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City of Santa Clara, California

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Form per Gov't Code Section 27361.6
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The undersigned declares that this document is recorded at the request of and for the benefit of the City of Santa Clara and therefore is exempt from the payment of the recording fee pursuant to Government Code §6103 and 27383 and from the payment of the Documentary Transfer Tax pursuant to Revenue and Taxation Code §11922.

PARKLAND AGREEMENT

BETWEEN

THE CITY OF SANTA CLARA,

a chartered California municipal corporation,

AND

RCR TASMAN I, LLC

AND COVENANTS AND RESTRICTIONS FOR

PRIVATE RECREATIONAL AMENITIES

PREAMBLE

This PARKLAND AGREEMENT (“Agreement”) is entered into between the CITY OF SANTA CLARA, a chartered California municipal corporation (“City”) and RCR TASMAN I, LLC, a Delaware limited liability company (“Developer”) as of the date of City’s execution (“Effective Date”). City and Developer may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

City and Developer enter into this Agreement on the basis of the following facts, understandings and intentions, and the following recitals are a substantive part of this Agreement.

- A. Developer desires to develop a residential tower (“Project”), which is a portion of the project described in City File #PLN2018-13439, in the City of Santa Clara, County of Santa Clara, State of California.
- B. Under the provisions of Santa Clara City Code (“SCCC”) Chapter 17.35 (“Park and Recreational Land”), every person who constructs or causes to be constructed a dwelling unit or dwelling units or who subdivides residential property shall dedicate land for neighborhood and community parks, pay a fee in lieu thereof, or provide a combination of such dedication and fee, at the discretion of the City (“Parkland Dedication Requirement”).
- C. Developer shall build parkland pursuant and subject to the Conditions of Approval in the Tasman East Specific Plan adopted by the City Council on November 13, 2018, and amended on September 29, 2020, described in **Exhibit F** (the “Conditions of Approval”).
- D. Developer is the fee title owner of all that real property located in the City described as Parcel B in that certain Certificate of Lot Line Adjustment recorded on October 1, 2020, and more particularly described in **Exhibit A** attached hereto (the “Park Site”).
- E. The parties acknowledge that City Mitigation Fee Act (“MFA”) fees due in lieu of parkland dedication in the amount of Eleven Million Eighty-one Thousand Two Hundred Twenty-four Dollars (\$11,081,224) have been paid.
- F. In order for Developer to satisfy the Parkland Dedication Requirement for the Project, Developer and City desire to enter into this Agreement pursuant to which Developer shall satisfy the Parkland Dedication Requirement as follows:

- a. Dedicate the Park Site, an approximately 0.5357-acre Mini Park (real property), to City for use as a neighborhood public park;
 - b. Construct park improvements on the Park Site substantially in accordance with those specified in the Public Park Improvements Site Plan set forth in **Exhibit B** to this Agreement (“Park Improvements”); and
 - c. Install private recreational amenities on approximately 1.1441-acres of real property within the Project substantially in accordance with those specified in the Private Recreational Amenities Site Plan set forth in **Exhibit C** (“Private Recreational Improvements”).
- G. The official name(s) of the Park will be established by City after the date of this Agreement in conformance with City policy.
- H. City’s Director of Parks & Recreation (“Director”) is charged with the administration of this Agreement. The Director or designee is responsible for the review, inspection, approval, and acceptance on behalf of the City of the Park Improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement, the Parties hereby agree as follows:

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Developer shall consist of the terms and conditions set forth in the main body of this Agreement (the “Terms and Conditions”) and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A - Legal Description of Park Parcel
 Exhibit B - Public Park Improvements Site Plan
 Exhibit C - Private Recreational Amenities Site Plan
 Exhibit D - Design and Construction Requirements
 Exhibit E - Fees and Credits Summary
 Exhibit F - Conditions of Approval
 Exhibit G - Bond Forms
 Exhibit H - Insurance Requirements
 Exhibit I – Sample Certificate of Acceptance

This Agreement, including the Exhibits set forth above, contains all the agreements, representations, and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings,

whether oral or written. The Parties acknowledge their mutual understanding that the Terms and Conditions and the Exhibits are consistent with each other and the Parties agree that the Terms and Conditions and the Exhibits shall be read and interpreted in a manner to maintain the greatest consistency between them and to accomplish, to the greatest practical and legal extent feasible, the mutual intent and goals of the Parties as set forth in this Agreement. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

Effective Date. The term (“Term”) of this Agreement shall commence on the Effective Date set forth above.

Expiration. The Term shall expire upon City acceptance of the Park Improvements, which acceptance shall be evidenced by the issuance of a Certificate of Acceptance by City Manager as outlined in **Exhibit I** to this Agreement, and City acceptance of the Grant Deed for the Park Site pursuant to the applicable provisions of Section 2.E of **Exhibit D**, unless earlier terminated upon mutual agreement of the Parties. City will within 30 days following Developer’s request execute a termination in recordable form stating that this Agreement has been terminated. Following expiration of the Term or any extension, or if sooner terminated, this Agreement shall have no force and effect, subject, however, to the post-termination obligations in Sections 6.C, 12, and 18.

3. REPRESENTATIONS AND WARRANTY

Developer expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Developer agrees to promptly replace or correct any incomplete, inaccurate, or defective materials and services at no cost to City when defects are due to the negligence, errors, or omissions of Developer. If Developer fails to promptly correct or replace materials and services, City may make corrections or replace materials and services and charge Developer for the cost incurred by City.

Developer represents and warrants to City that the following facts are true and correct:

- A. Any and all documents provided to City pursuant to the terms of this Agreement, or in connection with the execution of this Agreement, are now in full force and effect and contain no material inaccuracies or misstatements of fact. Developer covenants that at such time City notifies Developer of City's

intention to accept the Park Improvements, if any of these documents contain material inaccuracies, misstatements or have become obsolete, Developer shall notify City and provide City with the information required to render the documents accurate, complete and current.

- B. Developer has the legal ability to enter into this Agreement and Developer's signatories to this Agreement is (are) duly authorized to sign this Agreement on its behalf.

4. OFFER OF DEDICATION, AND DESIGN AND DEVELOPMENT OF PARK IMPROVEMENTS

- A. Developer affirms its irrevocable offer to dedicate the Park Site, approximately 0.5357 acres of real property, as further identified in Exhibit A to this Agreement, to City. Developer shall be responsible for all recording and escrow fees and other customary and reasonable closing costs incurred in the conveyance of the Park Site to City in accordance with the requirements and specifications set forth in this Agreement.
- B. Developer shall be responsible for the development of plans and construction of the Park Improvements on the Park Site substantially in compliance with the Public Park Improvements Site Plan as approved by City Council and as set forth in Exhibit B to this Agreement. Developer shall develop plans and specifications for the Park Improvements ("Project Specifications") for the review and approval of the Director, as more particularly described in the attached Exhibit D. Subject to Exhibit D of this Agreement, Developer shall construct the Park Improvements in conformance with the Project Specifications and all applicable standards and specifications in effect on the Effective Date of this Agreement.
- C. The Parties acknowledge that Developer has provided City a report, prepared by a qualified consultant analyzing the condition of the Park Site with respect to the presence of hazardous materials and other known deleterious conditions on or adjacent to the Park Site ("Hazardous Materials Report"). The Hazardous Materials Report did not disclose the presence of Hazardous Materials on any of the Park Site in excess of generally accepted environmental screening limits for park land uses, (e.g. Environmental Screening Limits and California Human Health Screening Limits) and/or in violation of any hazardous materials/waste laws.
- D. The Parties acknowledge that the exact size, dimensions, and other particular characteristics of the Park Improvements may not have been determined as of the Effective Date of this Agreement. The Parties, however, agree that the Park Improvements shall consist of the following specific Park Improvements:

an approximately 2,770 square foot small natural grass area, an approximately 3,278 square foot enclosed off-leash dog area, an approximately 8,194 square foot playground area with play apparatus for children ages 2-5 and 6-12, benches, drinking fountains, trash receptacles, dog waste stations, lighting, pathways, trees, and landscaping, all as depicted in **Exhibit B**.

