

PARK DEVELOPMENT AGREEMENT

THIS PARK DEVELOPMENT AGREEMENT (“**Agreement**”) is dated as of _____, 2024, for reference purposes only, by and between Motte Historical Museum, Inc., a California corporation (“**Owner**”), and the City of Menifee, a California municipal corporation (“**City**”) (collectively, the “**Parties**” and individually, a “**Party**”).

RECITALS

A. Owner owns in fee title that certain real property located in the City of Menifee, County of Riverside, State of California, as more particularly described on “Exhibit A” attached hereto and incorporated herein by this reference (the “**Property**”), which is a portion of approved tentative map, TTM No. 34118 (the “**Tentative Map**”). The Tentative Map proposes to subdivide 27.58 acres into 85 single-family residential lots with a minimum lot size of 4,000 square feet, 82 garden court condominium homes within one common lot, one clubhouse, one pool, and two parks, for an overall density of 6.24 dwelling units per acre. The Property is located within the Menifee North Specific Plan area (“**Specific Plan**”). Certain portions of the land within the Specific Plan are within City and the remaining portions of the land within the Specific Plan are within an unincorporated area of the County of Riverside.

B. As a condition to map recordation for the Property, City requires Owner to enter into a park development agreement to ensure its fair contribution towards a community park to be funded and constructed on the Park Site (as defined below) by the developers within the portion of the Specific Plan located within the City (collectively, “**Menifee North SP Developers**”).

C. The Park Site is that certain real property located in the City of Menifee, County of Riverside, State of California, as more particularly depicted on the conceptual site plan attached hereto as “Exhibit B” and incorporated herein by this reference (“**Site Plan**”), comprised of an approximate 12.5-acre portion of undeveloped land that has been designated for a community park (“**Park Site**”), including Assessor Parcel Numbers 329-090-019, 329-090-020, and 329-090-021 owned by MR 56, LLC, a California limited liability company, which is affiliated with Owner (the portion of the Park Site owned by MR 56, LLC, is referred to herein as the “**MR 56 Parcels**”). The community park, including park site acquisition, will be funded and eventually constructed by the Menifee North SP Developers. Owner is not solely responsible for the entirety of funding and constructing the community park, and will fund its fair share of those costs and satisfy its park obligations pursuant to the terms and conditions set forth in this Agreement.

D. The Parties acknowledge and agree that the Park Site is encumbered by one or more easements and/or fee interests that have been previously granted to Southern California Edison for the installation, maintenance, repair, and replacement of power lines and related electrical system infrastructure (the “**Edison Easement**”), and that the dedication of the MR 56 Parcels to City and the performance of all obligations set forth in this Agreement, shall be subject to the Edison Easement, including but not limited to all use and development restrictions set forth therein.

E. The Parties intend to (i) establish a means to assure that park and recreational improvements are completed on the Park Site; (ii) specify the timing of the development of these improvements in relation to the development of residential units on the Property and within the

Specific Plan; (iii) provide sufficient surety to guarantee that park and recreational improvements are completed and ready for public use within those timeframes; and (iv) specify that failure to comply with any deadline for development of the park and recreational improvements shall halt the issuance of building permits for residential dwelling units within the Specific Plan. The Parties further intend that this Agreement, and similar park agreements between the City and the other Menifee North SP Developers will accomplish these goals.

F. Following the construction of a community park on the MR 56 Parcels, the City shall accept dedication of the MR 56 Parcels pursuant to the IOD (as defined below).

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein by this reference, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. Overall Timeline for Park Site Development. The Parties agree that the following park development thresholds apply to all undeveloped units with the portion of the Specific Plan located within the City.

a. Prior to the issuance of the 400th building permit within the portions of the Specific Plan within the boundaries of City, a minor plot plan application shall be submitted to and approved by City's Community Services Department and/or Community Development Department showing the conceptual park plans for the Park Site. Conceptual plans shall contain overall site map or tract map showing locations of all parks, trails, channels, basins and/or open spaces; vicinity map; street names; north arrow; adjacent land use; proposed park layout including but not limited to parking lot and concrete layout, all proposed amenities, (including, but not limited to, gazeboes, tot lots, picnic areas, lighting, decomposed granite trails, as shown in the Specific Plan); turf and planter layout; tree locations; and plant palette, all in conformance with "Exhibit C." The plans are subject to approval by City or other entity acceptable to City, at City's sole discretion.

b. Prior to the issuance of the 550th building permit within the portions of the Specific Plan within the boundaries of City, construction park plans shall be submitted to and approved by City's Community Services Department and/or Engineering and Public Works Department for the park on the Park Site. The plans are subject to approval by City or other entity acceptable to City, at City's sole discretion.

c. Prior to issuance of the 650th building permit within the portions of the Specific Plan within the boundaries of City, the park on the Park Site shall be constructed and open to the public.

