

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
SUBJECT: DAUENHAUER RANCH SUBDIVISION HOUSING
ALLOCATION PLAN CONTRACT - PHASE 2 WITH
MERITAGE HOMES OF CALIFORNIA, INC.
STAFF PRESENTER: CHUCK REGALIA, DIRECTOR OF COMMUNITY
DEVELOPMENT
DEPARTMENT OF COMMUNITY DEVELOPMENT
AGENDA ACTION: RESOLUTION

ISSUE(S)

Shall the Council approve the proposed Housing Allocation Plan Contract with Meritage Homes of California, Inc. for the Dauenhauer Ranch Subdivision Affordable Ownership Units - Phase 2?

BACKGROUND

1. On June 29, 2010, in a negotiated foreclosure sale, Meritage Homes of California, Inc. (Meritage) purchased 65 lots in Phase 1 of the Dauenhauer Ranch Subdivision, and Phase 2 of the subdivision, which was tentatively mapped for an additional 73 single family homes. Meritage's purchase did not include Lot 66 of the subdivision, which was set aside and restricted for construction of twenty-four (24) affordable rental units. Lot 66 remained under the ownership of Alderbrook Properties, LP of which Christopherson Homes, Inc., a California corporation, is the managing general partner ("Christopherson").

Meritage has no ownership or control over Lot 66 and despite its good faith efforts has not been able to reach an agreement with the owner of Lot 66 to either purchase the site or assist with the construction of the required affordable units on that site. Attached to the staff report is a letter from Meritage dealing its efforts.

2. Meritage then sought to construct for sale market rate units on the individual lots in Phase 1, but the City's Housing Allocation Plan requires that the affordable units be built generally concurrently with the market rate units. City staff encouraged Meritage to collaborate with Christopherson in order to get the Lot 66 affordable units under construction, but in the meantime, Meritage was not able to proceed with construction of the market rate units.

3. City staff also met with Christopherson in an effort to resolve impediments to the construction of the affordable units on Lot 66. The City, as the issuer of bonds for the affordable housing project on Lot 66 and the beneficiary under the existing Housing Allocation Plan contract recorded against Lot 66 ("Original HAP Contract"), has an interest in seeing the development of the affordable rental units on Lot 66.
4. While the City issued tax exempt bonds to provide financing for a portion of the affordable rental units the Linwood Subdivision, known as the Alderbrook Heights Apartments, which were constructed, as well as the Lot 66 affordable units, it was also anticipated that Christopherson would receive investment from the sale of tax credits. At the downturn of the economy, the tax credit market disappeared, and Christopherson found itself with little remaining bond proceeds and no hope of tax credit investment.

The amount of time that had elapsed made it impossible for Christopherson to utilize the initial award of tax credits. Further, the letter of credit issued by Exchange Bank in order to secure the bonds until permanent financing could occur following completion of construction has an expiration date, which if expired would result in the bonds being called due and payable.

5. Despite efforts on the part of City staff and Meritage, including an offer by Meritage to assist in financing the construction of the affordable units on Lot 66 as well as interest by other affordable housing developers in a purchase of the Lot 66 site, construction of the Lot 66 affordable units was not forthcoming.
6. In order to provide a solution to the City that would allow Meritage to construct its market rate units, Meritage proposed to pay the in lieu housing fees applicable to their market rate units. City staff was concerned that this would result in a "double dipping" of sorts for the City, in that it remained dedicated to the ultimate construction of the Lot 66 affordable rental units originally pledged for the project. Since the original subdivision of which this project is a part was already approved for onsite affordable units, the City did not have a legal basis to also require payment of in lieu fees.
7. Meritage alternately proposed to make available up to twenty (20) for-sale affordable housing units (Affordable Ownership Units) as an interim solution to address the HAP requirement for the subdivision, until such time as the Lot 66 affordable units were constructed. Meritage has worked with the City to meet the City's housing needs and its desire to move forward with construction on the properties that it purchased.
8. On June 28, 2011, the Council approved the Dauenhauer Ranch Subdivision Housing Allocation Plan Contract-Phase 1 with Meritage Homes, Inc. (the "Phase 1 HAP Contract"), which was recorded on August 3, 2011. Phase 2 of the project was not approved at that time because it was hoped and anticipated that the Lot

66 affordable rental units would be under construction. The proposal for Phase 2 follows the same model for obtaining affordable units that was approved by the Council for Phase 1.

9. On December 20, 2012 the Dauenhauer Ranch Phase 2 Final Map was recorded, subdivided into 73 lots and the efforts of Christopherson to locate the necessary financing for construction of the Lot 66 affordable units had still not borne fruit. Additionally, the letter of credit issued by Exchange Bank, had been extended, further pushing out the deadline for commencement of construction.
10. On April 2, 2013, the City Council considered approval of the proposed Housing Allocation Plan Contract with Meritage Homes of California, Inc. for the Dauenhauer Ranch Subdivision Affordable Ownership Units – Phase 2. After consideration of the proposed contract, the City Council continued consideration of the contract.

The purpose of this continuance was to allow Meritage Homes and Christopherson to develop a plan for construction of the 24-unit affordable housing units on lot 66 through mutual agreement between the two parties.

11. Meritage Homes, at the direction of Council pursued further discussions with Christopherson, but despite the additional efforts of Meritage Homes as indicated in the attached letter dated May 8, 2013, any assurances regarding construction of the Lot 66 affordable units was still not forthcoming.
12. Staff therefore recommends that the Council approve the Phase 2 Housing Allocation Plan to provide an interim solution to allow the Meritage project to be built and also provide for affordable units until Lot 66 is developed with affordable units.

By approving this proposed agreement, the Council will not be releasing the provisions requiring construction of the affordable rental units on Lot 66, which requirement is secured by the Dauenhauer Ranch Housing Allocation Plan Contract with the original owner of the subdivision (Dauenhauer Village Investors, LLC, of which Christopherson Homes, Inc. is the managing member), recorded against Lot 66 on May 30, 2007, and which contract requirements will run with and continue to burden Lot 66 regardless of sale or bond financing foreclosure.

ANALYSIS

1. The ultimate goal for the City is to see the Lot 66 affordable units built and made available for occupancy as soon as possible. Lot 66 is subject to a recorded agreement with the City and the Housing Authority requiring development of rental units restricted for occupancy by residents who qualify as low and very low income.

2. In light of Meritage's efforts to cooperate in good faith with the City and with Christopherson in their efforts to see the Lot 66 affordable units constructed, the only reasonable course of action is to allow Meritage to proceed with construction of its market rate units.
3. Given the two goals of both pursuing the ultimate construction of the Lot 66 affordable units, and not forestalling Meritgage's efforts to construct its market rate units in the meantime, it would appear to City staff that there exist only two options:
 - a) The Council may chose to accept Meritage's offer to provide the City with an interim solution through the restriction of eleven (11) additional units restricted for sale to moderate income families; or
 - b) The Council may chose to release Meritage from any further requirements under the Original HAP Contract.
4. The Council may also direct staff to more vigorously pursue the owner of Lot 66 regarding construction of the affordable units.

RECOMMENDATION

The Departments of Community Development, Economic Development and Housing, and the City Attorney's Office recommend that the Council, by resolution, approve the proposed Housing Allocation Plan Contract with Meritage Homes of California, Inc. for the Dauenhauer Ranch Subdivision Affordable Ownership Units - Phase 2.

Author: Chuck Regalia

Attachment: Proposed Phase 2 HAP Contract
Meritage Homes correspondence dated May 8, 2013
Meritage Homes correspondence dated May 28, 2013

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NO FEE

This Document is being recorded
For the benefit of the City of Santa Rosa,
as per Gov't Code Section 6103

WHEN RECORDED MAIL TO:

HOUSING AUTHORITY OF
THE CITY OF SANTA ROSA
P. O. Box 1806
Santa Rosa, CA 95402-1806

Space Above This Line For Recorder's Use

**HOUSING ALLOCATION PLAN CONTRACT
BETWEEN THE CITY OF SANTA ROSA,
THE HOUSING AUTHORITY OF THE CITY OF SANTA ROSA
AND
MERITAGE HOMES OF CALIFORNIA, INC.
A CALIFORNIA CORPORATION**

**DAUENHAUER RANCH SUBDIVISION
Phase 2 - Ownership Units**

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**HOUSING ALLOCATION PLAN CONTRACT
BETWEEN THE CITY OF SANTA ROSA,
THE HOUSING AUTHORITY OF THE CITY OF SANTA ROSA
AND
MERITAGE HOMES OF CALIFORNIA, INC.
A CALIFORNIA CORPORATION**

**RE: DAUENHAUER RANCH SUBDIVISION
Phase 2 - Ownership Units**

1. PARTIES

The parties to this Contract are THE CITY OF SANTA ROSA, a California charter city ("City"), THE HOUSING AUTHORITY OF THE CITY OF SANTA ROSA ("Housing Authority") and MERITAGE HOMES OF CALIFORNIA, INC., a California corporation ("Meritage").

2. BACKGROUND

2.1. The Dauenhauer Ranch Subdivision Phase 1 (the "Phase 1 Development") consists of sixty-five (65) lots for single-family homes, one (1) lot for a 24-unit multifamily rental complex ("Lot 66") designated for affordable rental housing (the "Allocated Units"), Parcel A Park Parcel, and Parcel B Common Area Wetland Site, all as shown on the final map entitled "Dauenhauer Ranch Phase 1," recorded on December 23, 2005 in the Official Records of Sonoma County, California as Document No. 2005188678, in Book 687 of Maps at Pages 11-15, inclusive, (the "Phase 1 Final Map"). Phase 2 of the Dauenhauer Ranch Subdivision consists of seventy-three (73) additional lots for single-family homes (the "Phase 2 Development") as shown on the final map entitled "Dauenhauer Ranch Phase 2," recorded on December 20, 2012 in the Official Records of Sonoma County, California as Document No. 2012-131194, in Book 755 of Maps at Pages 22 through 26, inclusive (the "Phase 2 Final Map"). The Phase 1 and Phase 2 Developments are collectively referred to as the "Dauenhauer Ranch Development").

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2.2 The Dauenhauer Ranch Development is subject to the requirements of the Housing Allocation Plan ("HAP") of the City, which plan was established by the Council of the City of Santa Rosa on June 2, 1992, and adopted as Ordinance No. 2961 on June 16, 1992, under Chapter 21-02 of the Santa Rosa City Code-Housing Allocation Plan, with various amendments between June 9, 1992, and May 14, 2002, all as amended by Ordinance No. 3561 on May 14, 2002 (hereinafter collectively referred to as the "HAP Ordinance").