- E. Developer shall be responsible for all costs incurred for planning, design, construction, and supervision of the construction of all Park Improvements, including without limitation, City's customary and reasonable plan review, inspections, and title transfer. Developer shall cause all material incorporated in the Park Improvements to be furnished in accordance with the requirements and specifications set forth in this Agreement.
 - F. The Park Improvements to be installed on the Park Site shall be completed on or before the earlier of any of the following events: (i) the date of the issuance of a final certificate of occupancy for the Project; or (ii) the date of the fifth-year anniversary of the Effective Date of this Agreement, subject to the occurrence of a Force Majeure Event (as defined below). The Park Improvements shall be deemed completed and accepted by City upon issuance of the Certificate of Acceptance by City Manager as outlined in **Exhibit I** of this Agreement. The City's Director may, at the City Director's discretion, grant extensions of the completion requirement specified in this subsection.
5. The Parties acknowledge and agree that the Park Site will be and remain a public park operated, controlled, supervised, and policed (including all emergency response services) solely by City, and open to the public during the hours then set by City (currently, 6:00 a.m. until one-half hour after sunset). Notwithstanding any provision herein to the contrary, nothing in this agreement shall create, or be deemed to create, any responsibility or liability on the part of Developer or any of its respective affiliates, successors or assigns with respect to the operation, control, supervision, or policing of the Park Site.

6. CREDIT FOR PRIVATE RECREATIONAL IMPROVEMENTS

- A. The Project is eligible to receive credit for the Private Recreational Improvements pursuant to the Park and Recreational Land Ordinance. The description of the Private Recreational Improvements that will receive credit pursuant to Chapter 17.35 is set forth in the Private Recreational Amenities Site Plan set forth in **Exhibit C**. Developer shall complete the installation of the Private Recreational Improvements described in **Exhibit C** on or before the issuance of final certificate of occupancy for the Project.
- B. With respect to any credit for Private Recreational Improvements which have not been completed pursuant to Section 5(A) of this Agreement, the credits for

the improvements shall be disallowed and Developer shall be required to pay all applicable Parkland Fees at the currently established City Municipal Fee Schedule, or the amount of the credit received, whichever is greater.

- C. Developer acknowledges and agrees that use of the Private Recreational Improvements shall be restricted for recreation purposes by this recorded covenant which runs with the land in favor of the future owners of the residential units and which expressly cannot be defeated or eliminated without the consent of the City or all of the owners of such units.
- D. Developer acknowledges and agrees that Developer shall not receive any credit for eligible Private Recreational Improvements pursuant to the Park and Recreational Land Ordinance except those private recreational improvements that are set forth in **Exhibit C** and constructed in full compliance with this Agreement.

7. COMPLIANCE WITH THE PARKLAND DEDICATION ORDINANCE

- A. City acknowledges and agrees that Developer's performance of this Agreement shall satisfy all of Developer's dedication, payment, construction and other obligations under the City's Park and Recreational Land Ordinance for the residential units approved for the Project. Provided that Developer is not in material default hereunder, and provided further that Developer satisfies all other terms, conditions, and requirements associated with the Project, City shall issue all building permits necessary for the Project.
- B. The Parties acknowledge and agree that the calculation of the Developer's Parkland Dedication Requirement is set forth in the Fees and Credits Summary set forth in **Exhibit E**, including the calculation of the parkland in-lieu fees ("Parkland Fees") and the credits for the Private Recreational Improvements ("Credits").
- C. In the event there is an increase in the number of residential units to be built, or change in the dwelling unit type, Developer agrees to immediately notify the Director and to pay such additional Park In-Lieu Fees as required by the Park and Recreational Land Ordinance.
- D. Developer acknowledges that the costs and expenses for the design, development, construction, and supervision related to the Park Improvements may exceed the Parkland Fees that the Developer otherwise would have been obligated to pay under the Parkland Dedication Ordinance. Because of the benefit to the Project that will result from the Park Improvements, Developer agrees to design, develop, and construct the Park Improvements on the Park Site and dedicate the Park Site in fee simple and as specified in this

Agreement, without any obligation on the part of City except as expressly set forth in this Agreement.

8. BONDS AND SECURITY

Developer shall furnish to City the following security prior to commencement of any work on the Park Improvements under this Agreement and for the purposes, in the amounts, and under the conditions that follow:

A. Type and Amounts.

- i. Performance Security. To assure the Developer's faithful performance of this Agreement to complete the Park Improvements in an amount of One Hundred Percent (100%) of the estimated cost of the Park Improvements (hereinafter "Performance Security"); and
- ii. Payment Security. To secure Developer's payment to any Contractor, subcontractor, person renting or supplying equipment or furnishing labor and materials for completion of the Park Improvements in the additional amount of One Hundred Percent (100%) of the estimated cost of the improvements (hereinafter "Payment Security"); and
- iii. Warranty Security. To warranty the Developer's work for a period of one (1) year following recordation of the Certificate of Acceptance against any defective work or labor done or defective materials furnished in the additional amount of Twenty-Five Percent (25%) of the estimated cost of the improvements (hereinafter "Warranty Security"); and
- iv. Landscaping Security. To secure Developer's installation and maintenance of landscaping as may be required by the Project Specifications, at such time when the drought restrictions have been rescinded as further described in Section 2(E)(3) of **Exhibit D** (hereinafter "Landscaping Security").

B. Conditions.

- i. Developer shall provide the required security on forms approved by City and from sureties authorized by the California Insurance Commissioner to transact the business of insurance. Any bonds furnished by Developer to satisfy the security requirements in this Section 8 shall be substantially in the forms attached hereto as **Exhibit G**, as may be reasonably amended by City from time to time.
- ii. A condition of the Developer's security is that any changes not exceeding ten percent (10%) of the original estimated cost of the Park Improvements shall not relieve the security. In the event that changes to the Improvement Plans cause an increase of more than ten percent

- (10%) over the original estimated cost of the Park Improvements, Developer shall provide security as required by Section 8A of the Agreement for one hundred percent (100%) of the total estimated cost of the Park Improvements as changed.
- iii. Notwithstanding Section 8B(ii) above, Developer's security shall compensate City for the actual cost of completing the required Park Improvements in the Event of Default (as defined in Section 9 below) by Developer in the performance of this Agreement, regardless of whether City's cost of completion exceeds the estimated total cost of the Park Improvements.
 - iv. A condition of Developer's security is that any request by Developer for an extension of time for the completion of the work under this Agreement may be granted by City without notice to Developer's surety and such extensions shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement.
 - v. As a condition of granting any extension for the commencement or completion of the work under this Agreement, Director may require Developer to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by Director.
 - vi. If Developer seeks to replace any security with another security, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by Developer to Director; and (3) upon its written acceptance by Director, be deemed to be a part of this Agreement. Upon Director's acceptance of a replacement security, the former security shall be released by City.

C. Release of Securities. City shall release the securities required by this Agreement as follows:

- i. Performance Security. City shall release the Performance Security upon recordation of the Certificate of Acceptance or as may otherwise be authorized in accordance with California Government Code sections 66499.7(a)-(g).
- ii. Payment Security. City shall release the Payment Security in accordance with California Government Code section 66499.7(h).
- iii. Warranty Security. City shall release the Warranty Security upon expiration of the warranty period and settlement of any claims filed during the warranty period.
- iv. City may retain from any Warranty Security released, an amount sufficient to cover costs and reasonable expenses and fees incurred by City in connection with any claims thereunder, including reasonable attorney's fees.

- v. Landscapping Security. City shall release Landscapping Security upon recordation of the Certificate of Acceptance.

D. Injury to Park Improvements, Public Property or Public Utility Facilities. Until recordation of the Certificate of Acceptance of the Park Improvements, Developer assumes responsibility for the care and maintenance of, and any damage to, the Park Improvements. Developer shall replace or repair all Park Improvements, public utility facilities, and surveying or subdivision monuments and benchmarks which are destroyed or damaged for any reason, regardless of whether resulting from the acts of the Developer, prior to the recordation of the Certificate of Acceptance, except to the extent caused by the gross negligence or intentional misconduct of City or any City personnel. Developer shall bear the entire cost of such replacement or repairs regardless of what entity owns the underlying property. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the Director, which shall not be unreasonably withheld, delayed or conditioned.

Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss, or damage, regardless of cause, occurring to the work or Park Improvements prior to recordation of the Certificate of Acceptance of the work or improvements.