2. Owner Responsibilities.

a. Owner shall cause the MR 56 Parcels to be irrevocably offered for dedication to the City, and shall deliver to City the original executed and acknowledged Irrevocable Offer of Dedication to City of the MR 56 Parcels (the "IOD").

b. Owner agrees that the Menifee North SP Developers will be responsible for developing the Park Site as a community park in accordance with this Agreement and similar

agreements between the City and the other Menifee North SP Developers, and City agrees that Owner's sole contribution to such development is the delivery of the IOD and, if applicable, the payment of Quimby fees in accordance with Section 3 below.

c. Owner shall cause the owner of the MR 56 Parcels to take all actions and execute all documents, as reasonably required by City, to ensure that the Menifee North SP Developers have all access and development rights necessary to develop a community park on the MR 56 Parcels, including but not limited to a temporary construction license or easement, if necessary.

d. If any of the conditions in Section 1 are triggered before Owner is issued all building permits for the Property, or by Owner's submission of an application for a building permit, Owner, or Owner's successor-in-interest, shall not be subject to the requirements of that condition, in recognition that Owner has satisfied the park obligations for the Property through entering into this Agreement and delivering the IOD to the City, and therefore, Owner will be deemed to have been issued all building permits for the Property prior to City's issuance of the 400th building permit within the portions of the Menifee North Specific Plan located within the boundaries of the City for purposes of complying with the park design and construction thresholds set forth above, once the IOD has been delivered. This paragraph shall apply whether Owner is the applicant or issuee of any building permit for construction on the Property, or a successor-in-interest to Owner. For purposes of clarification, neither Owner, nor Owner's successor-in-interest to the Property, shall be deemed a "Constructing Party" under Section 5 below (titled "Security").

3. Conditions of Approval. Upon City's receipt of the IOD, City shall consider Owner (and, if applicable, the then-current owner of the Property) as having satisfied the Conditions of Approval set forth below related to Planning Application No.: Extension of Time No. 2019-039 and 20-0040 to County Approved Tentative Map No. 34118 and any similar park conditions applicable to any modified or new entitlements issued for development of the Property, and to have funded its fair share of the total costs for developing a community park on the Park Site, save and except that if more than 167 dwelling units are developed on the Property, all units in excess of 167 units shall be subject to payment of all Quimby in-lieu fees or other park fees in the amounts in effect at the time of payment.

General Conditions:

(85) Quimby Fees. Payment of in-lieu fees and dedication of parkland. The proposed subdivision will fulfill Quimby obligations through the payment of in-lieu fees and dedication of land for credit for onsite parks. Prior to the issuance of a building permit, the City Manager or his/her designee shall determine the amount of Quimby Fees to be paid by the subdivider, if any. Quimby fees shall be paid directly to the city prior to the issuance of the first certificate of occupancy of any dwelling unit in the subdivision.

Prior to Map Recordation

(279) Park Development Agreement. The Specific Plan has requirements for the construction of a Community Park (PA10). There are various owners of property within the Specific Plan and multiple approved tracts. Therefore, in order to ensure

that the Community Park in PA10 is constructed and funding is available for the park, prior to map recordation, the developer shall enter into a Park Development Agreement pursuant to Menifee Municipal Code Chapter 9.195. If the park in PA10 has been constructed and is open to the public prior to recordation of the final map, then this condition shall be considered null and void.

Prior to Building Permit

(281) Quimby Fees. Payment of in-lieu fees and dedication of parkland. The proposed subdivision will fulfill Quimby obligations through the payment of in-lieu fees and/or dedication of land for credit for onsite parks. Prior to the issuance of a building permit, the City Manager or his/her designee shall determine the amount of Quimby Fees to be paid by the subdivider, if any.

Prior to Final Inspection

(282) Quimby Fees. The applicant shall pay any Quimby fees, if any are due, to whoever operates the financing districts (CFD and LMD) at issue, which, for now is going to be the District, subject to later being amended depending on the City's pending efforts to modify the District's boundaries and proposed future detachment from the District.

