

**AGREEMENT BETWEEN
THE CITY OF MENIFEE AND PARDEE HOMES
REGARDING COMPLIANCE OF REVISED TENTATIVE TRACT MAP NO. 2012-045
(REVISION TO TENTATIVE TRACT MAP NO. 32277)
WITH GOVERNMENT CODE SECTION 66477 ("QUIMBY ACT")**

THIS AGREEMENT is entered into this 15th day of March 2017, by and between the City of Menifee ("**City**") and Pardee Homes, a California corporation (hereinafter referred to as "**Developer**") regarding Developer's compliance with the Quimby Act, through dedication, construction and acceptance of a 9.97-acre park identified in Revised Tentative Tract Map No. 2012-045 (i.e., revision to Tentative Tract Map No. 32277);

RECITALS:

WHEREAS, the Developer is in the process of fulfilling all of the conditions for Revised Tentative Tract Map No. 2012-045 (i.e., revision to Tentative Tract Map No. 32277) including the conditions providing for payment of Quimby fees and provision of landscape maintenance and annexation to a Park District; and,

WHEREAS, since the date such condition was written, the City has assumed responsibility for the provision of park maintenance and operations within the entirety of the City's jurisdiction and now must legally collect the Quimby fees or accept park dedication to satisfy Quimby requirements; and,

WHEREAS, the current conditions of approval for Revised Tentative Tract Map No. 2012-045 provide that the developer take the steps necessary to form a financing mechanism for the maintenance of such parks; and,

WHEREAS, the City has formed Community Facilities District (CFD) 2015-02 and the Developer shall annex to the City's CFD 2015-02 for landscape and park maintenance; and,

WHEREAS, on December 17, 2014, the City adopted Ordinance No. 2014-160, codified in Chapter 9.55 of the Menifee Municipal Code ("MMC"), governing the payment of Quimby fees and/or dedication of land to the City; and

WHEREAS, City of Menifee Municipal Code, Chapter 9.55 ("Park Dedication or Quimby Fee Requirements for Residential Development Requiring a Tentative Map or Parcel Map") requires the payment of Park Development Fees (Quimby Fees), adopted pursuant to Govt. Code Section 64777 to mitigate the impacts of the project on existing public park and recreation facilities located near the project; and,

WHEREAS, the Developer shall cause to have constructed one (1) 9.97-net acre park, which includes open play areas in addition to children's play structures, picnic tables, benches, shade shelter areas, two (2) full-size fenced baseball fields with dugouts and bleachers, one (1) full-size soccer field, basketball courts, restrooms, a parking lot with handicapped accessibility, and parallel parking along the Park perimeter, for public use. When completed, these recreational facilities will satisfy and potentially exceed park and recreation (Quimby) requirements for project construction; and,

When completed, these recreational facilities will satisfy and potentially exceed park and recreation (Quimby) requirements for project construction; and,

WHEREAS, based on the average household size of 3.164 people for single-family dwellings (with attached garages), number of units within the tract (359 units), and the level of service standard of five (5) acres per thousand residents, the Developer is required to provide minimum dedication of 5.68 acres of parkland;

WHEREAS, the City has agreed that upon dedication, construction and acceptance by the City of the park, the Developer will have fulfilled all Quimby Act requirements and current park conditions of approval for Revised Tentative Tract Map No. 2012-045; and,

WHEREAS, on June 15, 2016, the City adopted Ordinance No. 2016-193, amending Chapter 9.55 of the Menifee Municipal Code ("MMC"), to allow credit for excess park dedication; and

WHEREAS, based on the provision of the 4.29 acres of excess parkland dedication (9.97 acres minus 5.68 acres) and pursuant to Assembly Bill 1359 (AB 1359), the Developer may be allowed to use the excess credits to meet future Quimby requirements within a 2 mile nexus radius of the Park site and within the City of Menifee where it is reasonably foreseeable that the new subdivision's residents would use the 9.97-acre park and in compliance with the provisions of AB 1359; and,

WHEREAS, the City shall, upon Developer's dedications of the park in accordance with the timing and conditions referenced below, accept such dedication as full compliance with the Revised Tentative Tract Map and all Quimby Act and/or City requirements, and no fees or other obligations shall be required by the City.

NOW, THEREFORE, the parties to this Agreement do mutually agree as follows:

I. RESPONSIBILITIES OF DEVELOPER

A. Developer shall build to an acceptable standard.

When designing and building the park, Developer agrees to follow the provisions of the City of Menifee Municipal Code, Chapter 9.86 ("Park Design, Landscaping and Tree Preservation") and the guidelines adopted by the City.

B. Developer shall build the parks in a timely manner.

Developer shall secure approval from the City of the park conceptual plan, approval of construction plans and construction, completion and acceptance of the Parks at the times set out for performance in accordance with City approved park conditions, as follows:

Park Plans. Prior to the issuance of the 80th building permit in the Tract Map, the Park in Lot 360, shall be offered for dedication to the City or other entity acceptable to the City of Menifee directly or through an appropriate

mechanism as agreed to by the City and the applicant. Additionally, a minor plot plan application shall be submitted to and approved by the Community Development Department showing the detailed park plans (for Lot 360). The plans shall show the landscape and irrigation plans, along with, but not limited to, any walls, fencing signage, playground equipment, park furniture, hardscape, and/or structures. This park plan shall all show the park with all topography, grading, and cross-sections. The plans shall be approved by the City or other entity acceptable to the City of Menifee.