9. DEFAULT

- A. Developer shall be in default hereunder upon the occurrence of any one or more of the following events (“Event of Default”), each subject to the effect of any Force Majeure Event:
 - i. Developer’s failure to timely complete construction of the Park Improvements under this Agreement.
 - ii. Developer’s failure to timely cure any defect in the Park Improvements.
 - iii. Developer’s insolvency, appointment of receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Developer fails to discharge within thirty (30) days.
 - iv. Developer assigns this Agreement in violation of Section 9.
 - v. Developer fails to perform or satisfy any other term, condition, or obligation under this Agreement.
- B. If an Event of Default occurs and the Event of Default is not cured by Developer in accordance with Section 9C below, City in its sole discretion shall be entitled to terminate Developer’s control over the Park Improvements work described herein and hold Developer and its surety liable for all damages

suffered by City as a result of the Event of Default. City shall have the right, at its sole discretion, to draw upon or use the appropriate security to mitigate City's damages in the Event of Default by Developer pertaining to the Park Improvements work and subject of such security. Developer acknowledges and agrees that City's right to draw upon or use the security is in addition to any other remedies available at law or in equity to City. The Parties acknowledge and agree that the estimated costs and security amounts may not reflect the actual cost of construction of the Park Improvements, and therefore, City's damages in the Event of Default by Developer shall be measured by the actual cost of completing the required Park Improvements to the satisfaction of City. City may use the sums provided by the securities for the completion of the Park Improvements in accordance with the Project Specifications.

City may take over the work and complete the Park Improvements, by contract or by any other method City deems appropriate, at the sole cost and expense of Developer. In such event, City, without any liability whatsoever, may complete the Park Improvements using any of Developer's materials, appliances, plans, or other property located at the Park Site and that are necessary to complete the Park Improvements.

- C. Unless the City's Director determines that the circumstances warrant immediate enforcement of the provisions of this Section 9 in order to prevent an immediate threat to the public health, safety, and welfare, the City's Director shall give twenty (20) working days' prior written notice of termination to Developer ("Notice Period"), which notice shall state in reasonable detail the nature of Developer's default and the manner in which Developer can cure the default. During the Notice Period, Developer shall have the right to cure any such default; provided, however, if a default is of a nature which cannot reasonably be cured within the Notice Period, Developer shall be deemed to have timely cured such default for purposes of this section if Developer commences to cure the default within the Notice Period and prosecutes the same to completion within a reasonable time thereafter.
- D. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer in its obligations under this Agreement, the City shall at the same time forward a copy of such notice or demand to each lender (including each and any mortgage and mezzanine lender) having a security interest in (directly or indirectly) the real property which is the subject of the breach or default who has previously made a written request to the City therefor (a "Lender"), at the last address of such Lender specified by such lender in such notice. In addition, if such breach or default remains uncured after the expiration of the applicable period specified in this Agreement, the City shall deliver a notice of such failure to cure such

breach or default to each such Lender at such applicable address (a “Notice of Default”). A delay or failure by the City to provide a Notice of Default required by this Section 9.D shall extend the time allowed to the Lender for cure for the number of days until notice is given to such Lender.

- E. After receiving any Notice of Default referred to in Section 9.D, a Lender shall have the right, but not the obligation, to cure such default within the later of sixty (60) days after receipt of such Notice of Default and ten (10) business days after the expiration of the cure period afforded Developer under this Agreement; provided, however, if a default is of a nature which cannot reasonably be cured within the Notice Period, Lender shall be deemed to have timely cured such default for purposes of this section if Lender commences to cure the default within the Notice Period and prosecutes the same to completion within a reasonable time thereafter.
- F. City's rights and remedies specified in this Section 9 shall be deemed cumulative and in addition to any rights or remedies City may have at law or in equity. In the event of any default by City under this Agreement, Developer shall have any and all rights and remedies at law or in equity.

10. ASSIGNMENT AND SUBCONTRACTING

City and Developer bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Any attempts to assign or transfer any terms, conditions or obligation under this Agreement without the express written consent of City shall be voidable at City’s sole discretion. Notwithstanding the foregoing, Developer shall have the right, without any consent or approval by City, to assign or transfer its rights and obligations under this Agreement to any affiliate of Developer, any third party that acquires all or substantially all of the assets of Developer, or to any third party that acquires the parcel containing the market rent tower, provided such assignee or transferee agree in writing to be bound by the obligations of Developer under this Agreement. Developer shall also have the right to pledge or collaterally assign this Agreement to lenders.

Subject to this Section 10, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors, assignees, transferees, and legal representatives.

11. INDEPENDENT CONTRACTOR

Developer and all person(s) employed by or contracted with Developer to furnish labor and/or materials under this Agreement are independent contractors and do

not act as agent(s) or employees(s) of City. Developer has full rights to manage its employees in their performance under this Agreement.

12. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Developer agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the performance by Developer of the Park Improvements work pursuant to this Agreement – including claims of any kind by Developer's employees or persons contracting with Developer to perform any portion of the work under this Agreement except to the extent arising from the gross negligence or intentional misconduct of City or any City personnel.
- B. Subject to the provisions of Section 12.A, Developer's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Developer), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Developer is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Developer warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Developer's responsibilities under the Act.
- D. This Section 12 shall survive the recordation of the Certificate of Acceptance, acceptance of the Park Site, or sooner termination of this Agreement for a period of one (1) year from the date of such acceptance or termination. Recordation of the Certificate of Acceptance by City of the Park Improvements shall not constitute an assumption by City of any responsibility or liability for any loss or damages covered by this Section 12.

13. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit H, Developer shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in **Exhibit H.**

14. WAIVER

Each Party agrees that waiver by the other Party of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither Party's review, nor acceptance required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

15. NOTICES

All notices to Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Parks & Recreation Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at: parksandrecreation@santaclaraca.gov

And to Developer addressed as follows:

RCR Tasman I, LLC
Attention: Matthew Keipper
44 Montgomery Street, Suite 1300
San Francisco, CA 94104
and by e-mail at matthew.keipper@related.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

16. TIME OF ESSENCE

Time is of the essence in the performance of this Agreement.

17. FORCE MAJEURE

- A. “Force Majeure Event” shall be defined as any matter or condition beyond the reasonable control of a Party, including but not limited to war, public emergency or calamity, fire, earthquake, extraordinary inclement weather, Acts of God, strikes, labor disturbances or actions, civil disturbances or riots, litigation brought by third parties against either the City or Developer or both, epidemic or pandemic (including COVID-19 or any variant), default by the other Party, or any governmental order or law which causes an interruption in the construction of the Park Improvements (the “Work” for purposes of this section) or prevents timely delivery of materials or supplies.
- B. Should a Force Majeure Event prevent performance of this Agreement, in whole or in part, the Party affected by the Force Majeure Event shall be excused or performance under this Agreement shall be suspended to the extent commensurate with the Force Majeure Event; provided that the Party availing itself of this Section 17 shall notify the other Party within ten (10) days of the affected Party’s knowledge of the commencement of the Force Majeure Event; and provided further that the time of suspension or excuse shall not extend beyond that reasonably necessitated by the Force Majeure Event.
- C. Notwithstanding the foregoing, the following shall not excuse or suspend performance under this Agreement:
 - i. Performance under this Agreement shall not be suspended or excused for a Force Majeure Event pertaining to the Work if such event is not defined as a Force Majeure Event under the applicable contract for the Work.
 - ii. Negligence or failure of a Developer to perform its obligations under a contract for the Work (other than for a Force Majeure Event as defined under the applicable contract) shall not constitute a Force Majeure Event.
 - iii. The inability of Developer for any reason to have access to funds necessary to carry out its obligations under this Agreement or the termination of any contract for the prosecution of the Work for such reason or for Developer's default under such contract shall not constitute a Force Majeure Event.

18. BOOKS AND RECORDS

- A. Developer shall be solely responsible to implement internal controls and record keeping procedures in order to comply with this Agreement and all applicable laws relating thereto. Developer shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or

documents evidencing or relating to the Park Improvement activities performed by Developer under this Agreement, including without limitation those relating to the construction of the Park Improvements, for a minimum period of three (3) years, or for any longer period required by law, from the date of termination of this Agreement or the date of the City's acceptance of the Park Improvements, whichever is longer. Notwithstanding this previous sentence, Developer shall retain such records beyond three (3) years so long as any related litigation, audit, dispute, or claim is pending.