2.3. Meritage is the owner and developer of the single-family portion of the Dauenhauer Ranch Development.

2.4. The portion of the Phase 1 Development known as Lot 66 is owned by Alderbrook Properties, LP (the "Lot 66 Owner"), as the successor-in-interest to the original owner of the Dauenhauer Ranch Development, Dauenhauer Village Investors, LLC. In May, 2007, the original owner entered into a HAP contract with the City and the Housing Authority (the "Existing HAP Contract"), dated May 17, 2007 and recorded against Lot 66 in the Official Records of Sonoma County, California as Document No.2007061251, which Existing HAP Contract requires the provision of twenty-four (24) affordable rental units on Lot 66 to meet the City's HAP requirements for the Dauenhauer Ranch Development.

2.5. As of the date of this Contract, the Lot 66 Owner has still not commenced construction of the Allocated Units and therefore the HAP requirements for the Dauenhauer Ranch Development have not yet been fulfilled. Meritage has no control over the timing of construction and occupancy of the Allocated Units by the Lot 66 Owner.

2.6. In light of the fact that the HAP requirements for the Dauenhauer Ranch Development have not yet been fulfilled, and in order to address the fact that pursuant to Section 21-02.150 of the HAP Ordinance, no occupancy of more than five market rate units is allowed within the Dauenhauer Ranch Development for each affordable unit constructed and ready for occupancy, City and Meritage entered into that certain Housing Allocation Plan Contract for the Dauenhauer Ranch Subdivision Phase 1 – Ownership Units recorded August 3, 2011 as Document No. 2011065748 in the Official Records of Sonoma County, California (the "Phase 1 HAP Contract"), which required

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the construction of nine (9) affordable units to fulfill the HAP requirements for the Phase 1 Development .

2.7. Meritage now desires to fulfill the HAP requirements for the Phase 2 Development by making eleven (11) on-site for sale units within the Phase 2 Development available to first time moderate income purchasers. In addition, City and Meritage now desire to allow two (2) of the nine (9) HAP units required in Phase 1 to be constructed as part of the second phase of build out as herein set forth.

2.8. This Contract sets forth the terms and conditions by which Meritage has committed to fulfilling the HAP requirements for the Phase 2 Development. By its approval of this Contract, the City has agreed to accept Meritage's proposal to construct the eleven (11) affordable for-sale units in the Phase 2 Development and the two (2) build-out affordable for-sale units in the Phase 1 Development on site subject to the terms and conditions of this Contract and hereby delegates the responsibility of monitoring and enforcing the affordable housing requirements set forth in this Contract to the Housing Authority.

2.9. The information set forth in the BACKGROUND is true and correct, and made a part of this Contract.

3. DEFINITIONS

Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall mean:

3.1. "**Affordable Unit**": Includes two (2) single-family units within the Phase 1 Development (designated as "BO"), and eleven (11) single-family units within the Phase 2 Development (all as shown on the Building Plan attached as Exhibit B to this Phase 2 HAP Contract, and made part hereof), as further described in Section 5.1, to be set aside under this Contract, together with the underlying real property interests therein, which are to be constructed, sold, owned, occupied and resold only to Certified Households pursuant to this Contract during its Term.

3.2. "**APN**" or "**APNs**": Assessor Parcel Number or Assessor Parcel Numbers.

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3.3. "**Area Median Income**": the median income for the Santa Rosa/Petaluma Primary Metropolitan Statistical Area as determined by the Secretary of Housing and Urban Development (HUD) under Section 8(f)(3) of the United States Housing Act of 1937, as amended.

3.4. "**Certified Households**": households having been certified by the Housing Authority as First-Time Homebuyers (as herein defined) having a gross income level of no more than 120% of Area Median Income adjusted for household size.

3.5. "**First-Time Homebuyer**": a household that has not owned a home in the preceding three-year period.

3.6. "**Housing Authority**": the Housing Authority of the City of Santa Rosa, and its successors and assigns. With respect to administrative steps required to be taken under this Contract, and any of the related exhibits, the staff of the Housing Authority is also included within the definition of that term.

3.7. "**HUD**": the United States Department of Housing and Urban Development, and its successors and assigns.

3.8. "**Income Certification**": a certification as to income executed by a household applying to purchase an Affordable Unit, together with a signed approval by the Housing Authority, all in the form attached hereto as Exhibit "C."

3.9. "**Income Guidelines**": the compilation of data periodically updated and published by the Housing Authority setting forth the targeted population's standard income levels. At the time this Contract is executed, the primary source of information for the Income Guidelines is HUD. Should the HUD data no longer be available, the Housing Authority shall select an alternative method of arriving at a similar guideline, and the Meritage, and its successors or assigns, shall be bound by that alternative throughout the Term. A copy of the present Income Guidelines is attached hereto as Exhibit "D."

3.10. "**Moderate Income Household**": a household having a gross income level of no more than 120% of Area Median Income adjusted for household size.

3.11. "**Project**": For purposes of this Contract, the Project consists of Lots 63, and 64 as shown on the Phase 1 Final Map and Lots 5, 9, 15, 21, 29, 32, 37, 40, 47, 57 and 59, as shown on the Phase 2 Final Map (collectively, the "Project" or the

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"Affordable Units"). A legal description of the Project is attached to this Contract and incorporated into it as Exhibit "A."

3.12. "Resale Agreement": the Resale Restriction Agreement and Option to Purchase ("Resale Agreement") between the Housing Authority and each of the Certified Households, which Resale Agreement shall be recorded on each Affordable Unit and the underlying property at the time of acquisition by the Certified Household. The Resale Agreement shall set forth that Certified Household's obligations to occupy the Affordable Unit, and sell it under the terms of this Contract only to another Certified Household at no more than the Maximum Sales Price Upon Resale as defined therein. A copy of a blank form of such Resale Agreement is attached to this Contract and incorporated into it as Exhibit "E."

3.13. "Subsequent Owner": Any owner of an Affordable Unit other than Meritage.

4. PROJECT DESCRIPTION

Owner's Name:	Meritage Homes of California, Inc.
Owner's Address:	1671 East Monte Vista Avenue, Suite 214 Vacaville, CA 95688
Owner's Phone:	(707) 359-2018
Project Title:	Dauenhauer Ranch Subdivision, Phase 2 Ownership Units
Project Address:	(Formerly addressed as 1600 Aston Avenue) Santa Rosa, CA 95404 Currently on Honeysuckle Drive, Woodsage Way, and Velvetleaf Lane, but with no street addresses assigned yet
Legal Description:	See Exhibit "A"

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5. COMMITMENT TO PROVIDE AFFORDABLE FOR-SALE UNITS

5.1. Affordable Units. Meritage, and its successors or assigns, commits to set aside the Affordable Units for sale to and occupancy by Certified Households, at a price that does not exceed the "Maximum Sales Price Upon Initial Sale," as defined below. This Contract controls the initial and resale prices of the Affordable Units and limits the purchasers to Certified Households during the term of this Contract.

The Affordable Units must meet all size and bedroom number requirements imposed by the HAP Ordinance, including, without limitation, the requirement that each Affordable Unit have a minimum of two (2) bedrooms and be of at least eight hundred (800) square feet living area. The Affordable Units that Meritage has committed to provide meet or exceed the minimum square foot amount of living area.

5.2. Building Plan. Notwithstanding the requirements of the City Code Section 21-02.150, requiring that construction of the affordable units is on a 1 to 5 ratio to the market rate units, the parties hereto agree that the Affordable Units shall be allowed to be constructed in accordance with the Building Plan attached hereto as Exhibit B and incorporated herein by reference. The location of the Affordable Units is designated on the Building Plan and each shall be constructed generally concurrently with the construction of the market rate units within each subphase. In no event shall any occupancy of any market rate unit within a new subphase be allowed before all of the Affordable Units located within that current subphase of construction are substantially completed; provided, however, that the two (2) Affordable Units designated on the Building Plan as "BO" or build-out, and identified on the Phase 1 Final Map as Lots 63 and 64, shall be constructed generally concurrently with build out of subphase 11 as shown on the Building Plan, and in no event later than occupancy of the last four (4) residences within subphase 11. In addition, two (2) Affordable Units to be located within subphase 5 as shown on the Building Plan and identified on the Phase 2 Final Map as Lots 5 and 40 shall be substantially complete prior to occupancy of the first market rate unit in the Phase 2 Development. The sequencing of construction of the units identified in the Building Plan may be revised by Meritage only with prior written approval by the Executive Director of the Housing Authority, which approval will not be

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unreasonably withheld (in that regard, the Executive Director of the Housing Authority shall endeavor to respond to any requested revision within forty-five (45) days from the date the Housing Authority receives such request). Notwithstanding the foregoing provisions, nothing in this Contract shall preclude Meritage from constructing any of the Affordable Units sooner than as currently shown in the Building Plan, so long as this does not constitute a change in the units identified as Affordable Units on the Building Plan.

5.3. Duration of Restrictions. The requirements of this Contract shall be imposed upon the Affordable Units required by this Contract for a period of thirty (30) years from the date of close of escrow on the initial sale by Meritage, or its successors or assigns, of each Affordable Unit to a Certified Household, or until such time as the Allocated Units on Lot 66 are constructed and ready for occupancy, whichever is sooner ("Term").

If, and when, the Allocated Units are complete, which shall be evidenced by a final inspection and approval of occupancy issued by the City for the entire twenty-four (24) unit apartment complex, this Contract shall be released by the City. If the Lot 66 Owner does not provide the Allocated Units, this Contract shall remain in effect and Meritage, and its successors or assigns, shall be bound by its terms and conditions throughout the effective thirty-year period of this Contract. Upon expiration of the Term, this Contract shall be released, and the Executive Director of the Housing Authority, or designee, is hereby authorized to execute such documents as are necessary to effect such release in compliance with this Contract.

5.4. Intentionally Omitted.

5.5. Deed Restrictions. This Contract shall be recorded in the chain of title to the real property underlying each Affordable Unit as more specifically described in Section 8 of this Contract. Accordingly, the grantees of each Certified Household who take title to an Affordable Unit are subject to and bound by the restrictions contained in this Contract during its Term. Each deed by which an Affordable Unit is conveyed to a Certified Household shall incorporate, by reference, the obligations of this Contract. Prior to the close of escrow, each Certified Household purchasing an Affordable Unit shall be required to sign a Resale Agreement, a blank form of which is attached to this

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Contract as Exhibit "E" which shall be recorded against each Affordable Unit at the time of sale.

5.6. Maximum Sales Price Upon Initial Sale.

The "Maximum Sales Price Upon Initial Sale" shall be determined based on a formula assuming a three percent (3%) down payment with payment of monthly principal, interest, taxes and insurance as well as mortgage insurance and homeowner association dues, based upon the applicable Income Guidelines for a household with a gross income of 110% of Area Median Income adjusted based on unit size (1.5 persons per bedroom). In any event, the Maximum Sales Price Upon Initial Sale under this Contract to a Certified Household by Meritage, or its successors and assigns, shall not be more than Three Hundred Fifty Thousand Dollars (\$350,000).

