

## **OPERATING AGREEMENT REGARDING PARTIAL ASSIGNMENT AND ASSUMPTION OF GOVERNMENT CODE SECTION 66477 (“QUIMBY ACT”) CREDIT**

This Operating Agreement Regarding Partial Assignment and Assumption of Government Code section 66477 (“*Quimby Act*”) Credit (“*Agreement*”) is dated as of October 4, 2023, by and between Tri Pointe Homes IE-SD, Inc., a California corporation, formerly known as Pardee Homes, a California corporation (“*Developer*”) and the City of Menifee, a California municipal corporation (“*City*”). Developer and City are referred to herein collectively as the “*Parties*” and individually as a “*Party*.”

### **RECITALS**

A. The Parties entered into that certain agreement titled “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*”)” dated as of March 15, 2017 (the “*Quimby Act Agreement*”), which details Developer’s compliance with and exceedance of Quimby Act requirements through dedication, construction and City 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) (“*TPH Project*”), as well as Developer’s receipt of credit from City for such excess park and recreation dedication and improvement in accordance with the Quimby Act and Menifee Municipal Code (“*MMC*”).

B. Under the Quimby Act Agreement, Developer received 4.29 acres (9.97 acres minus 5.68 acres) as excess credits (“*Total Excess Credits*”).

C. Developer is seeking to enter into an agreement regarding the sale and assignment of a portion of Developer’s Total Excess Credit (“*Assignor Assignee Agreement*”) with CRP/CWR River Walk Project, LLC, a Delaware limited liability company, or its successor in interest or assigns (“*CRP/CWR*”) under which Developer would assign to CRP/CWR, or any future owner of the property, and CRP/CWR, or any future owner of the property, would accept from Developer a portion of Assignor’s Total Excess Credits under the Quimby Act Agreement for CRP/CWR’s property located at north of Lazy Creek Road and west of Bradley Road (known as Riverwalk and Tract Map No. 38219) (“*Assigned Property*”) totaling 2.82 acres (“*Assigned Property Credits*”) in accordance with the terms and conditions of the Assignor and Assignee Agreement.

D. It is reasonably foreseeable that future occupants of the Assigned Property benefit from and could use the 9.97-acre park located within the TPH Project that was dedicated to and accepted by the City. Therefore, in accordance with the Quimby Act Agreement, City desires to authorize the assignment of a portion of Developer’s Total Excess Credits to the Assigned Property subject to the terms set forth herein.

### **AGREEMENT**

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. City hereby approves and grants Developer the unilateral right to assign the Assigned Property Credits (2.82 acres) to the Assigned Property, provided that Developer relinquishes and/or

otherwise foregoes the remaining 1.47 acres of the Total Excess Credits (collectively, the “*Assignment*”). The Parties agree that the Assignment shall not become effective until Developer provides City with written notice electing to proceed with the Assignment. If the Assignment becomes effective, City agrees to execute and deliver to Developer or its assignee, upon request, such further documents, instruments and conveyances, and take such further actions as necessary or desirable, to effectuate this Assignment and Agreement.

2. Developer shall indemnify, defend and hold harmless the City and its elected city council, appointed boards, commissions, committees, officials, employees, volunteers, contractors, consultants and agents from and against any and all claims, liabilities, losses, fines, penalties and expenses, including without limitation reasonable litigation expenses and attorney’s fees, arising out of this Agreement and use of the Total Excess Credits (“*Indemnity Obligation*”). City understands and acknowledges that Developer may condition any transfer or assignment of the credits to CRP/CWR, or any future owner of the Assigned Property, on CRP/CWR’s, or any future owner of the Assigned Property’s, agreement to indemnify City upon the foregoing terms.

3. The effective date of this Agreement shall be the date that the Agreement is fully executed and delivered by City and Developer. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective party. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever. This Agreement shall be governed by and construed in accordance with the laws of the State of California. This Agreement may be executed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument. The parties contemplate that they may be transmitting counterparts of this Agreement by email and agree and intend that a signature by email or facsimile shall bind the party so signing with the same effect as though the signature were an original signature.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the day and year written below.

**DEVELOPER:**

Tri Pointe Homes IE-SD, Inc.,  
a California corporation

By: \_\_\_\_\_

Name:

Title:

Date:

**CITY OF MENIFEE:**

By: \_\_\_\_\_

Name: Armando G. Villa

Title: City Manager

Date:

**ATTEST:**

By: \_\_\_\_\_

Name: Sarah A. Manwaring

Title: City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

Name: Jeffrey T. Melching

Title: City Attorney