4. City Responsibility. The City agrees to collect and maintain in a separate account all Quimby fees and other applicable park fees from all other Menifee North SP Developers. The City commits to using such funds solely to pay or reimburse costs incurred by the Menifee North SP Developers in developing a community park on the Park Site, up to the full cost of the park, including soft costs, pursuant to mutual agreement of the City and the relevant Menifee North SP Developers. Once the community park is developed, completed, and dedicated to the City, any and all funds remaining in that separate account may be used by the City for any purposes consistent and in compliance with applicable laws, regulations, and the provisions of the City's Municipal Code.

5. Security. When one of the Menifee North SP Developers applies for the 650th building permit within the portions of the Specific Plan within the boundaries of City (the "**Constructing Party**"), the Constructing Party shall furnish security to City to ensure the faithful performance of the park construction, including all park and recreational improvements listed within the then-approved construction park plans, of the community park on the Park Site. The cost of the security required pursuant to this Section shall be considered in the full cost of the park described in Section 4 above. The security shall be either a surety bond, letter of credit or other instrument of credit issued by a banking institution subject to regulation by the State or Federal government and pledging that the funds necessary to carry out this Agreement are on deposit and guaranteed for payment, or a cash deposit made either directly with City or deposited with a recognized escrow agent for the benefit of City. The security shall be irrevocable, shall not be limited as to time, and shall provide that it shall be released only upon the written approval of City. At the conclusion of construction of the park improvements on the Park Site, upon the written acceptance of them by City, approval of a notice of completion, and upon the Constructing Party furnishing the Warranty Security (as defined below), City shall authorize the release of the

Performance Security (as defined below). Ninety (90) days after a notice of completion is filed with respect to the park improvements on the Park Site, City may authorize the release of the Labor and Materials Security (as defined below) in the event no claims have been filed against the Labor and Materials Security. In the event that claims or actions are filed against the Labor and Materials Security, City may release so much of the labor and Materials Security as in excess of the total of the claims made against it. Security shall be in the following amounts and for the following purposes:

- a. Performance Security. One hundred percent (100%) of the estimated cost of improvements for the Park Site securing performance of this Agreement (**“Performance Security”**).
- b. Security for Labor and Materials. One hundred percent (100%) of the estimated cost of improvements for the Park Site as set forth in Paragraph 4(a), securing payment for the contractor of improvements, to subcontractors, and to persons furnishing labor, materials, or equipment to them (**“Labor and Materials Security”**).
- c. Warranty Security. Ten percent (10%) of the estimated cost of the improvements for the Park Site, as set forth in Paragraph 4(a), to guarantee and warrant the improvements for a period of one (1) year following the completion and acceptance of the improvements against any defects in the improvement design, the work, or the labor done, or defects in materials furnished (**“Warranty Security”**). The Warranty Security need not be furnished prior to completion of the improvements but must be provided prior to their acceptance and prior to the release of the Performance Security.

6. CFD Maintained Common Area Plans. Community Facilities District Maintained Common Area plans, including designated parkland must be consistent with the Menifee Municipal Code Chapter 9.195.080 “Park Design, Landscaping and Tree Preservation,” the Park Development Guidelines, Menifee Municipal Code Chapter 9.195.090 “Landscape Water Use Efficiency Requirements,” and applicable Eastern Municipal Water District requirements.

7. Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not subject to control by City may possess authority to regulate aspects of the development of the Property, and this Agreement does not limit the authority of such other public agencies.

8. Compliance with Applicable Laws and Regulations. Construction of the improvements contemplated by this Agreement shall be in compliance with all applicable federal, state, and local laws and regulations, including but not limited to Menifee Municipal Code and the Quimby Act (Government Code section 66477 et seq.).

9. Defaults. In the event a Party has breached any provision of this Agreement, the non-defaulting Party shall give written notice to the defaulting Party specifying the grounds of the alleged breach. The defaulting Party shall have thirty (30) days to cure the alleged breach or begin cure if the breach cannot be cured within thirty (30) days and shall diligently continue to cure until complete. In the event the breach is not timely cured or there is a failure to diligently continue to cure, the defaulting Party shall be in default of this Agreement.