The Maximum Sales Price Upon Initial Sale shall be reviewed not less than annually, or more frequently upon the request of the Housing Authority based on the receipt of new information, for consistency with the Income Guidelines and housing market conditions. At the Housing Authority's sole discretion, the Maximum Sales Price Upon Initial Sale may fluctuate in order to assure that the Affordable Units are reasonably accessible to Certified Households.

5.7. Notification of Initial Sales Availability by Meritage. Meritage, or its successors or assigns, shall give the Housing Authority a written Notice of Initial Sales Availability thirty (30) days prior to the date any of the Affordable Units are placed on the market for initial sale by Meritage. Meritage shall include in the Notice the sales price at which it intends to market the Affordable Unit, which sales price may not exceed the Maximum Sales Price Upon Initial Sale as set forth in Section 5.6.

Meritage shall make good-faith efforts to market and sell each Affordable Unit to persons who will qualify as Certified Households. Meritage shall be deemed to have made "good-faith efforts" by (a) providing advertising prior to the release of the Affordable Unit for sale indicating the availability of the Affordable Unit to potentially Certified Households, (b) maintaining a waiting list of potentially Certified Households seeking housing opportunities within the City, and (c) notifying such Certified Households prior to the release of newly available Affordable Units. In the event that notwithstanding Meritage's good-faith efforts to market and sell an Affordable Unit to a

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Certified Household, Meritage is unable to sell such Affordable Unit at the initially established sales price, then not more than ninety (90) days following the initial marketing of the Affordable Unit, Meritage shall reduce the initial sales price in an amount determined by Meritage in its reasonable discretion for such Affordable Unit, and shall continue to reduce the sales price at least every thirty (30) days thereafter, until such time that the Affordable Unit is sold to a Certified Household. In no event shall an Affordable Unit be sold by Meritage, or its successors or assigns, to any person(s) other than a Certified Household under the terms of this Contract. These provisions shall apply to initial sales only. Any resale of an Affordable Unit shall be marketed in accordance with the applicable provisions of the Resale Agreement.

5.8. Owner Occupancy. The intent of the policy underlying this Contract is that affordable "for sale" housing be provided to Certified Households. Therefore, at all times during the term of this Contract, the Affordable Units shall be occupied only by Subsequent Owners who are Certified Households. At no time shall the Affordable Units be other than owner occupied by a Certified Household, and the deed to the Certified Household on the initial sale or a resale of the Affordable Unit shall so specify.

5.9. Acknowledgement of Resale Restrictions. Meritage shall ensure that each Certified Household purchasing an Affordable Unit upon initial sale of the Affordable Unit is informed in writing and signs a written acknowledgement, before close of escrow, in the following form acknowledging that any sale or resale of the Affordable Unit:

THIS HOME IS BEING SOLD TO THE UNDERSIGNED BUYER(S) AS PART OF A PROGRAM SPONSORED BY THE CITY OF SANTA ROSA TO ASSIST IN THE PROVISION OF AFFORDABLE HOUSING. VIOLATIONS OF THE PROGRAM REQUIREMENTS MAY RESULT IN THE EXERCISE OF A POWER OF TERMINATION, WHEREBY THE PERSON(S) HOLDING TITLE UNDER THE GRANT MUST RECONVEY THE PROPERTY TO THE HOUSING AUTHORITY OR ITS DESIGNEE BY GRANT DEED, DULY ACKNOWLEDGED AND SUITABLE FOR RECORDING. THE POWER OF TERMINATION CAN BE ENFORCED BY AN ACTION TO FORFEIT TITLE,

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**BY AN INJUNCTION TO PREVENT A BREACH OF THE CONDITIONS
SUBSEQUENT, BY FORFEITURE OR BY ANY OTHER LEGAL ACTION.**

5.10. Recitals in Deed. Meritage, or its successors and assigns, shall include in any deed to a purchaser of an Affordable Unit, a reference to this Contract which specifically incorporates the requirements of this Contract; provided, however, in the absence of such reference, the obligations of this Contract shall still run with the land and bind Meritage, its successors and assigns, and obligate any Subsequent Owner. All Subsequent Owners reselling an Affordable Unit shall inform all purchasers of this requirement as long as this Contract is in effect for any Affordable Unit.

6. SUBSEQUENT OWNERS' BASIC OBLIGATION

During the Term, each Subsequent Owner shall only resell the Affordable Unit to a Certified Household or, at the Housing Authority's option, to the Housing Authority, or to its designee, at a price not to exceed the Maximum Sales Price Upon Resale, as defined below, all in accordance with the obligations of this Contract and the Resale Agreement to be recorded against each Affordable Unit upon sale.

The price at which an Affordable Unit may be resold by a Subsequent Owner of the Affordable Unit to a Certified Household under this Contract and the Resale Agreement shall not exceed the Maximum Sales Price Upon Resale, which shall be determined based on a formula assuming a three percent (3%) down payment with payment of monthly principal, interest, taxes and insurance as well as mortgage insurance and homeowner association dues, based upon the applicable Income Guidelines for a household with a gross income of 110% of Area Median Income adjusted based on unit size (1.5 persons per bedroom), or the market rate price, whichever is less. Notwithstanding the foregoing, in no event will the Subsequent Owner of an Affordable Unit be required to sell the unit for less than it was purchased plus real estate transfer tax and real estate commission.

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7. LOAN RESTRICTIONS

The terms and conditions of any purchase money loans made to Certified Households for the purchase of an Affordable Unit must be expressly approved in writing by the Housing Authority, provided however, that alternatively the Housing Authority may approve a loan program to be made available to Certified Households consistent with the terms of this Contract and the goals and policies of the Housing Authority.

8. RECORDATION OF CONTRACT

This Contract shall be recorded against the Affordable Units, described in Exhibit "A" attached hereto, in the Official Records of the County of Sonoma immediately after its execution, as an encumbrance, but in a first priority position, senior to all other liens and encumbrances except real property taxes which are a lien, but paid current at the time of such recording for the purpose of assuring that the sale and resale restrictions survive any foreclosure of subsequent financing.

9. REMEDIES

In addition to any other remedy provided by law or granted under this Contract, the Housing Authority may elect to seek in a court of appropriate jurisdiction such injunctive orders as are reasonably necessary to secure performance of Meritage's and any Subsequent Owner's commitments under this Contract. In any such action, the Housing Authority shall, in addition to injunctive relief, be entitled to the full scope of remedies afforded by law, including such damages as are provable and allowed for breach of this Contract.

Any default in the performance of the requirements of this Contract by Meritage, shall entitle the Housing Authority, in addition to any other relief afforded to it by law or this Contract, to extend the period of time the Affordable Unit(s) are to be held under this Contract, by the period of time equal to the duration of such default.

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10. NO AGENCY CREATED

Meritage is an independent contractor and is not an agent of the Housing Authority or of the City. No party to this Contract may in any way contract on behalf of, or in the name of, the other party to the Contract. Any attempted violation of the provisions of this Section shall confer no rights, and shall be void.

11. INSURANCE

Until such time as all of the Affordable Units have been sold, Meritage, or its successors and assigns, shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, Attachment One, "Insurance Requirements," which is attached hereto and hereby incorporated and made part of this Contract by this reference. Maintenance of the insurance coverage as set forth in Attachment One is a material element of this Contract. Failure by Meritage to (i) maintain or renew coverage, (ii) provide the Housing Authority notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by the Housing Authority as a material breach of this Contract by Meritage. In the event that Meritage fails to maintain the full insurance coverage required herein, the Housing Authority, after at least ten (10) days written notice to Meritage, may, but shall not be obligated to, take out the required insurance policies and pay the premiums on such policies. Notwithstanding the foregoing, any failure by Meritage to maintain required insurance coverage shall not excuse or alleviate Meritage from any of its other duties or obligations under this Contract. Meritage shall assure that any, contractors, subcontractors or consultants utilized in connection with the Project maintain, all of the insurance coverage requirements set forth in the Insurance Requirements at Attachment One. The insurance requirements following the initial sale of an Affordable Unit shall be set forth in the Resale Agreement for each Affordable Unit.

12. INDEMNIFICATION

Meritage is solely responsible for the initial marketing and selling of the Affordable Units to Certified Households. Meritage has agreed to take such steps as are reasonably required to market the Affordable Units in such a manner as fairly and

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truthfully discloses to prospective purchasers the nature of the limitations created under this Contract and under the Resale Agreement. Accordingly, Meritage shall defend, indemnify and hold harmless the Housing Authority, the City, and their respective agents and employees from any liability, loss, cost or damage arising out of or in any way connected with alleged or real, errors, omissions, mistakes and/or misrepresentations occurring during the marketing, advertising, promoting, and/or conducting of the sale of any Affordable Unit by Meritage, whether the underlying claim is well-founded or not, and regardless of the form of relief sought, but excluding liability, loss, cost or damage arising out of the sole active negligence or willful misconduct of the Housing Authority, the City or their respective agents and employees.

13. MISCELLANEOUS PROVISIONS

13.1. Binding on Successors. Without waiving any of the requirements of the provisions of this Contract prohibiting assignment, the terms, covenants, conditions and restrictions of this Contract shall run with the land comprising the real property herein described on the legal description attached as Exhibit "A," and shall bind, and the benefits shall inure to, respectively, the heirs, successors, executors, administrator, assignees, and grantees of Meritage, the City, and the Housing Authority.

13.2. No Waiver. The waiver by any party of any breach or violation of any term, covenant or condition of this Contract or of any provision, ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other terms, covenant, condition, ordinance or law.

13.3 Voidable Transfers. Any sale, conveyance, assignment, lease, or mortgage of the Project in violation of the terms of this Contract shall be voidable at the election of the Housing Authority.

13.4. Severability. The provisions of this Contract are severable. Invalidation of any provision by law, judgment or Court order shall not affect the validity of any other provision. If any part of this Contract is determined to be unenforceable, the remainder thereof shall be enforced.

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February 22, 2013

13.5. Zoning/Land Use Restrictions. This Contract implements the City's zoning requirements and the land use conditions for the approval of the underlying Development. Consequently, nothing in this Contract shall be construed as a waiver of the City's zoning requirements for the Development or of the conditions to approval of the Development, which zoning requirements and conditions are set forth in this Contract and will be ongoing for the required Term of this Contract.