- B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at any time during regular business hours, upon not less than three (3) business days' prior written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Developer's address indicated for receipt of notices in this Agreement.
- C. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Developer's business, City may, by written request by any of the above-named officers and upon the issuance of appropriate court order, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Developer, Developer's representatives, or Developer's successor-in-interest.
- D. Developer's obligations under this Section shall be in addition to Developer's obligations specified in **Exhibit D**.

19. ESTOPPEL CERTIFICATES.

Either Party (the "requesting Party") may, at any time, and from time to time, deliver written notice to the other Party (the "certifying Party") requesting the certifying Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and is a binding obligation of the Parties, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe the nature of any defaults and (iv) such other reasonable items as may be requested. The certifying Party receiving a request under this Section 18 shall execute and return its certificate within thirty (30) days following receipt of the request. The Director shall be authorized to execute any

certificate requested by Developer. Developer and City acknowledge that a certificate hereunder may be relied upon by any transferees, title companies, and lenders. Developer shall pay the City's reasonable costs involved in providing such estoppel certificate.

20. MISCELLANEOUS PROVISIONS

- A. Captions. Captions and Sections of this Agreement are for convenience only and shall not be considered in resolving any questions of interpretation or construction.
- B. Incorporation of Recitals. The Recitals contained in this Agreement are hereby incorporated into the terms of this Agreement.
- C. Plurality. As used in this Agreement and when required by the context, each number (singular and plural) shall include all numbers.
- D. Nondiscrimination. Developer, its employees, agents, representatives, contractors, and subcontractors shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or any other recognized or protected class in connection with or related to the performance of this Agreement. Developer shall expressly require compliance with the provisions of this Section in all agreements with contractors and subcontractors for the performance of the improvements hereunder.
- E. Developer has read each and every part of this Agreement, including without limitation, its exhibits, and Developer freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such Party may have drafted this Agreement or any of its provisions.
- F. Whenever in this Agreement words of obligation or duty are used (signified by use of the word “shall” or “must”), such words shall have the force and effect of covenants. Any obligation imposed by either Party shall include the imposition on such Party of the obligation to pay all costs and expenses necessary to perform such obligation.
- G. This Agreement is entered into pursuant to the Park and Recreational Land Ordinance. If not otherwise defined in this Agreement, capitalized terms shall have the meanings set forth in Santa Clara City Code Chapter 17.35. In the event of any conflict between the provisions of this Agreement and the Park and Recreational Land Ordinance, this Agreement shall control.

- H. Compliance with Laws. In performing its obligations under this Agreement, Developer shall comply with applicable laws and regulations of the federal, state and local government, including but not limited to “The Santa Clara City Code” (“SCCC”), subject to the provisions of this Agreement. In particular, Developer’s attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally, Developer has read and agrees to comply with City’s Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).
- I. Conflicts of Interest. Developer certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Developer and that no person associated with Developer has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Developer is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Developer will advise City if a conflict arises.
- J. Governing Law and Venue. This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.
- K. Severability Clause. In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.
- L. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

[Remainder of Page Intentionally Blank; Signatures Follow]

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form: _____

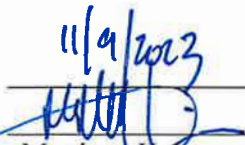
Dated: _____

GLEN R. GOOGINS
City Attorney

JÖVAN D. GROGAN
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

RCR TASMAN I, LLC
a Delaware limited liability company

Dated: 11/9/2023
By (Signature): 
Name: Matthew Keipper
Title: Vice President
Principal Place of Business Address: 44 Montgomery Street, Suite 1300, San Francisco, CA 94104
Email Address: Matthew.keipper@related.com
Telephone: (415) 677-9000
Fax: ()

“DEVELOPER”

- * All signatures must be accompanied by an attached notary acknowledgement.
- * Proof of authorization for signatures is required to be submitted concurrently with this Agreement.

CALIFORNIA ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of SAN FRANCISCOOn November 09, 2023 before me, JENNIFER R. CHILDS, NOTARY PUBLIC
Date Here Insert Name and Title of the Officerpersonally appeared MATTHEW KEEPER
Name(s) of Signer(s)

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 signature(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.

Place Notary Seal and/or Stamp Above

Signature Jennifer R. Childs
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____☐ Partner – ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: _____

Signer is Representing: _____

EXHIBIT A

Legal Description of Park Parcel

Real property in the City of Santa Clara, County of Santa Clara, State of California, described as follows:

Being a portion of Lots 25, 26 and 27, as said Lots are shown on that certain Parcel Map, filed for record on February 27, 1976 in Book 368 of Maps at Pages 14 and 15, Records of Santa Clara County, more particularly described as follows:

Beginning at the most southerly corner of said Lot 27, said corner being also a point on the northeasterly line of Lafayette Street, as shown on said Parcel Map;

Thence leaving said corner and along the southeasterly line of said Lots 27, North 68°35'44" East, 213.81 feet;

Thence leaving said southeasterly line of said Lot 27, the following courses and distances:

- North 21 °24' 34" West, 27.81 feet;
- North 68°35'26" East, 67.68 feet;
- North 21°24'34" West, 119.89 feet to the TRUE POINT OF BEGINNING;

Thence leaving said point, the following courses and distances:

- South 68°35'26" West, 16.75 feet;
- North 21°24'00" West, 21.25 feet;
- South 68°35'26" West, 67.27 feet;
- North 06°30'05" West, 65.70 feet to a point on the southeasterly line of Calle De Luna, being 60.00 feet in width, as shown on said Parcel Map, said point being also the beginning of anon-tangent curve, concave to the southeast, having a Radius of 3,469.82 feet, with a radial line that bears North 23°35'47" West;

Thence northeasterly along said curve and said southeasterly line of Calle De Luna, through a central Angle of 02°11'35", with an arc Length of 132.81 feet;

Thence continuing along said southeasterly line of Calle De Luna, North 68°35'47" East, 123.31 feet to a point and being distant thereon South 68°35'47" West, 206.69 feet from the northeasterly terminus of the course shown on said Parcel Map as " N 67°35'48" E 329.99' ";

Thence leaving said southeasterly line of Calle De Luna, the following courses and distances:

- South 21 °24' 13" East, 5.94 feet;

- South 89°42'27" East, 36.72 feet;
- South 64°35'26" West, 36.40 feet;
- South 26°22'55" East, 46.38 feet;
- South 25°38'52" West, 64.32 feet;
- South 79°45' 17" West, 33.17 feet;
- North 26°59'08" West, 7.51 feet;
- South 61°40'31" West, 16.27 feet;
- North 26°59'08" West, 5.45 feet;
- South 61°40'56" West, 16.28 feet;
- North 27°10'44" West, 5.08 feet;
- South 61°43'54" West, 16.41 feet;
- North 27° 10'44" West, 5.29 feet;
- South 61°40'56" West, 16.11 feet;
- North 27° 10'44" West, 5.28 feet;
- South 61°41'04" West, 16.26 feet;
- North 27°10'44" West, 5.28 feet;
- South 61°43'05" West, 17.07 feet;
- South 68°36'00" West, 10.12 feet;
- South 21°24'34" East, 3.49 feet to the TRUE POINT OF BEGINNING.

BASIS OF BEARINGS: The bearing North 68°35'47" East of the centerline of Calle De Luna, between found monuments, was taken as the basis of bearings. Said bearing is based on the North American Datum of 1983 (NAD83), California Coordinate System, Zone 3, Epoch 2010. All distances in the description are grid distances. Multiply expressed distances by 1.00005310 to obtain ground distances. Area shown is calculated using grid distances.