10. Indemnity. Owner agrees to indemnify, protect, defend, and hold harmless City and its respective elected and appointed officers, officials, employees, agents, consultants, contractors, and volunteers (collectively, “**City Indemnitees**”) from and against any and all liability, loss, cost, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, or damage (collectively, “**Claims**”), which may arise, directly or indirectly, in whole or in part, from the acts, omissions, or operations of Owner or Owner’s agents, contractors, subcontractors, or employees arising out of this Agreement, but excluding any loss resulting solely from the intentional or active negligence of the City Indemnitees. Notwithstanding the foregoing, (i) City shall have the right to select and retain counsel to defend any such action or actions and Owner shall pay the cost thereof; provided, however, that the Parties may agree to attempt in good faith to coordinate and/or consolidate their defense of any Claim that is subject to the indemnification provisions of this Section 10; and (ii) this indemnity obligation shall not apply to any Claim for which Owner has provided a separate indemnity to City by way of a separate instrument mutually accepted by the Parties.

11. Notices. All written notices required to be given pursuant to the terms hereof shall be sent by (a) personal delivery, (b) a nationally recognized overnight courier service, or (c) United States first class mail, registered or certified return receipt requested and postage prepaid as expressly provided herein.

All notices shall be addressed as follows:

To City: City of Menifee
29844 Huan Road
Menifee, CA 92586
Attention: Jonathan Nicks, Deputy City Manager

With copy to: Rutan & Tucker, LLP
18575 Jamboree Road, 9th Floor
Irvine, CA 92612
Attention: Jeffrey T. Melching, Esq.

To Owner: Motte Historical Museum, Inc.
Attn: John Motte
445 South D Street
Perris, CA 92570
Email: johnmotte@gmail.com and
sbockhorst@hoffmanland.com

With copy to: Tyler Law, LLP
Attn: Todd Frahm
25026 Las Brisas Road
Murrieta, California 92562
Email: tfrahm@tylerlawllp.com

12. Successors and Assigns. Owner may assign its rights and obligations under this Agreement only with express written consent of City, not to be unreasonably withheld or delayed, and City hereby expressly consents to the assignment of Owner's rights and obligations under this Agreement to Melia Homes, Inc. (or to any related entity controlled by or under common control with Melia Homes, Inc.), upon its acquisition of the Property, as Melia Homes, Inc. is an intended third-party beneficiary of this Agreement. Subject to the foregoing, the covenants, obligations, and agreements contained in this Agreement shall run with the land and be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns, and successors-in-interest, including any successor owner of the Property. To effectuate the foregoing, upon execution of this Agreement and delivery of the IOD to City, this Agreement shall be recorded by Owner in the Official Records of the County of Riverside.

13. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the Parties with respect to the items contained herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

14. Amendment. This Agreement may only be amended or modified by a writing signed by the Parties.

15. Severability. If any section, paragraph, term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect, unless and to the extent the rights and obligations of any Party has been materially altered or abridged by such holding.

16. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. Any dispute between City and Owner over this Agreement shall be filed, and tried, in the Superior Court of the County of Riverside. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting Party or in favor of City shall not be employed in interpreting this Agreement, each of the Parties having been represented by counsel in the negotiation and preparation hereof.

17. Estoppel Certificate. A Party hereunder may, at any time, deliver written notice to the other Party requesting such Party to certify in writing that, to the best knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Party; (ii) this Agreement has not been amended or modified either orally or in writing, or if so amended, identifying the amendments; and (iii) the requesting Party is not in default in the performance of its obligations set forth in this Agreement or, if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof.

18. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

19. Singular and Plural. As used herein, the singular of any word includes the plural.

20. Waiver. Failure of a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

21. No Third-Party Beneficiaries. Except as expressly set forth in this Agreement, this Agreement is made and entered into for the sole protection and benefit for the Parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

22. Counterparts. This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if each of the Parties had executed the same instrument.

23. Further Assurances. In a timely manner, each Party shall execute and deliver such further instruments, documents, or assurances, and take such further action, as shall be reasonably required to carry out the purposes and intent of this Agreement.

24. Authority to Execute. Each of the individuals executing this Agreement verifies that each of them has the authority to enter into this Agreement, that the necessary resolutions or other consents have been passed or obtained, and that this Agreement shall be binding on the Party for whom each of them is signing.