13.6. Notices. Formal notices, demands, and communications between the City, the Housing Authority and Meritage shall be sufficiently given if, and shall not be given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery service or overnight courier service, to the City, the Housing Authority and Meritage as follows, or at such other address as the parties may designate in writing from time to time:

City: City of Santa Rosa
c/o City Attorney
City Hall, Room #8
100 Santa Rosa Avenue
Santa Rosa, California 95404

Housing Authority: Housing Authority of the
City of Santa Rosa
90 Santa Rosa Avenue (95404)
Post Office Box 1806 (95402)
Santa Rosa, California

Meritage: Meritage Homes of California, Inc.
1671 East Monte Vista Avenue, Suite 214
Vacaville, CA 95688

13.7. Amendments. Except as otherwise provided hereunder, this Contract may not be amended, changed, modified, altered or terminated except as permitted in this Contract. This Contract shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the official records of the County of Sonoma.

13.8. No Assignment. Meritage shall not transfer any interest in the Project or the underlying real property, nor transfer any interest in or duty under this Contract (whether by assignment or novation) without prior written approval of the Housing

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February 22, 2013

Authority except as allowed herein, which approval shall not be unreasonably withheld (in that regard, the Housing Authority shall endeavor to respond to any requested transfer within forty-five (45) days of the date the Housing Authority receives Meritage's request).

13.9. Force Majeure. If Meritage is delayed or prevented from the performance of any act required under this Contract, by reason of natural disasters, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of Meritage (financial inability excepted), performance of the act shall be excused for the period of the delay and the period for the performance of the act shall be extended for a period equivalent to the period of the delay.

13.10. Two Corporate Signatures. Due to recent interpretations of California Corporations Code Section 313, this Contract must be **signed by two (2) corporate officers** of Meritage. One signature must be from the "operational" category of officers: chairman, president, or vice-president and one signature must be from the "financial" category of officers: secretary, assistant secretary, chief financial officer or assistant treasurer. The title of the officer must be listed under his or her signature.

13.11. Governing Law/Venue. The law of the State of California governs this Contract, its interpretation and enforcement. The parties agree to the exclusive jurisdiction and venue in any dispute in the Sonoma County Superior Court.

List of Exhibits:

Exhibit A - Legal Description

Exhibit B - Building Plan

Exhibit C - Income Certification Form

Exhibit D - Income Guidelines

Exhibit E - Resale Agreement

[Signatures on Next Page]

EXHIBIT "A"

February 22, 2013

IN WITNESS WHEREOF, the parties have caused this Contract to be signed and sealed by their respective, duly authorized representatives, as of the day and year written below.

CITY OF SANTA ROSA

Dated: _____, 2013

By: SCOTT P. BARTLEY
Its: Mayor

**HOUSING AUTHORITY OF THE
CITY OF SANTA ROSA**

Dated: _____, 2013

By: DAVID E. GOUIN
Its: Executive Director

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

Dated: _____, 2013

By: _____
Its: _____

Dated: _____, 2013

By: _____
Its: _____

APPROVED AS TO FORM:

By: _____
CAROLINE FOWLER, City Attorney

By: _____
MOLLY L. DILLON, General Counsel for
The Housing Authority of the City of Santa Rosa

EXHIBIT "A"

February 22, 2013

ATTACHMENT 1

INSURANCE REQUIREMENTS

I. Insurance Coverage Requirement

Owner must procure, or must cause its contractors who perform work on the Project to procure, and keep in force throughout Project development and through the term of this Contract, as applicable, at Owner's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the Housing Authority and the City. The insurance must be issued by insurers with AM Best ratings of no less than A-: VI or otherwise acceptable to the Housing Authority and the City and must at a minimum include:

Commercial General Liability insurance, at least as broad as ISO CG 0001, including but not limited to, Bodily Injury; Broad Form Property; Personal Injury and Advertising Injury; Medical Payments; Contractual Liability; Products and Completed Operations; XCU; and Owners and Contractor Protective Liability. The CGL policy must contain severability of interest clause or cross liability clause or the equivalent thereof.

Coverage afforded on behalf of the Housing Authority and the City shall be primary insurance and any other insurance available to the Housing Authority or the City under any other policies shall be excess insurance (over the insurance required by this Agreement).

Minimum amount of liability insurance shall be the following:

Per Occurrence - \$1,000,000
Or, Annual Aggregate - \$2,000,000

Automobile Liability insurance, including all owned, non-owned and hired automobiles used by the Owner or its contractors or agents in the construction of the Affordable Units shall have the following minimum coverage for Bodily Injury and Property Damage - \$1,000,000 Combined Single Limit.

Worker's Compensation insurance as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage of not less than \$1,000,000. Owner certifies that it is aware of the provisions of section 3700 of the California Labor Code, which require every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. Owner and its contractors must comply with the provisions of section 3700 of the California Labor Code before commencing construction of the

EXHIBIT "A"

February 22, 2013

Affordable Units and thereafter as required by that law.

Builders Risk Insurance during Project construction. This coverage must cover all risk of physical damage of or loss basis for an amount equal to the full replacement cost of the Affordable Units. This coverage must include coverage for flood if the Project is located in a Special Flood Hazard Area as determined by the Federal Emergency Management Agency and coverage for materials destined for incorporation into the Affordable Units that are stored away from the worksite or are in transit. The minimum amount of coverage to be carried must be equal to the full replacement cost of the Affordable Units. This coverage is required upon the Owner obtaining any construction financing for the Project.

Property Insurance including all risk coverage or standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements to the extent of full replacement value of the Project. Coverage amount may be adjusted for fluctuation in replacement values. This coverage is required upon completion of construction of the Project, or until all of the Affordable Units are sold in accordance with this Contract. Any proceeds from such coverage in connection with the Affordable Units shall be used to repair or reconstruct the damaged Affordable Unit(s).

II. Terms, Conditions, and Endorsements

The Insurance required by this Agreement must be endorsed and have all the following conditions:

Additional Insured: Owner must ensure that "the Housing Authority of the City of Santa Rosa and the City of Santa Rosa, and their respective directors, officers, agents and employees" are named as additional insureds in the Commercial General Liability policy identified in Section I above. The endorsement form must be substantially equivalent to CG20 10 with an edition date prior to 2004. A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT OF THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT.

Cancellation Notice: 30-day prior written notice of cancellation, termination or non-renewal.

Certification holder is to be the same person and address as indicated in the "Notices" section of this Agreement.

Owner shall furnish the Housing Authority and the City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the Housing Authority and the City before the Contract is executed, as applicable, and must be in effect until all of the Affordable Units are sold in

EXHIBIT "A"

February 22, 2013

accordance with this Contract. The Housing Authority and the City reserve the right to require complete copies of all required endorsements.

All insurance coverage amounts required hereunder and available or applicable to this Project are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage.

III. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office (ISO) as of the date of this Agreement.

IV. Subcontractors

Owner or its general contractor must include all subcontractors performing work on the Project as insureds under its policies or such subcontractors must maintain separate commercial general liability, auto liability and worker's compensation policies as set forth in Section I above. Any architect, engineer or other profession consultant performing professional services in connection with the Project must maintain professional liability coverage in the minimum amount of \$1,000,000 covering any damages caused by any negligent act, error, omission in performing such professional services. The Housing Authority and the City reserve the right to perform an insurance audit during the course of the Project to verify compliance with requirements.

V. Deductibles and Self-insured Retention

Any deductible or self-insured retention amount greater than \$10,000 must be declared to the Housing Authority and the City. This provision shall not apply to contractors or subcontractors of Meritage, unless the contractor is meeting the above insurance requirements on behalf of Meritage.

February 22, 2013

EXHIBIT "A"

State of California)
County of Sonoma)

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his/her/their authorized capacity(ies), and that by his / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature _____ (Seal)

State of California)
County of Sonoma)

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his/her/their authorized capacity(ies), and that by his / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature _____ (Seal)

February 22, 2013

EXHIBIT "A"

State of California)
County of Sonoma)

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his/her/their authorized capacity(ies), and that by his / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature _____ (Seal)

EXHIBIT "A"

EXHIBIT A

LEGAL DESCRIPTION

All that real property in the City of Santa Rosa, County of Sonoma, State of California, described as follows:

Lots 63 and 64, as shown on the final map entitled "Dauenhauer Ranch Phase 1," recorded on December 23, 2005, in Book 687 of Maps at Pages 11-15, inclusive, as Document No. 2005-188678, in the Official Records of Sonoma County, California.

Lots 5, 9, 15, 21, 29, 32, 37, 40, 47, 57 and 59, as shown on the final map entitled "Dauenhauer Ranch Phase 2," December 20, 2012 in the Official Records of Sonoma County, California as Document No. 2012-131194, in Book 755 of Maps at Pages 22 through 26, inclusive, in the Official Records of Sonoma County, California.

HOUSING AUTHORITY OF THE CITY OF SANTA ROSA

EXHIBIT "A"

P. O. Box 1806
Santa Rosa, California 95402

HOMEOWNERSHIP PROGRAM INCOME CERTIFICATION FORM

An income certification is required as one of the stipulations of purchasing an affordable home contracted under the Housing Authority.

In order to ensure compliance, please fill out the following and return it with **proof of income and assets** to the responsible agent.

NAME OF APPLICANT(S): _____

PRESENT HOME ADDRESS: _____

Phone: Home _____

Work _____

E-mail: _____

Names of Members of Household	Relationship To Head of Household	Date of Birth	Employer or Other Source of Income	Annual Gross Income*
	Head			\$ _____
				\$ _____
				\$ _____
				\$ _____
				\$ _____
				\$ _____
				\$ _____
Anticipated gross income of all adults during the next 12-month period:				\$ _____

*Annual Gross Income includes:

- 1) all wages and salaries, overtime, commissions and bonuses **BEFORE** payroll deductions;
- 2) full amount of periodic payment(s) received from Social Security, annuities, insurance policies, retirement funds, pensions, disability of death benefits, alimony, child support and regular contributions/gifts;
- 3) payments in lieu of earnings.

Total value of all assets (excluding personal property):.....\$ _____

Income expected from assets during next 12-month period: (Interest, dividends, etc.)..... \$ _____

TOTAL OF ALL INCOME DURING NEXT 12-MONTH PERIOD:..... \$ _____

TO BE CERTIFIED YOU MUST ATTACH PROOF OF INCOME

The undersigned certifies that all of the above information is a full disclosure of all income and is true and correct.

