construed to provide any right to any other entity or individual.

17. **Related Party Transactions.** Executive may not engage in any related party transactions with the Company unless approved in the specific instance by the Audit Committee of the Board of the Company.

*[Signature page follows]*

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AGREED to this 16<sup>th</sup> day of October, 2006 by:

**MERITAGE HOMES CORPORATION**, a  
Maryland corporation

By: /s/ Steven J. Hilton  
Name: Steven J. Hilton  
Title: Chairman and Chief Executive Officer

AGREED to this 16<sup>th</sup> day of October, 2006 by:

**EXECUTIVE: Steven Davis**

/s/ Steven Davis

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**EXHIBIT A**

**BONUS TERMS FOR STEVEN DAVIS**

For 2006, a bonus of \$400,000, provided that Executive is employed by the Company on December 31, 2006. Such bonus to be paid on or around January 31, 2007.

For 2007 and during each Renewal Term (if any), Executive will be eligible for an annual bonus, which is targeted to be between .25% and .33% of EBITDA. The payout range will be based on Executive's achievement of specific goals to be mutually agreed upon between Executive and CEO and approved by the Company's Executive Compensation Committee of the Board of Directors. This annual bonus, which is subject to legally required withholdings, will be paid in February following the end of the respective fiscal year.

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October 16, 2006

Mr. Steven Davis  
257 Brokenbraugh Court  
Metairie, Louisiana 70005

### Change of Control Agreement

Dear Steve:

The Board of Directors believes that it is in the best interests of Meritage Homes Corporation ("Meritage") 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 in this Change of Control Agreement.

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. This Agreement was drafted to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended ("Code") and the proposed regulations issued thereunder. If the final regulations issued under Code Section 409A provide for more liberalized rules than those under this Agreement, and if the Company decides to amend the change of control agreements for other Company executives to reflect any such change, this Agreement will be amended in a manner consistent with the amendments made to those other change of control agreements.

#### 1. TERM OF AGREEMENT.

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

#### 2. SEVERANCE PAYMENT AND STOCK OPTION ACCELERATION.

If your employment with the Company is terminated without "Cause" (as defined in Section 6) at any time within two years following a "Change of Control" (as defined in Section 4), 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 5) at any time within two years following a Change of Control.

The "Severance Payment" equals (i) your annual base salary on the date of termination of your employment plus (ii) your incentive compensation for the year preceding the year in which the Change of Control occurred. In addition, you will not be required to repay any portion of

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your relocation payments or reimbursements upon such termination of employment. The Severance Payment will be paid in one lump sum within 15 business days of 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 8(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.

Notwithstanding anything in this Agreement or in any option agreement to the contrary, upon a Change of Control, without further action (i) any stock option granted to you shall accelerate and become vested and (ii) any restrictions on restricted stock awards shall lapse. You will have a period of one year from the date of termination to exercise such options.

#### 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 18 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 Agreement 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 3 shall also 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 the benefits provided by this Agreement.

#### 4. 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 33% 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 4, 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 4, the term “Unrelated Person” shall mean and include any Person other than the Company, or an employee benefit plan of the Company.

(b) A sale, transfer, or other disposition through a single transaction or a series of related 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.

#### **5. GOOD REASON DEFINED.**

For purposes of this Agreement, the term “Good Reason” shall mean if following a Change of Control you are either (i) not offered a comparable position in the surviving corporation or (ii) required to relocate to any employment location that is more than thirty (30) miles from the Company’s Scottsdale, Arizona headquarters.

#### **6. 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.

#### **7. CEILING ON BENEFITS.**

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

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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 (or the number of years worked if less than five). For example, if a Change of Control occurs in 2009, your base period compensation would be the average of the compensation includible in your income for years 2006, 2007, 2008 and because you were first employed in 2005, your annualized compensation for that partial year. Any compensation includible in your income for 2009 is disregarded for these purposes. 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 8. 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.

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 7 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.

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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 7, 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 7, 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 7, 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 7 shall be of no further force or effect.

## **8. TERMINATION NOTICE AND PROCEDURE.**

Any termination by the Company or you of your employment within two (2) years following a Change of Control 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:

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(a) The Notice of Termination 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 a senior executive officer of the Company or member of the Executive Compensation Committee of the Board of Directors of Meritage specifying the basis for such termination.

(c) If during the two (2) year period following a Change of Control the Company furnishes 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 15 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 during the two (2) year period following a Change of Control the Company furnishes 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. Any 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 mean a disability that results in you being medically unable to fulfill your duties of employment for six (6) consecutive months.

(e) If during the two (2) year period following a Change of Control and as a result of such Change of Control 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 15, (B) the date of your death or (C) one day prior to the second anniversary of a Change of Control; or (ii) Good Reason did not exist, your employment

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shall continue after such determination as if you had not delivered the Notice of Termination asserting Good Reason.

(f) If during the two (2) year period following a Change of Control 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 of your employment from Meritage to one of its subsidiaries or a transfer of your employment from a subsidiary to Meritage or another subsidiary shall not be treated as a termination of employment.

## **9. 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 to assume, whether expressly or by operation of law, this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. Failure of Meritage to obtain such assumption 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.

## **10. 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.

## **11. 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

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Meritage with a copy to the General Counsel 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.

**12. 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 a senior executive officer of the Company or a member of the Executive Compensation Committee of the Board of Directors 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 Texas 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.

**13. 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.

**14. 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.

**15. 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 7 and 8(d)), be resolved by the arbitration provisions set forth below.

Any dispute, controversy, or claim, whether contractual or non-contractual, between Meritage and you arising directly or indirectly out of or connected with this Agreement, relating to the breach or alleged breach of any representation, warranty, agreement, or covenant under this Agreement, unless mutually settled by the parties hereto, shall be resolved by binding arbitration in accordance with the Employment Arbitration Rules of the American Arbitration Association (the "AAA"). Any arbitration shall be conducted by arbitrators approved by the AAA and mutually acceptable to Meritage and you. All such disputes, controversies, or claims

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shall be conducted by a single arbitrator, unless the dispute involves more than \$100,000 in the aggregate in which case the arbitration shall be conducted by a panel of three arbitrators. If the parties hereto are unable to agree on the arbitrator(s), then the AAA shall select the arbitrator(s). The resolution of the dispute by the arbitrator(s) shall be final, binding, nonappealable, and fully enforceable by a court of competent jurisdiction under the Federal Arbitration Act. The arbitrator(s) shall award damages to the prevailing party. The arbitration award shall be in writing and shall include a statement of the reasons for the award. The arbitration shall be held in the Phoenix, Arizona metropolitan area. The arbitrator(s) shall award reasonable attorneys' fees and costs to the prevailing party.

**16. 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 Guaranty Bank from time to time as its prime rate from the date that payments to you should have been made under this Agreement.

**17. 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 the Company 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, the Company shall have the right to recover all or any part of such overpayment from you or from whomsoever has received such amount.

**18. ENTIRE AGREEMENT.**

This Agreement sets forth the entire agreement between you and Meritage concerning the subject matter discussed in this Agreement and supersedes 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.

**19. 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

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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.

**20. SECTION 409A.**

If any payments under this Agreement are subject to the provisions of Code Section 409A, it is intended that the Agreement will comply fully with and meet all the requirements of Code Section 409A.

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 HOMES CORPORATION**

By. /s/ Steven J. Hilton  
Name: Steven J. Hilton  
Title: Chief Executive Officer

**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.

/s/ Steven Davis  
Steven Davis