25. No Partnership. This Agreement shall not be construed as creating a partnership or joint venture between the Parties or among the Parties and any third party or cause any of them to be responsible in any manner for the other Party's or any third party's debts or obligations.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first set forth above.

CITY: CITY OF MENIFEE

By

Bill Zimmerman, Mayor

ATTEST:

By

City Clerk

APPROVED AS TO FORM:

By _____
City Attorney

OWNER:

MOTTE HISTORICAL MUSEUM, INC.
a California corporation

By: John D. Motte, President

By: Leon Motte, Secretary/Treasurer

[ALL SIGNATURES SHALL BE NOTARIZED. EXECUTION ON BEHALF OF ANY CORPORATION SHALL BE BY TWO CORPORATE OFFICERS.]

EXHIBIT A

DESCRIPTION OF THE PROPERTY

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

PARCEL 1:

THAT PORTION OF LOT 77 OF ROMOLA FARMS, IN THE CITY OF MENIFEE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 12, PAGE 71 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 77; THENCE SOUTHERLY ALONG THE EASTERLY LINE OF SAID LOT, 134.34 FEET; THENCE WESTERLY 646 FEET MORE OR LESS TO A POINT ON THE WESTERLY LINE OF SAID LOT; 134.24 FEET SOUTHERLY FROM THE NORTHWEST CORNER THEREOF; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID LOT, 134.24 FEET TO THE NORTHWEST CORNER THEREOF; THENCE EASTERLY ALONG THE NORTHERLY LINE OF SAID LOT, 646.01 FEET TO THE POINT OF BEGINNING.

APN: 329-110-041

PARCEL 2:

LOTS 68, 77 AND 84 OF ROMOLA FARMS, IN THE CITY OF MENIFEE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 12, PAGE 71 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING FROM LOT 77 THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 77; THENCE SOUTH 0° 13' WEST 134.34 FEET; THENCE WEST 646 FEET TO A POINT ON THE WEST LINE WHICH BEARS SOUTH 0°4'06" WEST, 134.24 FEET FROM THE NORTHWEST CORNER OF LOT 77; THENCE NORTH 0°4'06" EAST, 134.24 FEET; THENCE NORTH 89°25'30" EAST 646.01 FEET TO THE POINT OF BEGINNING;

ALSO EXCEPTING FROM THAT PORTION OF LOT 77 ALL OIL AND MINERAL RIGHTS RESERVED BY BERTHA PLAM, A WIDOW, IN DEED RECORDED SEPTEMBER 6, 1957 AS INSTRUMENT NO. 64467 OF OFFICIAL RECORDS;

ALSO EXCEPTING ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES AND MINERALS LYING IN AND UNDER SAID LAND, AS RESERVED BY DEED RECORDED FEBRUARY 7, 1966, AS INSTRUMENT NO. 13633 OF OFFICIAL RECORDS AS TO AN UNDIVIDED ONE-HALF INTEREST AND BY DEED RECORDED FEBRUARY 7, 1966, AS INSTRUMENT NO. 13632 OF OFFICIAL RECORDS AS TO AN UNDIVIDED ONE-HALF INTEREST.

APN: 329-110-042 and 329-110-043

PARCEL 3:

LOTS 67, 78 AND 83 OF ROMALA FARMS, IN THE CITY OF MENIFEE, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 12, PAGE 71 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THAT PORTION LYING WITHIN TRACT NO. 4540, AS PER MAP RECORDED IN BOOK 74, PAGES 62 AND 63 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 329-110-024 and 329-110-028

EXHIBIT B

CONCEPTUAL PARK SITE PLAN



MENIFEE NORTH



not to scale

Figure IV-19B
Community Park Site Plan Concept (PA 10)



EXHIBIT C

PARK SITE IMPROVEMENTS

COMMUNITY PARK: The MENIFEE NORTH Specific Plan includes one 10-acre community park within Planning Area 10, which offers a variety of active recreational opportunities to MENIFEE NORTH residents and the surrounding community. Community Park Site Plan Concept (PA 10), the eastern portion of the park includes picnic areas, tot lots, sport fields and basketball courts, and barbecue facilities, as well as parking and restrooms. The western portion of the park is within an easement granted by Southern California Edison, and provides a trail and an open turf area for passive recreational uses and informal play. Please note that the northern 2.5-acre portion of Planning Area 10 is owned in fee by Southern California Edison, has no parkland facilities, and is excluded from Parkland Quimby Calculations.