_____ Date

_____ (Applicant's Signature)

_____ Date

_____ (Applicant's Signature)

EXHIBIT "A"



INCOME GUIDELINES

February 27, 2012

Household Size	Extremely Low 30% of Median	Very Low 50% of Median	60% of Median	Low 80% of Median*	Median 100% of Median	Moderate 120% of Median
1 Person	\$17,400 /Year \$1,450 /Month	\$28,950 /Year \$2,413 /Month	\$34,740 /Year \$2,895 /Month	\$45,500 /Year \$3,792 /Month	\$57,800 /Year \$4,817 /Month	\$69,350 /Year \$5,779 /Month
2 Persons	\$19,850 /Year \$1,654 /Month	\$33,050 /Year \$2,754 /Month	\$39,660 /Year \$3,305 /Month	\$52,000 /Year \$4,333 /Month	\$66,100 /Year \$5,508 /Month	\$79,300 /Year \$6,608 /Month
3 Persons	\$22,350 /Year \$1,863 /Month	\$37,200 /Year \$3,100 /Month	\$44,640 /Year \$3,720 /Month	\$58,500 /Year \$4,875 /Month	\$74,350 /Year \$6,196 /Month	\$89,200 /Year \$7,433 /Month
4 Persons	\$24,800 /Year \$2,067 /Month	\$41,300 /Year \$3,442 /Month	\$49,560 /Year \$4,130 /Month	\$65,000 /Year \$5,417 /Month	\$82,600 /Year \$6,883 /Month	\$99,100 /Year \$8,258 /Month
5 Persons	\$26,800 /Year \$2,233 /Month	\$44,650 /Year \$3,721 /Month	\$53,580 /Year \$4,465 /Month	\$70,200 /Year \$5,850 /Month	\$89,200 /Year \$7,433 /Month	\$107,050 /Year \$8,921 /Month
6 Persons	\$28,800 /Year \$2,400 /Month	\$47,950 /Year \$3,996 /Month	\$57,540 /Year \$4,795 /Month	\$75,400 /Year \$6,283 /Month	\$95,800 /Year \$7,983 /Month	\$114,950 /Year \$9,579 /Month
7 Persons	\$30,800 /Year \$2,567 /Month	\$51,250 /Year \$4,271 /Month	\$61,500 /Year \$5,125 /Month	\$80,600 /Year \$6,717 /Month	\$102,400 /Year \$8,533 /Month	\$122,900 /Year \$10,242 /Month
8 Persons	\$32,750 /Year \$2,729 /Month	\$54,550 /Year \$4,546 /Month	\$65,460 /Year \$5,455 /Month	\$85,800 /Year \$7,150 /Month	\$109,050 /Year \$9,088 /Month	\$130,800 /Year \$10,900 /Month

*79% Income published by the United States Department of Housing and Urban Development (HUD), updated December 13, 2011.

Extremely Low, Very Low, and Low Income is compared to HUD Income Limits for 2012, updated December 13, 2011.
Median Income and Moderate Income is compared to the Official State of California Income Limits for 2012, updated February 1, 2012.
60% of Median is compared to the California Tax Credit Allocation Committee Income Limits for 2012, updated December 13, 2011.

CITY OF SANTA ROSA
ECONOMIC DEVELOPMENT AND HOUSING
90 Santa Rosa Avenue, Santa Rosa, California 95404
Telephone: 707-543-3300 • Fax: 707-543-3317 • TDD: 707-543-3318 • Web Address: srcity.org

EXHIBIT "A"

NO FEE

This Document is being recorded
for the benefit of the Housing Authority
of the City of Santa Rosa,
as per Gov't Code Section 6103

WHEN RECORDED MAIL TO:

HOUSING AUTHORITY OF THE
CITY OF SANTA ROSA
P.O. Box 1806
Santa Rosa, CA 95402-1806

Space Above This Line For Recorder's Use

RESALE RESTRICTION AGREEMENT AND OPTION TO PURCHASE

PARTIES

The parties to this Resale Restriction Agreement and Option to Purchase
("Agreement") are _____ ("Owner") and the Housing
Authority of the City of Santa Rosa ("Housing Authority").

BACKGROUND

Owner has purchased and is the record title holder of the following property
located at _____, Santa Rosa, California in the
subdivision commonly known as Dauenhauer Ranch:

LOT ____ of the Map entitled, " _____ "
filed for record in the Sonoma County Official Records on
_____, in Book ____ of Maps, at Pages ____
through ____.

APN _____ (hereinafter referred to as the "Property")

EXHIBIT "A"

The City of Santa Rosa ("City") required the developer of the subdivision in which the Property is located to meet the goals of the City's Housing Element of the General Plan and the requirements of the City's Housing Allocation Plan by setting aside this Property for a duration of thirty (30) years to be occupied by qualified moderate income households that are first-time homebuyers pursuant to the conditions and restrictions set forth in that certain Housing Allocation Plan Contract between the City of Santa Rosa, the Housing Authority of the City of Santa Rosa, and Meritage Homes of California, Inc., a California corporation dated _____, and recorded in the Official Records of Sonoma County, California on _____, as Document No. _____ (the "HAP Contract").

The Housing Authority has been delegated the responsibility of administering compliance with the Housing Allocation Plan and the HAP Contract on behalf of the City.

In consideration for the benefits afforded to Owner in connection with the purchase of the Property, Owner and Housing Authority agree that Housing Authority should have the option to purchase the Property upon a triggering event as defined in this Resale Restriction Agreement and Option to Purchase.

NOW, THEREFORE, IT IS AGREED:

I. DEFINITIONS

Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms which are used in this Agreement have the meanings indicated in this section. Exhibits to this Agreement are hereby incorporated by reference. All recordings required by this Agreement shall be in the official records where deeds are recorded in Sonoma County.

1. **"Agreement":** this Resale Restriction Agreement and Option to Purchase.
2. **"APN" or "APNs":** Assessor Parcel Number or Assessor Parcel Numbers.

EXHIBIT "A"

3. **"Area Median Income":** the median income for the Santa Rosa/Petaluma Primary Metropolitan Statistical Area as determined by the Secretary of Housing and Urban Development (HUD) under Section 8(f)(3) of the United States Housing Act of 1937, as amended.
4. **"Certified Households":** households having been certified by the Housing Authority as First-Time Homebuyers (as herein defined) having a gross income level of no more than 120% of Area Median Income adjusted for household size.
5. **"City":** The City of Santa Rosa
6. **"First-Time Homebuyers":** a household that has not owned a home in the preceding three-year period.
7. **"Housing Authority":** the Housing Authority of the City of Santa Rosa, and its successors and assigns. With respect to administrative steps required to be taken under this Agreement, and any of the related exhibits, the staff of the Housing Authority is also included within the definition of that term.
8. **"HUD":** the United States Department of Housing and Urban Development, and its successors and assigns.
9. **"Income Certification":** a certification as to income executed by a household applying to purchase the Property, together with a signed approval by the Housing Authority, all in the form attached hereto as Exhibit A.
10. **"Income Guidelines":** the compilation of data periodically updated and published by the Housing Authority setting forth the targeted population's standard income levels. At the time this Contract is executed, the primary source of information for the Income Guidelines is HUD. Should the HUD data no longer be available, the Housing Authority shall select an alternative method of arriving at a similar guideline, and Owner shall be bound by that alternative throughout the effective period of this Agreement. A copy of the present Income Guidelines is attached hereto as Exhibit B.
12. **Intentionally Omitted.**
13. **"Maximum Sales Price Upon Resale":** the maximum price at which the Property may be resold by the Owner to a Certified Household under this Agreement, as set forth in Section V, subparagraph 3, of this Agreement.

EXHIBIT "A"

15. **"Notice of Sales Availability"**: the required preliminary notice of a the Owner's intent to resell the Property under this Agreement that the Owner is required to deliver in writing to the Housing Authority, so that the Housing Authority receives such Notice at least fifteen (15) days before the Property is to be placed on the market for resale. The Notice of Sales Availability shall include the proposed sales price at which the Owner intends to market the Property, which sales price may not exceed the Maximum Sales Price Upon Resale as set forth in Section V, subparagraph 3, of this Agreement.

II.

OWNER REPRESENTATION AND WARRANTIES

Owner represents and warrants to Housing Authority that the financial and other information previously provided to Housing Authority or to any lenders by Owner for the purpose of qualifying to purchase the Property was true and correct at the time it was given and remains true and correct as of the date of this Agreement. Owner further represents and warrants to Housing Authority that Owner shall occupy the Property as his or her principal residence and that only Owner, Owner's spouse and/or Owner's children will occupy the Property as their residence; provided, however, nothing contained in the preceding sentence shall prevent Housing Authority from approving additional residents so long as the overall intent of the underlying program is met.

III.

INSURANCE

Owner shall at all times during the effective Term of this Agreement maintain hazard insurance on the Property in the amount of the full replacement value of the improvements. Any proceed from such coverage in connection with the Property shall be used to repair or reconstruct the damage to the improvements.

EXHIBIT "A"

IV.

DURATION OF RESTRICTIONS

The requirements of this Agreement shall be imposed upon the Property for a period of thirty (30) years from the date of close of escrow on the initial sale of the Property to a Certified Household by the developer of the subdivision, on _____ [date], or until such time as the twenty-four (24) affordable rental housing units on Lot 66 of Phase 1 of the original development are constructed and ready for occupancy, whichever is sooner ("Term"). Upon the expiration of the Term, this Agreement shall be released, which shall be evidenced by the execution by the Executive Director of the Housing Authority, or designee, of a suitable Authorization for Reconveyance, which shall be recorded in the Official Records of Sonoma County.

V.

RESALE PROVISIONS

To assure the continued availability of the Property as affordable housing for Certified Households, Owner agrees to abide by all the terms of this Agreement, including without limitation, the following restrictions on Owner's right to resell the Property:

1. Notice of Intent to Sell. When Owner desires to resell the Property, Owner shall notify Housing Authority in advance and request the Maximum Sales Price Upon Resale, and marketing instructions. Owner is then required to notify Housing Authority in writing at least fifteen (15) days prior to placing the Property on the market for resale. The written Notice of Sales Availability shall include the proposed sales price at which Owner intends to market the Property, which sales price may not exceed the Maximum Sales Price Upon Resale as set forth in subparagraph 3 of this Section. Notwithstanding the foregoing, in no event will the Owner of the Property be required to sell the Property for less than it was purchased plus real estate transfer tax and a normal and customary real estate commission.

2. Marketing. Owner is required to make good-faith efforts to market the Property to members of the public who will qualify as Certified Households. Formal, written certification of a qualified household by the Housing Authority must be done

EXHIBIT "A"

prior to the close of escrow on a resale, but this step is not a prerequisite to negotiation of the sale. The written agreement of sale between Owner and the buyer of the Property must be approved by Housing Authority prior to entering escrow. All resale efforts by Owner must be conducted in a good-faith manner and through a bona fide, good-faith marketing effort. Details of the requirements for good-faith marketing efforts will be provided in writing by Housing Authority to Owner, along with the Maximum Sales Price Upon Resale. A copy of the current guidelines for good-faith marketing efforts is attached as Exhibit C.

The terms and conditions of any purchase money loan made to a Certified Household for the purchase of the Property must be expressly approved in writing by Housing Authority. Housing Authority will not approve financing unless it is consistent with the goals and policies underlying this Agreement.