EXHIBIT B

PUBLIC PARK IMPROVEMENTS SITE PLAN



Tasman East
5150 Calle Del Sol & 2350 Calle De Luna
Mini Park Design



Final Mini Park Design



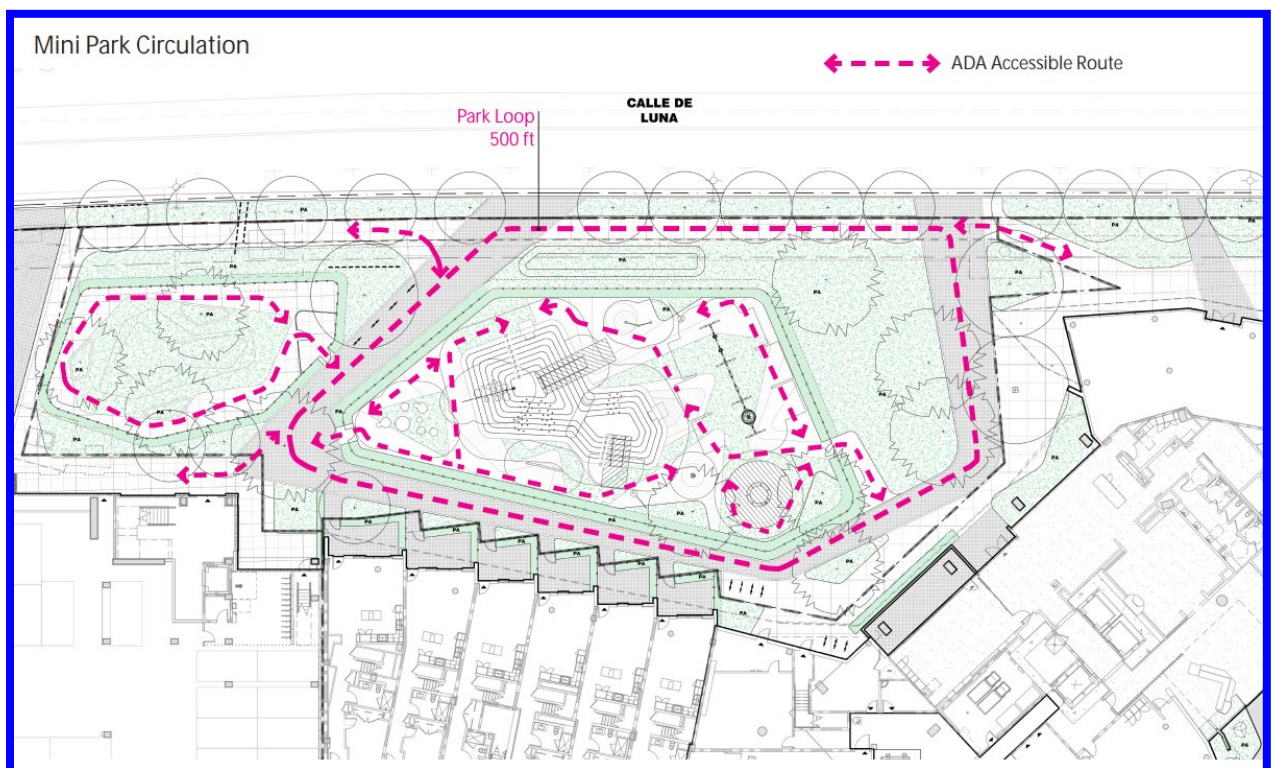
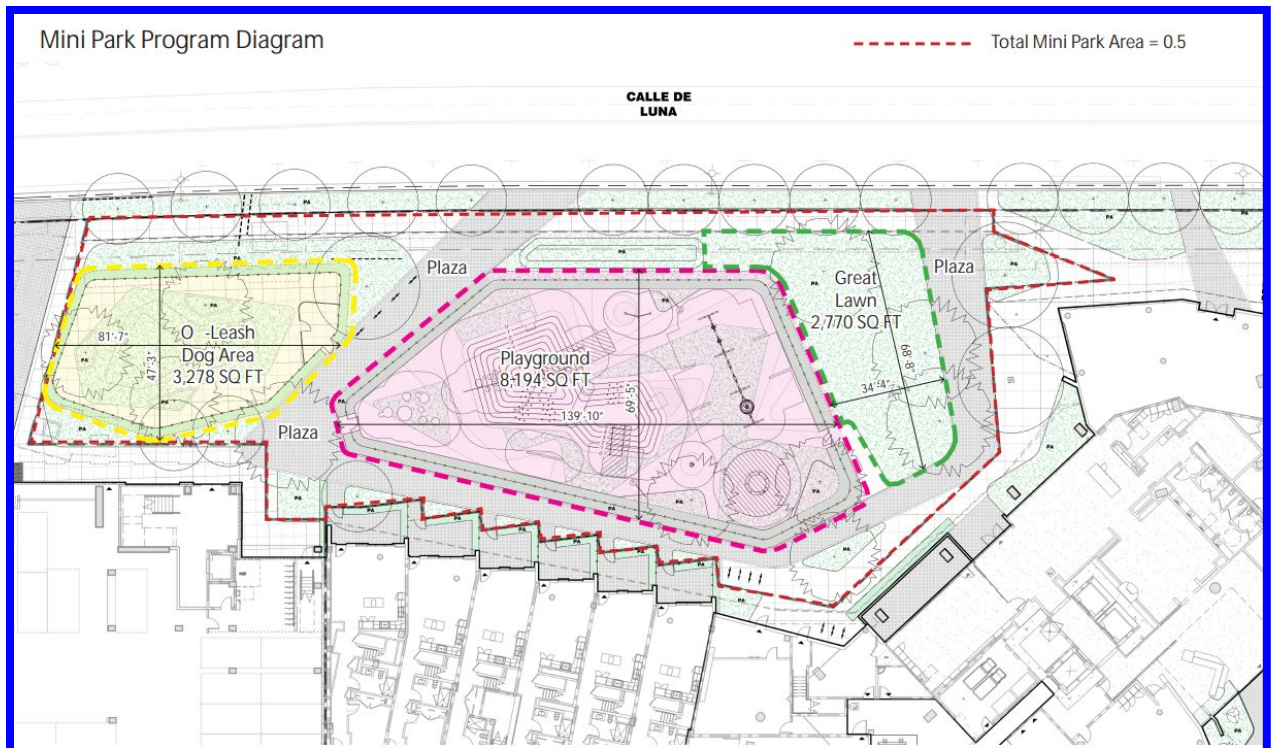
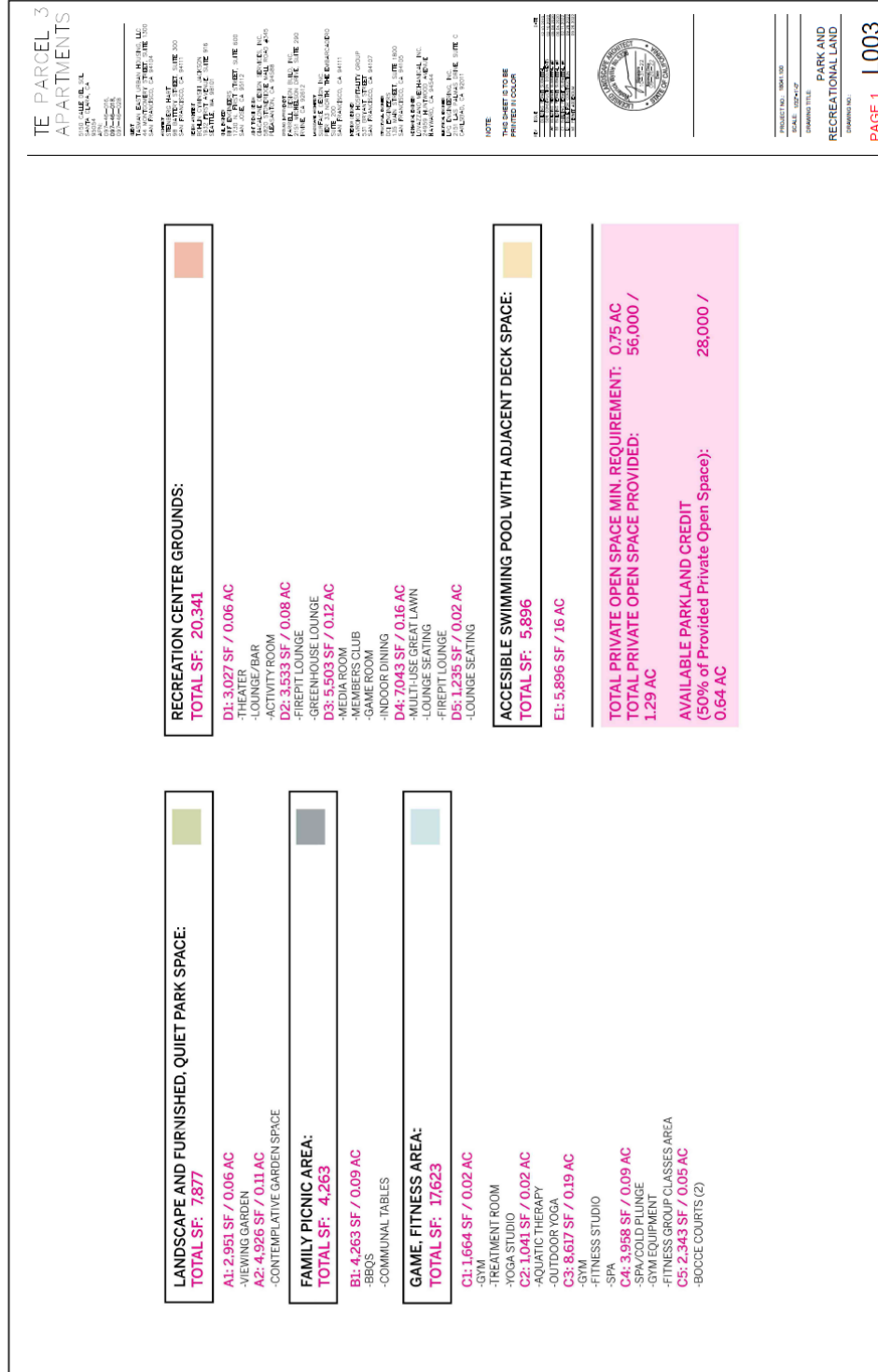