Before the issuance of the 80th building permit, Developer shall provide sufficient surety to guarantee that the improvements and/or amenities set forth in the minor plot plan are completed and ready for public sue within the timeframes specified above.

Park Construction and Operation. Prior to issuance of the 125th building permit in the Tract Map, the Park, as shown on the TENTATIVE MAP [RTR 2012-045] and [Approved] EXHIBIT L shall be constructed and fully operable. The landscaping, including irrigation, must be consistent with the approved landscaping plans. The annexation to the City Community Facilities District 2015-2 or other mechanism as agreed to by the City and the application for maintenance of Open Space.

Before the issuance of the 125th building permit, Developer shall provide sufficient surety to guarantee that the improvements and/or amenities set forth in the minor plot plan are completed and ready for public sue within the timeframes specified above.

C. Developer shall provide homebuyer notification regarding CFD.

Developer shall provide all necessary notifications to all future property owners within this tract that CFD Maintenance District 2015-02 ("CFD") will be formed and a special tax will be placed on all parcels within this project to fund ongoing park maintenance.

D. Park parcels will be free of all liens and encumbrances at the time of dedication.

Developer shall convey property to the City consistent with City of Menifee Municipal Code, Chapter 9.55, as adopted by the City.

II. RESPONSIBILITIES OF CITY

A. City shall endeavor to provide timely assistance.

City shall make reasonable efforts to provide all necessary inspections and document reviews within reasonable timeframes that assist the Developer.

B. City shall credit Developer's dedication of park acreage and improvements against Quimby fees due.

Upon dedication of park acreage, construction of improvements, and acceptance by the City of this 9.97-acre park and improvements, Developer will have satisfied Quimby park requirements per the provisions of City of Menifee Municipal Code, Chapter 9.55. Pursuant to Government Code Section 66477(a)(2)(B(9), the value of such dedicated park acreage, any improvements thereto, and any equipment located thereon shall be a credit against the payment of fees or dedication of Land.

C. **City shall authorize the use of the excess credits from Developer's dedication of park acreage and improvements for future Quimby fees due.**

The City shall allow the Developer, its assigns or future successor-in-interest to use excess credits in the amount of 4.29 acres to meet future Quimby requirements within a 2 mile nexus radius and within the City of Menifee's jurisdiction where it is reasonably foreseeable that the new subdivision's residents would use the 9.97-acre park and in compliance with the provisions of AB 1359. The acceptability of the use of the available credit for any particular future subdivision site shall be subject to City Manager (or his designee) review and approval.

III. **ASSIGNMENT**

Pardee Homes, a California corporation, its assigns and successors-in-interest, shall be bound by the terms and conditions contained in this Agreement.

IV. **MISCELLANEOUS**

The prevailing party in any proceeding to enforce this Agreement shall be entitled to reasonable attorney's fees as determined by the Court. Modifications to this agreement shall be considered to be binding only if they are made in writing and signed by the interested parties. No waiver of any term or conditions of this Agreement shall be a continuing waiver thereof.

- A. It is expressly understood and agreed by the Owner and the City that the laws of the State of California shall govern them and the interpretation of the Agreement and that any litigation brought because of, or involving this Agreement, shall be initiated exclusively in the Superior Court, Riverside County.
- B. In the event of litigation to enforce this Agreement, the prevailing party in such litigation shall be entitled to reasonable costs and attorneys' fees.
- C. No waiver of any term or condition of this Agreement shall be a continuing waiver thereof.
- D. This Agreement may be amended only in writing signed by both parties.

- E. This Agreement constitutes the entire agreement of the parties and supersedes all other agreements, whether written or oral. However, this Agreement does not supersede any entitlements issued or related conditions of approval.
- F. This Agreement may be executed in counterparts, each of which when so executed shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.
- G. This Agreement inures to the benefit of and is binding upon, the Parties, and their respective heirs, successors and assigns.
- H. The person(s) executing this Agreement on behalf of the parties hereto warrant that (a) such party is duly organized and existing, (b) they are duly authorized to execute and deliver this Agreement on behalf of said party, and (c) by so executing this Agreement, such party is formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the Owner and the City have caused this Agreement to be signed in their names and on their behalf by their duly authorized representatives.

Dated: March 15, __ 2017

"City"

CITY OF MENIFEE, a California Municipal Corporation

By: Ronald E. Brade

Its: Interim City Manager ✓

ATTEST:

Sarah A. Manwaring
Sarah Manwaring, City Clerk

APPROVED AS TO FORM
RUTAN & TUCKER, LLP

[Signature]
City Attorney

Dated: _____, __ 2017

"Owner"

Pardee Homes, a California corporation

By: [Signature]

Print Name: Michael Taylor

Its: Division President