3. Maximum Sales Price Upon Resale. The sales price received upon resale of the Property (whether under the Option contained in Section VI of this Agreement, or in a sale to Certified Household) shall not exceed the Maximum Sales Price Upon Resale as set forth in Section 6 of the HAP Contract.

4. No Fees Allowed. Owner shall not receive any fees or other consideration upon resale other than the allowable sales price under this Agreement; provided, that all closing costs and escrow fees may be apportioned between the seller and the buyer in the normal and customary manner prevailing in Sonoma County at the time escrow closes.

5. Correction of Defects on Resale. Prior to close of escrow on the resale of the Property, Owner must at Owner's cost: (a) correct and repair all structural and pest control conditions recommended by a duly licensed structural pest control inspector approved by Housing Authority; (b) correct and repair any building and zoning code violations which developed during the period of Owner's ownership; (c) repair and restore any damage to the Property which occurred during Owner's period of ownership; and (d) paint, refurbish and clean the Property to substantially the condition it was in at the time of acquisition, reasonable wear and tear excepted.

6. Escrow. Owner shall use his or her best efforts to close escrow within ninety (90) days following the date of the approval by Housing Authority of the written

EXHIBIT "A"

agreement of sale between Owner and the buyer of the Property. Owner shall keep Housing Authority informed of any circumstance which may affect escrow closing within ninety (90) days

7. **Title.** Upon close of escrow, Owner shall be obligated to deliver title of the Property, free and clear of all title defects, liens, encumbrances, deeds of trust, mortgages, releases, or rights of tenants except non-delinquent real property taxes and such exceptions to title as are approved in writing by Housing Authority, which includes the HAP Contract recorded against the Property.

8. **Recitals in Deed.** Owner shall include in any deed to a buyer of the Property, a reference to this Agreement which specifically incorporates by reference the requirements of this Agreement; provided, however, in the absence of such reference, the obligations of this Agreement still run with the land and bind the owner of the Property. Owner shall inform all prospective buyers of this requirement as long as this Agreement is in effect for the Property.

9. **Resale Agreement.** The prospective purchaser of the Property shall enter into a new Resale Agreement with the Housing Authority similar in form to this Agreement for the purpose of restating of record the existing conditions and restrictions on the Property and the Housing Authority's rights to enforce the continued affordability of the Property in accordance with the terms set forth in the HAP Contract. The new Resale Agreement will be recorded against the Property at the close of escrow in place of this Agreement.

VI.

OPTION TO PURCHASE THE PROPERTY

Owner hereby grants Housing Authority an option to purchase the Property on the terms set forth in this Agreement ("Option"). Housing Authority's right to purchase the Property under this Agreement shall be exercised under the following conditions:

1. **Option.** Housing Authority's right is an *option* to purchase the Property at a price no greater than allowed by this Agreement at the time the option is exercised. The price allowed by this Agreement is that determined in accordance with Section V, subparagraph 3.

EXHIBIT "A"

2. When Exercised. The Option may be exercised at any time within ninety (90) days of receipt of Owner's written Notice of Sales Availability. Any written notice declining the Option shall expire six (6) months from the date of the notice of denial, unless extended by Housing Authority. In the event Owner fails to provide written Notice of Sales Availability pursuant to Section V.1, and Housing Authority learns of a pending or consummated sale of the Property, Housing Authority may thereafter, at its election, exercise the Option by notifying Owner in writing of its intent to exercise within ninety (90) days of receipt of actual notice by Housing Authority of any such action by Owner. The Option may be also be exercised within ninety (90) days following receipt by the Executive Director of the Housing Authority of actual (as opposed to constructive), personal notice of a violation of this Agreement, or a notice of default filed against the Property with respect to any loan thereon; provided, however, the Option shall not be exercisable after Owner has entered into a legally binding agreement of sale with a Certified Household and eligible purchaser under this Agreement.

3. Manner of Exercise. The Option is deemed exercised by Housing Authority upon posting in the United States Mail, postage prepaid, of a written notice of such exercise, addressed to Owner at the mailing address of the Property.

4. Escrow. Owner shall use his or her best efforts to close escrow within ninety (90) days following notice by Housing Authority of the exercise of the Option. Owner shall keep Housing Authority informed of any circumstance which may affect escrow closing within ninety (90) days.

5. Other Terms and Conditions. The other terms and conditions of this Agreement, including without limitation, Section V, shall apply to the purchase by the Housing Authority under this Option.

EXHIBIT "A"

VII.

BENEFICIARIES

Housing Authority and City are beneficiaries of the restrictions and other provisions of this Agreement, with all necessary rights of enforcement. Said rights of enforcement shall include a right of re-entry and possession to the fullest extent allowed by law or in equity. It is understood, in this regard, that any conveyance to a Certified Household is the conveyance of a fee simple subject to power of termination, i.e., a conveyance defeasible in favor of Housing Authority upon sale, resale or occupancy of the Property in violation of the provisions of this Agreement. Upon exercise of the power of termination the person otherwise entitled to hold title under the grant must reconvey the Property to Housing Authority or its designee by grant deed, duly acknowledged and suitable for recording. The right of re-entry and the power of termination created under this Agreement can be enforced by an action to forfeit title, by an injunction to prevent a breach of the conditions subsequent, and/or by an action requesting forfeiture, if the injunction preventing the breach is disobeyed, by any action for declaratory relief to secure a judgment securing a forfeiture, or by any other legal action.

VIII.

OWNER OCCUPANCY RESTRICTIONS

The Property shall be limited strictly to owner occupancy for the Term of the Agreement, as defined above in Section IV. All subsequent resales of the Property shall be only to Certified Households who are owner occupants, for the Term of the Agreement. For the duration of these restrictions, any sale to or use of the property by persons other than Certified Households who are owner occupants is void, and the beneficiaries of this Agreement may take any steps provided by law or in equity to enforce this restriction, including without limitation, a suit for injunctive relief.

IX.

EXEMPT TRANSFERS

The following transfers of title or any interest thereon are not subject to the resale conditions of this Agreement: Transfer by gift, devise or inheritance to Owner's

EXHIBIT "A"

spouse or issue; taking of title by a surviving joint tenant; transfer of title to spouse as part of divorce or dissolution proceedings; acquisition of title or interest therein in conjunction with marriage; provided, however, that these covenants shall continue to run with the title to the Property following said transfers, and all occupants must be Certified Households, and the owner occupancy restrictions shall remain in place.

X.

NOTICES

All notices provided for in this Agreement shall be in writing. Notices shall be sent to Owner and Housing Authority at the following addresses:

Owner:

Housing Authority:

Housing Authority
of the City of Santa Rosa
90 Santa Rosa Avenue (95404)
P.O. Box 1806 (95402)
Santa Rosa, CA

XI.

RECORDING

This Agreement shall be recorded against the Property in the Official Records of the County of Sonoma immediately after its execution, as an encumbrance.

XII.

MISCELLANEOUS

1. **Voidable Transfers.** Any sale, conveyance, assignment, lease, or mortgage of the Property in violation of the terms of this Agreement shall be voidable at

EXHIBIT "A"

the election of Housing Authority.

2. Assignment. Housing Authority may assign its rights under this Agreement. In the event of any such assignment, Housing Authority shall not be liable to Owner for any failure on the part of the assignee to consummate a purchase of the Property or to comply with the terms and conditions of this Agreement.

3. Severability. The provisions of this Agreement are severable. Invalidation of any provision by law, judgment or Court order shall not affect the validity of any other provision. If any part of this Agreement is determined to be unenforceable, the remainder thereof shall be enforced.

[signatures on next page]

EXHIBIT "A"

OWNER

DATED: _____

Print Name: _____

Print Name: _____

DATED: _____

**HOUSING AUTHORITY OF THE
CITY OF SANTA ROSA**

By _____

Its _____

List of Exhibits:

Exhibit A – Income Certification Form

Exhibit B – Income Guidelines

Exhibit C – Marketing Guidelines

EXHIBIT "A"

State of California)
County of Sonoma)

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his/her/their authorized capacity(ies), and that by his / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature _____ (Seal)

State of California)
County of Sonoma)

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his/her/their authorized capacity(ies), and that by his / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature _____ (Seal)

EXHIBIT "A"

State of California)
County of Sonoma)

On _____ before me, _____

personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his/her/their authorized capacity(ies), and that by his / her / their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Signature _____ (Seal)

EXHIBIT "A"
HOUSING AUTHORITY OF THE CITY OF SANTA ROSA

P. O. Box 1806
 Santa Rosa, California 95402

HOMEOWNERSHIP PROGRAM INCOME CERTIFICATION FORM

An income certification is required as one of the stipulations of purchasing an affordable home contracted under the Housing Authority.

In order to ensure compliance, please fill out the following and return it with **proof of income and assets** to the responsible agent.

NAME OF APPLICANT(S): _____

PRESENT HOME ADDRESS: _____

Phone: Home _____

Work _____

E-mail: _____

Names of Members of Household	Relationship To Head of Household	Date of Birth	Employer or Other Source of Income	Annual Gross Income*
	Head			\$ _____
				\$ _____
				\$ _____
				\$ _____
				\$ _____
				\$ _____
Anticipated gross income of all adults during the next 12-month period:				\$ _____

*Annual Gross Income includes:

- 1) all wages and salaries, overtime, commissions and bonuses **BEFORE** payroll deductions;
- 2) full amount of periodic payment(s) received from Social Security, annuities, insurance policies, retirement funds, pensions, disability of death benefits, alimony, child support and regular contributions/gifts;
- 3) payments in lieu of earnings.

Total value of all assets (excluding personal property):.....\$ _____

Income expected from assets during next 12-month period: (Interest, dividends, etc.)..... \$ _____

TOTAL OF ALL INCOME DURING NEXT 12-MONTH PERIOD:..... \$ _____

TO BE CERTIFIED YOU MUST ATTACH PROOF OF INCOME

The undersigned certifies that all of the above information is a full disclosure of all income and is true and correct.