EXHIBIT C

PRIVATE RECREATIONAL AMENITIES SITE PLAN



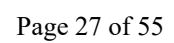




EXHIBIT D

DESIGN AND CONSTRUCTION REQUIREMENTS

SECTION 1. DESIGN AND CONSTRUCTION REQUIREMENTS.

A. Plans And Specifications.

The design for the Park Improvements must be consistent with the conceptual design for the Park Improvements as depicted in **Exhibit B**. Developer shall design and construct the Park Improvements in accordance with the following:

1. City's Santa Clara Public Park Amenity and Design Standards ("Park Standards") dated January 2019 and on file with City's Parks and Recreation Department. In the event that Developer does not submit the fifty percent (50%) and/or the ninety-five percent (95%) Project Plans and Specifications for City's review and approval within eighteen (18) months of the Effective Date of this Agreement and the Park Standards are then revised, Developer shall design and construct the Park Improvements in accordance with the revised Park Standards at no cost to the City.

B. Application of Plans and Specifications.

1. Park Standards and the Project Specifications shall be collectively referred to as the "Plans." The Park Improvements shall be constructed in accordance with the Plans.
2. The provisions of this Agreement supersede anything to the contrary in the Park Standards.

C. Project Specification Approval Process.

1. The Park Improvements Plans and Specifications shall be submitted to the City in a timely manner in order to ensure that the Developer completes the Park Improvements on or before the completion date specified in this Agreement. Developer shall not construct any Park Improvements unless and until the City's Director of Public Works ("Director of PW") and Director has approved the Specifications in writing. The approval process for the Specifications is more particularly set forth in the Park Standards.
2. City's approval of the Plans shall not release Developer of the responsibility for the correction of mistakes, errors, or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.

If, during the course of construction of the Park Improvements, the Director determines in the Director's reasonable discretion that public safety in compliance with applicable Code requires modification of, or the departure from, the Plans, the Director shall have the authority to require such modification or departure and to specify the manner in which the same may be made. The Parties acknowledge that the Plans, once approved by the Director, shall be final and that, except as expressly provided in this subsection, no revisions to the Plans shall be permitted for any reason whatsoever.

SECTION 2. PARTICULAR CONSTRUCTION REQUIREMENTS.

A. Developer Selection.

Developer may hire and contract with one or more contractor or subcontractor, licensed to perform such work in the State of California.

B. Prevailing Wage.

1. To the extent applicable to the Park Improvements, Developer shall cause the construction of the Project and the payment of all wages in connection therewith to be in accordance with the provisions of California Labor Code §§ 1720 through 1861 (collectively, the "Prevailing Wage Law").
2. Indemnity: To the fullest extent permitted by law, Developer shall indemnify, defend and hold harmless the City Indemnitees from and against all liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs), where the same arise out of, are a consequence of, are in connection with, or are in any way attributable to, in whole or in part, to: (i) Developer's or the contractor's failure, in performing and Park Improvements work, to comply with all applicable laws, including all applicable federal and state labor standards, including, without limitation, the requirements of the Prevailing Wage Law and the Davis Bacon Act, if applicable, (ii) defects in the design or construction of the Park Improvements to the extent not covered by the Warranty Bond, including (without limitation) the violation of any laws, and for defects in any work done according to the City approved plans, or (iii) any breach or failure to perform or act pursuant to this Agreement by Developer, or by any individual or entity that Developer shall engage, in connection with the Park Improvements work, including but not limited to officers, agents, employees or contractors of Developer. Notwithstanding the foregoing, Developer shall not be required to indemnify and hold harmless the City

Indemnites for liability attributable to the gross negligence or intentional misconduct of the City Indemnites.

3. Contractors And Subcontractors: Developer shall expressly require compliance with the Prevailing Wage Requirement in all agreements it enters into with contractors and subcontractors for construction work on the Park Improvements. Developer acknowledges and agrees that it is responsible for compliance by its contractors and subcontractors of the Prevailing Wage Requirement.
4. Reporting Obligations: Developer shall provide to City, at no cost to City, a copy of any and all such records within ten (10) working days of City's request for such records. In responding to a request by the City, Developer agrees that it is responsible for submitting the records of any and all of its contractors and subcontractors. Notwithstanding anything to the contrary contained herein, Developer is not obligated to submit to City copies of payroll records, or any other records required to be maintained pursuant to the Prevailing Wage Requirement, until City requests such records.

C. Conduct Of Work.

1. Site Preparation & Condition. Any debris or compaction from previous use must be addressed as part of site preparation, cleaning and grading. Work must be verified by inspection by the City.
2. Appearance. Developer shall maintain a neat and clean appearance to the work at the Site. When practicable, broken concrete and debris developed during clearing and grubbing shall be disposed of concurrently with its removal. If stockpiling of disposable material is necessary, the material shall be retained in an area not readily visible to the public in a manner meeting the reasonable satisfaction of the Director.
3. Condition. Developer shall maintain the Site in a neat, clean, and good condition prior to City's acceptance of the Park Improvements. Developer shall not dispose or cause the disposal of any Hazardous Substances on any of the Site. Additionally, Developer shall take reasonable precautions to prevent the disposal of Hazardous Substances by third parties on any of the Site. The term "Hazardous Substances" is defined in Section 3(A)(2) of this Exhibit.
4. Emergencies. In an emergency affecting the safety of persons or property, Developer shall act reasonably to prevent threatened damage, injury, or loss. Developer shall immediately notify the City by telephone at the

telephone number as directed by City's Director and in writing of such actions.

D. Access For Inspection.

1. Access. The Director or the Director's designated representatives, including without limitation, staff from other City departments, shall at all times during the progress of work on the Park Improvements have free access to such improvements for inspection purposes. If the Director determines that all or any portion of the work done on the Park Improvements is not in compliance with the Plans, the Director shall notify Developer of the same and Developer shall promptly cure such defect to the Director reasonable satisfaction. Such notifications shall be made to the Developer and his on-site representatives to not unduly interfere with ongoing construction work.
2. Representatives.
 - a. Prior to commencement of work on the Park Improvements, Developer shall designate in writing an authorized representative who shall have the authority to represent and act for Developer. When work is not in progress and during periods when work is suspended, arrangements acceptable to the Director shall be made for any emergency work which may be required. In addition, Developer shall provide Director with the names and telephone numbers of at least two (2) individuals in charge of or responsible for the work who can be reached personally in case of emergency twenty-four (24) hours a day, seven (7) days a week.
 - b. The Director shall also designate one or more authorized representative who shall have the authority to represent the Director. Developer's authorized representative shall be present at the site of the work at such reasonable times as designated by the Director. Prior to commencement of the work, the Parties shall mutually agree to an inspection schedule, which schedule may be adjusted from time to time by mutual agreement.
 - c. Whenever the Developer or its authorized representative is not present on any particular part of the work where it becomes necessary to give direction for safety reasons, the Director shall have the right to give such orders which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which the orders are given. Any

order given by the Director will on request of the Developer be given or confirmed by the Director in writing.

- d. City's rights under this Agreement shall not make the Developer an agent of the City, and the liability of the Developer for all damages to persons or to public or private property arising from Developer's execution of the work, shall not be lessened because of the exercise by City of its rights.

E. Acceptance of Park Improvements.

The Park Improvements shall be completed in accordance with the provisions of this Agreement to the reasonable satisfaction of the Director.

1. City agrees to inspect and prepare a punch list for the Park Improvements within ten (10) business days of notification by Developer that the Developer considers the construction of the Park Improvements to be complete. City further agrees to perform its final inspection within ten (10) business days of notification by Developer that all punch list work has been completed.
2. City will process acceptance documentation (Certificate of Acceptance-Exhibit I within ten (10) business days of the date of City's final inspection or the date upon which the Developer returns to City the appropriate signed acceptance documentation, whichever is later, provided that:
 - a. City finds that all punch list work has been satisfactorily completed; and
 - b. Developer has performed and satisfied any and all terms, conditions, and obligations required under this Agreement prior to acceptance of the Park Improvements, including but not limited to, the requirements for dedication of the Park Sites as outlined in Section 2(G) of this Exhibit below; and
 - c. Developer has provided the Director with three (3) sets of the Plans ("record plans") corresponding copies of any and all warranties, and the like (such warranties shall be in the name of the City), and corresponding copies of any and all operating manuals for equipment installed as part of the Park Improvements.
3. The Parties acknowledge that City's restrictions on the installation of landscaping because of future drought conditions may delay Developer's installation of the landscaping contemplated by this Agreement. If, due to

drought restrictions, Developer is unable to install the landscaping in time to be inspected by the Director for the purposes of accepting the completed Park Improvements, Developer shall post a bond as set forth in Section 8(A)(iv) of this Agreement.

- a. Should a drought emergency be declared that affects the ability to complete the park landscaping, Developer shall consult with City Water & Sewer Department and Parks & Recreation Department to obtain guidance and/or direction on a plan to complete Park.

F. Park Site.

1. Developer shall provide each of the following to the Director, subject to the approval of the Director, prior to City's acceptance of the Park Site and Park Improvements:
 - a. A preliminary report for the Park Site by a reputable title company currently doing business for City. Developer shall coordinate with City and provide a preliminary title report at least ninety (90) days prior to execution of this Agreement and an updated title report at least ninety (90) days prior to the anticipated completion of the Park Improvements.
 - b. A Grant Deed for the Park Site containing the legal description of the Park Site, as approved by City Surveyor or City designee, properly executed and acknowledged, subject only to the exceptions to title, if any, approved by City Manager pursuant to which a fee simple estate in Park Site shall be conveyed to City. Title to the Park Site shall be vested in City free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, and other adverse interests of record or known to Developer, subject only to those exceptions affecting the Park Site approved by City Manager, in writing, or listed in this Exhibit ("Permitted Exceptions"). The Grant Deed, subject to approval of City, for the Park Site shall be delivered to the City Manager or designee at least ninety (90) days prior to the anticipated completion of the Park Improvements.
 - c. Developer shall also cause to be provided to City, concurrently with the conveyance of the Park Site to City, a C.L.T.A. owner's form policy of title insurance issued by a reputable title company with City named as the insured, in the amount of the value of the land and the improvements at the time of transfer (as determined by the Parkland Dedication In Lieu Fee Schedule in effect at the time of

transfer) insuring the title of City to the Park Site is subject to only the Permitted Exceptions.

- d. Documents evidencing the authority of the signatory(ies) to execute any agreement or other legal binding documents on behalf of Developer.
2. Upon the Director acceptance of the Park Site and Park Improvements, Developer shall have no further obligations in connection with the Park Site except for the terms, conditions, or obligations of this Agreement that explicitly survives acceptance or termination.

G. Compliance With Laws/Permits.

1. Developer shall keep fully informed of all existing and future local, state, and federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work on the Park Improvements, or the materials used in the Park Improvements, or which in any way affect the conduct of the work on the Park Improvements, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. In the performance of any work pursuant to this Agreement, Developer shall at all times observe and comply with, and shall cause all Developer's employees, agents, representatives, contractors and subcontractors to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or contract for the work in relation to any such law, ordinance, regulation, order, or decree, Developer shall promptly report the same to the Director.
2. Developer shall, at its sole cost and expense, obtain all governmental reviews and approvals, licenses, and permits which are, or may be, required and necessary to construct and complete the Park Improvements in accordance with the provisions of this Agreement, including, but not limited to, site development reviews, development permits and environmental review. Developer shall comply with all conditions, restrictions or contingencies imposed upon, or attached to, such governmental approvals, licenses, and permits. If Developer for any reason fails to comply with any of City's requirements, or any other legal requirement concerning Developer's construction of the Park Improvements, then City shall have the right to require Developer to alter, repair, or replace any improvements or perform any other action to the satisfaction of the Director as reasonably

required to correct any non-compliance of the Park Improvements with legal requirements or this Agreement and at no cost to City. Developer's failure to effect the cure as required by the Director shall constitute an Event of Default in accordance with Section 9 of this Agreement.

SECTION 3. ENVIRONMENTAL WARRANTY.

- A. By executing this Agreement, Developer warrants and agrees that, prior to the City's acceptance of the Park Improvements and dedication of the Park Site:
1. Neither the Park Site nor Developer are in violation of any environmental law, and neither the Site nor Developer are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with the environmental laws relating to the Park Site.
 2. Neither Developer nor any other person with Developer's permission to be upon the Park Site shall use, generate, manufacture, produce, or release, on, under, or about the Park Site, any Hazardous Substance except in compliance with all applicable environmental laws. For the purposes of this Agreement, the term "hazardous substances" or "hazardous materials" shall mean any substance or material which is capable of posing a risk of injury to health, safety or property, including all those materials and substances designated as hazardous or toxic by any federal, state or local law, ordinance, rule, regulation or policy, including but not limited to, all of those materials and substances defined as "Toxic Materials" in Sections 66680 through 66685 of Title 22 of the California Code of Regulations, Division 4, Chapter 30, as the same shall be amended from time to time, or any other materials requiring remediation under federal, state or local laws, ordinances, rules, regulations or policies.
 3. Developer has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Substance on the Park Site or the property on which the Park Improvements are to be constructed, or the migration of any Hazardous Substance from or to any other property adjacent to, or in the vicinity of, the Park Site, other than that previously disclosed to City and undergoing remediation on parcels adjacent to the Park Site pursuant to the County of Santa Clara's oversight.
 4. Developer's prior and present use of the Park Site has not resulted in the release of any Hazardous Substance on, under, about, or adjacent to the Park Site.

5. Neither the Park Site nor Park Improvements located on the Park Site shall be subject to any monitoring, reporting, or restrictions whatsoever by any governmental authority with jurisdiction over the Park Site, including but not limited to, the California Department of Toxic Substances Control and California Regional Water Quality Control Board.
6. Subject to Section 2(F)(1)(b) of this Exhibit, neither the Park Site nor Park Improvements located on the Park Site shall be subject to any burden, easements, covenants or restrictions recorded against any part of the Park Improvements or Park Site.

B. Developer shall give prompt written notice to City of:

1. Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any Hazardous Substance on the Park Site or the migration thereof from or to any other property adjacent to, or in the vicinity of, the Park Site; and
2. Any claims made or threatened by any third party against Developer, City or the Park Site relating to any loss or injury resulting from any Hazardous Substance; and
3. Developer's discovery of any occurrence or condition on any property adjoining or in the vicinity of the Park Site that could cause the Park Site or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

EXHIBIT E

FEES AND CREDITS SUMMARY—PARKLAND REQUIREMENTS

The project described in City File #PLN2018-13439 will generate an estimated 1,472 Residents (2.24 persons/household x 657 units). Based on the Mitigation Fee Act Dedication Standard of 2.53 acres of parkland per 1,000 residents, the amount of public parkland required to mitigate the impact of the total new resident demand is 3.7234 acres. The equivalent fee in-lieu of parkland dedication is anticipated to be \$15,145,821 before accounting for deductions and credits.

Developer has proposed to meet the required parkland dedication of 3.7234 acres through dedication of a Mini Park (0.5357 acres), credit for onsite private parkland and recreational amenities, and payment of the remainder owed as a fee in lieu of dedication in the amount of \$11,081,224.