 Date

 (Applicant's Signature)

 Date

 (Applicant's Signature)

EXHIBIT A

Page 1 of 1

EXHIBIT "A"



INCOME GUIDELINES

February 27, 2012

Household Size	Extremely Low 30% of Median	Very Low 50% of Median	60% of Median	Low 80% of Median*	Median 100% of Median	Moderate 120% of Median
1 Person	\$17,400 /Year \$1,450 /Month	\$28,950 /Year \$2,413 /Month	\$34,740 /Year \$2,895 /Month	\$45,500 /Year \$3,792 /Month	\$57,800 /Year \$4,817 /Month	\$69,350 /Year \$5,779 /Month
2 Persons	\$19,850 /Year \$1,654 /Month	\$33,060 /Year \$2,754 /Month	\$39,660 /Year \$3,305 /Month	\$52,000 /Year \$4,333 /Month	\$66,100 /Year \$5,508 /Month	\$79,300 /Year \$6,608 /Month
3 Persons	\$22,350 /Year \$1,863 /Month	\$37,200 /Year \$3,100 /Month	\$44,640 /Year \$3,720 /Month	\$58,500 /Year \$4,875 /Month	\$74,350 /Year \$6,196 /Month	\$89,200 /Year \$7,433 /Month
4 Persons	\$24,800 /Year \$2,067 /Month	\$41,300 /Year \$3,442 /Month	\$49,560 /Year \$4,130 /Month	\$65,000 /Year \$5,417 /Month	\$82,600 /Year \$6,883 /Month	\$99,100 /Year \$8,258 /Month
5 Persons	\$26,800 /Year \$2,233 /Month	\$44,650 /Year \$3,721 /Month	\$53,580 /Year \$4,465 /Month	\$70,200 /Year \$5,850 /Month	\$89,200 /Year \$7,433 /Month	\$107,050 /Year \$8,921 /Month
6 Persons	\$28,800 /Year \$2,400 /Month	\$47,950 /Year \$3,996 /Month	\$57,540 /Year \$4,795 /Month	\$75,400 /Year \$6,283 /Month	\$95,800 /Year \$7,983 /Month	\$114,950 /Year \$9,579 /Month
7 Persons	\$30,800 /Year \$2,567 /Month	\$51,250 /Year \$4,271 /Month	\$61,500 /Year \$5,125 /Month	\$80,600 /Year \$6,717 /Month	\$102,400 /Year \$8,533 /Month	\$122,900 /Year \$10,242 /Month
8 Persons	\$32,750 /Year \$2,729 /Month	\$54,550 /Year \$4,546 /Month	\$65,460 /Year \$5,455 /Month	\$85,800 /Year \$7,150 /Month	\$109,050 /Year \$9,088 /Month	\$130,800 /Year \$10,900 /Month

*79% Income published by the United States Department of Housing and Urban Development (HUD), updated December 13, 2011.

Extremely Low, Very Low, and Low Income is compared to HUD Income Limits for 2012, updated December 13, 2011.
Median Income and Moderate Income is compared to the Official State of California Income Limits for 2012, updated February 1, 2012.
60% of Median is compared to the California Tax Credit Allocation Committee Income Limits for 2012, updated December 13, 2011.

CITY OF SANTA ROSA
ECONOMIC DEVELOPMENT AND HOUSING
90 Santa Rosa Avenue, Santa Rosa, California 95404
Telephone: 707-543-3300 • Fax: 707-543-3317 • TDD: 707-543-3318 • Web Address: srcity.org

EXHIBIT "A"

Dauenhauer Ranch Subdivision Housing Allocation Plan Phase 1 - Ownership Units

RESALE MARKETING GUIDELINES

Definitions

All terms used in these Guidelines have the meanings indicated in the Resale Restriction Agreement and Option to Purchase (the "Agreement").

Resale Provisions

Refer to the Resale Restriction Agreement and Option to Purchase, Section V. Resale Provisions, for the restrictions on the Owner's right to resell the Property, and certain requirements for resale of the Property.

Good-faith Efforts to Market

The Property was sold to the Owner under an Affordable Housing Program of the City of Santa Rosa. "Good-faith" marketing requires that the Owner, or Owner's agent, make a bona-fide effort to sell the Property in such a manner that accomplishes the purposes of the Program:

- market the Property to prospective buyers who will qualify as Certified Households, consistent with the definition in the Agreement
- shall not advertise or seek to sell the Property for more than the Maximum Sales Price Upon Resale, consistent with the definition in the Agreement
- shall not engage in conduct which appears intended to defeat a sale to a Certified Household

The Owner, or Owner's agent, must continuously advertise the following:

- the Property is affordable to Moderate Income Households (120% of Area Median Income, according to the current Income Guidelines)
- the sales price, consistent with the Maximum Sales Price Upon Resale
- number of bedrooms
- a contact phone number
- the Property is limited strictly to owner occupancy for the Term of the Agreement
- the Property is limited strictly to Moderate Income Households certified by the Housing Authority of the City of Santa Rosa for the Term of the Agreement

Proof of continuous marketing must be provided to the Housing Authority.



May 8, 2013

Chuck Regalia
City of Santa Rosa
100 Santa Rosa Avenue Room 3
Santa Rosa, CA 95402-1678

RE: Affordable Housing – Dauenhauer Ranch

Dear Mr. Regalia:

In response to the City Council's comments on April 2, 2013 regarding the Dauenhauer Ranch Phase 2 Housing Allocation Plan, Meritage would like to provide a little more background on the on-going efforts to find a reasonable solution to the affordable requirements required of the project.

Meritage acquired the single family detached portion of the project in July 2010 through a foreclosure involving Wells Fargo Bank. The 24-unit apartment complex site ("Lot 66"), which was approved by the City to provide the affordable component of the overall project, was not included in the original Deed of Trust held by Wells Fargo Bank. As a result, Lot 66 was retained by Alderbrook Properties, L.P. wherein Christopherson Homes, Inc is the general partner.

After Meritage acquired the property there was open discussion with Keith Christopherson in regards to all aspects of Dauenhauer Ranch. Keith even assisted in providing specific assignments of various agreements related to the project. The dialogue with Keith also included the future of Lot 66. He informed us he just needed the tax credit market to improve so he could tap into the necessary financing. This information combined with the fact that Lot 66 was fully improved - streets, utilities, paved parking lot, required retaining walls, and the apartment complex construction drawings were approved by the City, the permits were issued and the foundations were poured (construction halted in 2007) all led Meritage to believe that the vertical construction of the complex was imminent. Not to mention, there are covenants and restrictions recorded on Lot 66 requiring the project to be built as affordable.

It should be noted that in the fall of 2010 there was very little building activity in Santa Rosa, and the Dauenhauer project was sitting as a half-constructed liability for the City. A majority of the Phase 1 utilities and streets were installed along with major off-site infrastructure components, but none of the improvements had been finalized and accepted by the City. There existed long punch lists of uncompleted improvements and necessary fixes. In addition, Phase 2 of the project was only mass graded with existing erosion control measures quickly deteriorating. As a result, there was a strong desire by all parties to move this project toward completion.

*1671 East Monte Vista Avenue, Suite 214
Vacaville, California 95688*

In September 2010, Meritage initiated formal discussions with the City in regards to the existing Dauenhauer Ranch HAP (“HAP”) originally approved for Christopherson Homes. Meritage’s initial position was that Lot 66 is the affordable component of the project. Construction on Lot 66 had started and there was no need to amend the HAP. The HAP negotiation continued for several months as Meritage provided legal opinions on the status and implementation of the existing agreement. During this period there were several other “loose ends” that Meritage was attempting to resolve with the City, and Meritage continued to utilize Keith Christopherson as a valuable resource for project history and original intents. In January 2011, Meritage entered into a Consulting Services Agreement with Keith to compensate him for his assistance in resolving the numerous outstanding issues.

By January 2011 it was clear there were some overriding circumstances that prevented Meritage from moving forward on house construction under the existing HAP agreement. First and foremost was the “timing of construction” provision in the City’s affordable ordinance. This provision essentially requires that every sixth unit constructed must be offered as an affordable unit. Unfortunately, neither Christopherson nor Meritage could provide any guarantees on the timing of the Lot 66. Meritage explored the option of purchasing Lot 66. This was never really an option as Keith’s intentions have always been to build it. Even today, the value of the property and proceeds available from a sale are nowhere near the capital already invested. The only way to recoup the investment is to build the complex and rent the units. We also inquired with the City about options to pay in-lieu fees. This option was unavailable as the City’s affordable ordinance doesn’t allow projects above a certain size to “fee out.”

It has always been the City’s, Meritage’s and Christopherson’s preference to find a way to get Lot 66 constructed. Meritage has continuously offered assistance including financial assistance to Christopherson while continuing to seek a backup plan with the City. In April, 2011 amidst the ongoing negotiations with the City, Meritage heard there may be some concern that reasonable efforts were not being pursued with Christopherson. Attached is a copy of a letter dated April 12, 2011 that was provided to Assistant City Attorney Molly Dillon to address this issue. As previously stated, Meritage throughout the process has always offered financial assistance. Due to the uncertainties surrounding other necessary financing sources, it has been difficult for Christopherson to put an exact value on the funding gap.

Meritage was left with very few options. What Meritage had was a recorded final map that consisted of 65 single family detached lots, and an approved tentative map that provided for an additional 73 lots. Included in the project approvals was a 1,413 square foot house plan that fit nicely with the City’s for-sale affordable program. With tremendous assistance from City staff, the terms of an amended HAP agreement were finalized in May 2012 that provided for 9 for-sale affordable units in Phase 1 with the understanding that 11 more units would be reserved in Phase 2 once the Phase 2 final map recorded. Based on recent history, it is the City’s position that for-sale housing is not the best fit for low and very low income levels. These needs are better met with for-rent housing. As a result, the plan was to reserve the 20 units for moderate level affordable housing.

The amended HAP agreement was presented and approved by the City Council on June 28, 2011. At the meeting City staff was applauded for their creative efforts to get this project back

on track. Meritage commenced construction on the first affordable unit in early July 2011 and completed construction October 2011. The unit did not sell until May 3, 2012 and closed June 6, 2012 for a net price of \$285,000. This home was on the market for over 300 days from the day we started advertising to the day it closed. The carry costs associated with this long hold period are substantial and fueled Meritage efforts to find a resolution to Lot 66.

Meritage assisted Keith with rebidding the apartment complex and provided him access to all of our contractors with the idea that he can get very competitive prices utilizing the contractors already on-site. Meritage even offered to manage the construction of Lot 66. The final numbers presented by Keith were approximately \$2.5 million to finish the vertical construction of Lot 66 with access to approximately \$2.1 million in existing financing. On July 9, 2012 Meritage sought and received approval from the Meritage Corporate Land Committee to GIVE Christopherson the \$400,000 funding gap. Despite the repeated comment from Keith that things are close, to date he has been unable to secure the required financing. He has never come back to ask for more money.

In response to the City Council's request to continue negotiations, Meritage met with Keith on April 22, 2013, and received additional correspondence up until the date of this letter. The general response is still the same – Keith is “close” to securing the necessary financing to continue with the completion of Lot 66. The \$400,000 offer has been reconfirmed with Keith. Meritage has offered to put the money in escrow or deposit the money with the City. In the 2+ years that Meritage has been negotiating with the City and Christopherson on this issue, Keith has never once waived from his position that he will build the apartments. It is Meritage's opinion that Keith is sincere in his claims that it is only a matter of time. We believe that he just needs some favorable markets to return, and that he is indeed close.

There was concern at the previous Council meeting that both the Ph 1 and Ph 2 HAPs are only addressing the Moderate (120% of area median income) income category which does not meet the requirements of the City's Affordable Housing Ordinances. The Ph 1 and Ph 2 HAPs both define “Certified Households” and “Moderate Income Households” as those families having a gross income level of NO MORE than 120% of Area Median Income. To date we have sold seven (7) of the affordable units. As stated previously, the first unit sold for \$285,000. The next four (4) units sold for \$299,000. The sixth unit sold for \$322,000. This was due to a \$15,000 lot premium because the lot was larger than average and backed up to open space. The most recent sale was \$325,000, but included \$17,000 in upgrades so a base price of \$308,000.

Attached to this letter is the HAP Maximum Sales Price Chart as published by the City of Santa Rosa Housing Department dated August 2012, and just recently downloaded from the City's website. This is a chart of MAXIMUM SALES PRICES FOR 80% OF MEDIAN INCOME (LOW INCOME). It states that these values are a reflection of what LOW INCOME families can afford to pay for housing. The chart varies by current interest rates. The average interest rate for all seven (7) of the affordable buyers is approximately 4%. Current rates are 3.625%. Based on this chart, every single one of our sales to date falls well below the levels of what a LOW INCOME family can afford. And the buyers in this community get a bonus. When Lot 66 does get constructed to meet the affordable housing obligation of the project, the deed restriction

on the Dauenhauer affordable buyers goes away. These buyers should see a windfall of instant appreciation in their homes. Talk about a fantastic opportunity.

Meritage is willing to donate \$400,000 to assist the construction of Lot 66. In order for Meritage to provide the funds the City must immediately release all remaining affordable obligations for Dauenhauer Phase 2. Even if the Ph 2 HAP obligation is removed, the City still has the nine (9) affordable units bound by The Ph 1 HAP agreement (7 homes already sold and 2 more to be built in the future) until such time as the Lot 66 gets constructed. The other option is to approve the Ph 2 HAP, and allow Meritage to continue to offer eleven (11) additional affordable homes to low, median and moderate income families.

Please be aware that the City is currently holding Phase 2 building permits because of this issue. Meritage has been out of lots to sell for approximately 3 months due to the uncertainties surrounding the start of construction for Phase 2 homes. This is becoming a significant financial burden. As of the date of this letter, Meritage has a total of eighteen (18) Phase 2 building permit application in process at the City. Ten (10) of the permits are ready to be released, and Meritage has checks in hand. The remaining eight (8) permits will be pulled as soon as the City completes their review process. Meritage is very anxious to keep this project moving forward, and we greatly appreciate your consideration on this matter.

If you have any questions, please contact me directly.

Sincerely,



Scott Kramer
Director of Forward Planning
Meritage Homes of California, Inc.

Cc: Barry Grant – Meritage Homes
Nancy Gornowicz – City of Santa Rosa
Molly Dillon – City of Santa Rosa

Enclosures



April 12, 2011

Molly Dillon
City of Santa Rosa
100 Santa Rosa Avenue, Room 8
Santa Rosa, CA 95404

VIA Email

RE: **Dauenhauer Apartment Project Lot 66 – Communication**

Dear Ms. Dillon,

I was told by Keith Christopherson that it appears that the City Attorney for Santa Rosa believes that Meritage and Christopherson have not been working together on affordable housing condition for the Dauenhauer subdivision. This is an incorrect assumption and in fact, Meritage and Christopherson have been in open discussions regarding the Dauenhauer Affordable Apartments since October 2010.

Christopherson provided Meritage with information on the project and we explored the option of assisting or participating in the tax credit purchase, but our carry forward tax losses will last for 5 years so a purchase of the tax credits is not feasible for us currently. We continue to keep our discussions open with Christopherson to see where we may be able to assist.

It's in Meritage's best interest to assist Christopherson where or when possible. At this point it appears the Tax Credit financing remains a big hurdle, however I have been told by Christopherson that they have engaged a new legal team to assist with resolving issues with the tax credits and assisting in the sale of them.

Please let me know if you have any questions.

Sincerely,
MERITAGE HOMES OF CALIFORNIA, INC
A CALIFORNIA CORPORATION

A handwritten signature in black ink, appearing to read "Josh Roden".

Josh Roden
VP of Acquisitions

1671 E. Monte Vista Ave. #214
Vacaville, CA 95688
P: (707) 359-2018
F: (707) 359-2054
josh.rodan@meritagehomes.com



HOUSING ALLOCATION PLAN (HAP)

MAXIMUM SALES PRICE CHART
*Purchase Price Based on 80% of Area Median Income
 (Low Income)*

Mortgage Interest Rate (See Note 1. below)	2.00 – 2.99%	3.00 – 3.99%	4.00 – 4.99%	5.00 – 5.99%	6.00 – 6.99%	7.00 – 7.99%	8.00 – 8.99%	9.00 – 9.99%
Two Bedroom * Monthly Payment: \$1,487	\$418,156	\$367,942	\$326,084	\$290,992	\$261,399	\$236,297	\$214,878	\$196,493
Three Bedroom ** Monthly Payment: \$1,718	\$483,115	\$425,100	\$376,741	\$336,197	\$302,007	\$273,005	\$248,258	\$227,018
Four Bedroom *** Monthly Payment: \$1,916	\$538,794	\$474,093	\$420,160	\$374,944	\$336,813	\$304,469	\$276,870	\$253,182

This chart is a reflection of what Low Income families can afford to pay for housing. It is generally based upon the income level of such families. The chart assumes that a household can afford to pay 30% of their income for housing (principal and interest). It further assumes that a down payment of 10% will be made in all cases. The maximum prices were calculated by determining the amount at various loan rates, which would amortize over a 30-year period with a monthly payment of 30% of the income of the Low Income family. In the event that the interest rate (see Note 1. below) at the time of sales availability of the units is below 2.00% or above 9.99%, the appropriate maximum sales price will be calculated in a similar fashion.

Notes:

- When identifying a sales price, the interest rate column utilized is according to the Fannie Mae 30-year, 30-day rate on the first business day of the month. For information on the current rate, contact the Housing Trust staff of the Department of Economic Development and Housing at (707) 543-3300.
- Monthly payment amounts based on 80% of Area Median Income, 1.5 persons per bedroom
 - * 3 person household
 - ** 4.5 person household
 - *** 6 person household
- This chart is reviewed for possible update once or twice each calendar year.

**ALDERBROOK PROPERTIES, LP
1400 N. DUTTON AVENUE, SUITE 14
SANTA ROSA CA, 95401
707 360-6147**

May 28, 2013

Chuck Regalia
City of Santa Rosa
100 Santa Rosa Avenue Room 3
Santa Rosa, CA 95402-1678

RE: Dauenhauer Apartments

As the City Council and staff are aware, Alderbrook Properties, LP has been working for the past several years attempting to pull together the capital sources necessary to complete the construction of the 24 units comprising the Dauenhauer Apartments project. This would be in addition to the 32 units of the Linwood Apartments that were completed and occupied in 2006 for a total of 56 affordable apartments. The financial challenge we have been striving to overcome was created by the financial meltdown of 2007 and 2008 where we saw our original Tax Credit Investor find itself unable to complete the transaction leaving us in an environment for several years where Tax Credits were very difficult to utilize. In addition the same investors that own Alderbrook Properties, LP also owned the market rate single family home development (Dauenhauer) and expected the profits from the for sale homes to offset costs for the Dauenhauer Apartments. As the market collapsed, the lender for the for sale home portion of the project sold the note to Meritage Homes who then foreclosed on the note. With the lack of a Tax Credit Investor and no off-setting profits from the for sale homes to gap the financing needs the Dauenhauer Apartment project was left with a sizable hole in its financing structure which we are currently attempting to fill through a financing structure involving existing equity in the project(s), Exchange Bank and Meritage Homes.

Meritage's acquisition of the single family home subdivision left Alderbrook Properties with title to the adjoining Dauenhauer Apartment site and the obligation to develop the site as affordable rental housing to satisfy the inclusionary requirement for the entire Dauenhauer subdivision, without the profitability from the home sales to help off-set the financial burden of building the affordable housing. Meritage Homes was aware of the City's inclusionary requirement for the Dauenhauer Ranch subdivision when it purchased the note for the single family home portion of the subdivision from Wells Fargo Bank and expressed its willingness to provide assistance in the funding necessary to get these units built.

Alderbrook Properties lacks sufficient funds to complete construction of the Dauenhauer Apartments. Meritage has no control over the development of the Apartments. Hence, Meritage has found itself in a position where it needs to resolve how to implement the inclusionary requirement with respect to the single family homes so it can move forward with the pulling of permits and development of Phase 2 of the homes. As it did with the Phase 1 homes, Meritage has proposed to offer some of the Phase 2

homes at prices affordable for moderate-income households who earn no more than 120% of the area median income. Because the below market rate (BMR) price and household income restrictions on the homes would be released when the low-income Apartments become available, it appears that moderate-income home buyer interest is high in anticipation of a windfall.

Meritage has consistently confirmed its willingness to contribute a yet to be determined amount of capital to assist Alderbrook Properties LP in filling the shortfall in financing, however City Council approval of Meritage's proposal would eliminate any incentive for Meritage to contribute funds to help complete the construction of the Dauenhauer Apartments. Without these funds, the Apartments cannot be completed and operated as affordable housing for low-income households with incomes at or below 50% and 60% of the area median. Therefore, should the Council choose to approve Meritage's proposal, such approval should include the following requirements:

- (1) The BMR sales price and buyer income requirements existing for the Phase 1 and proposed for the Phase 2 homes should be made permanent (rather than released when Dauenhauer Apartment's affordable rental units become available); and
- (2) The affordability restrictions that apply to the Dauenhauer Apartments should be released so the Apartments can be financed, constructed and operated as market rate apartments. This is not our preference but without financial assistance we cannot build these units with the income restrictions in place.

Meritage has indicated that it is willing to contribute funds to help complete construction of the Dauenhauer Apartments. The unmet need for rental housing affordable for low-income households who earn no more than 50% and 60% of the area median income far outstrips the need for single family for-sale homes affordable to households with incomes at 120% of the area median. Alderbrook Properties needs at the very least 6 to 8 more weeks to work with Exchange Bank, bond and tax credit counsel to craft the financing structure to complete Dauenhauer as low-income housing and work with Meritage on its contribution thereto.

It is our hope that City Council will give us the 6 to 8 additional weeks and in the meantime allow Meritage to pull building permits and resume their building operation. We are all in this together and our ability to complete the Dauenhauer Apartments will require all of us pulling together with the same goal in our sights.

Thank You for your consideration,

Keith Christopherson
Managing Partner