According to City Code Section 17.35, projects may submit a written request for up to 50% credit against the amount of parkland dedication or the amount of the fee in-lieu thereof for eligible onsite private parkland and recreational amenities devoted to Active Recreational Uses provided the development meets the requirements contained in Santa Clara City Code 17.35. The Project includes 1.1441 acres of private amenities. The credit is therefore approximately 0.5721 acres, or \$2,098,936 in value.

In summary, the calculations above are:

\$15,145,821	Fee Due in Lieu of Parkland Dedication
1,965,661	Value of Dedicated Parkland
<u>2,098,936</u>	<u>Credit for Onsite Private Parkland & Recreation Amenities</u>
\$11,081,224	Balance of Fee Due in Lieu of Parkland Dedication

Table 1. Computation of Parkland Dedication

Project Unit Type: Multi-Family Dwelling	Mitigation Fee Act
Persons / Dwelling Type	2.24
Multi-Family Project Units	657
Residents	1,472
Parkland Dedication Required (acres): R/1,000x2.53	3.7234 acres
Equivalent Fee Due in Lieu of Parkland Dedication	\$15,145,821

Table 2. Public Parkland Dedication Proposed, Service Level

Parkland Proposed	Square Feet	Acres	Type of Dedication
Mini Park	23,337	0.5357	Fee Title

Table 3. Credit for Proposed Private Onsite Park & Recreation

	Square Feet	Acres
Market Rate Building Level 8:		
Landscaped Quiet Park-Like Area – A1	2,951	0.0677
Family Picnic Area - B1	4,263	0.0979
Fitness Studio - C3	8,617	0.1978
Outdoor Fitness - C4	3,958	0.0909
Game Area – C5	2,343	0.0538
Lawn & Firepit Lounge – D4	7,043	0.1617
Pool with Adjacent Deck Space - E1	5,896	0.1354
Market Rate Building Level 22:		
Game Room/Club Room - D3	5,503	0.1263
Market Rate Building Level 23:		
Firepit Lounge & Seating - D2	3,533	0.0811
Ambulatory Aged Building Level 20:		
Yoga Studio - C1	1,664	0.0382
Outdoor Yoga/Aquatic Therapy - C2	1,041	0.0239
Theater Room - D1	3,027	0.0695
Total:	49,839	1.1441
Credit at 50% for Private Active Recreation & Equivalent Value. 1.1441 acres x 50% x \$3,699,000 per acre: \$2,098,936		

The Parkland Fees have been paid in full. Pursuant to the Park and Recreational Land Ordinance, in the event Developer does not use a building permit for construction of a dwelling unit, the City will refund the fee collected for that dwelling unit at the time of expiration of the building permit.

EXHIBIT F

CONDITIONS OF APPROVAL

- PR1. This memo assumes the Project is not a subdivision and the Mitigation Fee Act provisions will apply. The project will generate an estimated 1472 residents (2.24 persons/household x 657 units). Based on the MFA standard of 2.53 acres/1,000 residents, the amount of public parkland required for this Project to mitigate the impact of the new resident demand is approximately 3.7234 acres. The equivalent fee due in lieu of parkland dedication is therefore \$15,145,821. The 43 life guidance units are not subject to City Code Chapter 17.35. Final calculations will depend upon the actual number and type of units and the mix of parkland dedicated and remaining fee due, at the discretion of the City.
- PR2. In lieu fees imposed under Chapter 17.35 due and payable to the City prior to issuance of a building permit for each dwelling unit. The equivalent fee due in lieu of parkland dedication is \$15,145,821. Final calculations will depend upon the actual number and type of units, the mix of parkland dedicated, and the remaining fee due, at the discretion of the City.
- PR3. Updated calculations for the on-site active recreational amenity space is needed to calculate the balance of fees owed in lieu of parkland dedication. Calculations shall not include features required to be included by zoning and building codes and other applicable laws, including but not limited to yards, court areas, setbacks, decorative landscape areas required with residential site design and other open areas. And a 4-foot setback shall be deducted from area calculations.
- PR4. Updated plans required for the on-site active recreational amenity space to include the programming for the various spaces. Architectural Committee Project Review Address: 2300 Calle De Luna December 4, 2019, Page 27
- PR5. The public park must be programmed and constructed to the “Park Amenity & Design Standards” and City standards.
- PR6. Updated park plans shall be included with complete plan set and show location of the: a. utilities, b. water & sewer, c. public sidewalk, d. parking for park visitors, e. restroom facilities for park visitors, and f. wayfinding signs for the park and parking.
- PR7. Updated park plans and conceptual design required.

- PR8. Developer will present public park schematic design plans to the Parks & Recreation Commission for their review and recommendation(s) to City Council for final approval.
- PR9. Developer to enter into a Park Improvement Agreement and a Park Maintenance Agreement with City which will be submitted to City Council for approval before park construction begins.
- PR10. The children's play area should have separate areas serving ages 2-5 and 6-12 that include the six + one elements of play (climbing, balancing, spinning, brachiating, swinging, sliding, and running/free play/imagination) — see sample table below that will need to be submitted with updated park design plans.

Park Playground							
Elements of Play	Ages 2-5	Level of Play	* Proposed Capacity	Ages 6-12	Level of Play	* Proposed Capacity	Total Capacity
Balancing	2	B-1 I-1 A-0	9	2	B-0 I-1 A-1	15	24
Sliding	3	B-2 I-1 A-0	7	1	B-0 I-0 A-1	3	10
Brachiating	1	B-0 I-0 A-1	3	1	B-0 I-1 A-0	3	6
Spinning	0	B-0 I-0 A-0	0	1	B-0 I-1 A-0	5	5
Climbing	6	B-3 I-2 A-1	18	7	B-2 I-3 A-2	25	43
Swinging	2	B-2 I-0 A-0	2	2	B-2 I-0 A-0	2	4
Running/Free Play	2	N/A	21	4	N/A	22	43
Total:	16		60	18		75	135
Inclusive Play Elements	7	B-3 I-4 A-0	16	3	B-1 I-2 A-0	15	31

Level of Play:
B: Beginner I: Intermediate A: Advanced

PR11. Developer to submit park construction plans to the City for review and approval after review by the Parks and Recreation Commission and prior to starting park construction.

PR12. Provide soil reports for proposed public park area.

PR13. A dwelling unit tax (DUT) due based on the number of units and additional bedrooms per City Code Chapter 3.15. The Project mix includes 148 studios, 271 one-bedroom units, 194 two-bedroom units, and 44 three-bedroom units for a total DUT of \$11,265.

PR14. Calculations may change if the number of units change, if any areas do not conform to City standards, the Ordinance, and City Code Chapter 17.35, if the fee schedule for new residential development fees due in lieu of parkland dedication changes before this project is deemed complete by Planning, and/or if City Council or the Architectural Committee make any changes.

*The conditions of approval set forth above do not represent all of the conditions of approval that apply to the project—conditions imposed by other City departments still apply.

EXHIBIT G

BOND FORMS

Bond No. _____

Premium _____

PERFORMANCE BOND

WHEREAS, the CITY OF SANTA CLARA, a municipal corporation of the State of California ("City"), and *[insert name of Developer or Contractor, type of entity, and state of incorporation if applicable]* as principal ("Principal") have entered into an agreement entitled *[insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project]*, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a bond to City for faithful performance of the Contract;

NOW, THEREFORE, we the Principal and ***[insert full name of Surety]***, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of ***[insert bond amount]***, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal, Principal's heirs, executors, administrators, successors, or assigns shall in all things stand to and abide by, and well and truly keep and perform all covenants, conditions, and agreements required to be kept and performed by Principal in the Contract and any changes, additions, or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless City, its officers, employees, and agents, as therein provided, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the sum specified above, there shall be included all costs, expenses, and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

(Principal name)
(Seal)

(Surety name) (Seal)

BY: _____
(Signature)

BY: _____
(Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:

(1) Affix Corporate Seals

(2) Attach Notary Acknowledgments for All Signatures

(3) Attach Power-of-Attorney if executed by Attorney-in-Fact

Bond No. _____

Premium _____

PAYMENT (LABOR AND MATERIALS) BOND

WHEREAS, the CITY OF SANTA CLARA, a municipal corporation of the State of California ("City"), and *[insert name of Developer or Contractor, type of entity, and state of incorporation if applicable]*, as principal ("Principal") have entered into an agreement entitled *[insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project]*, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a good and sufficient payment bond to the City to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code.

NOW, THEREFORE, we the Principal and *[insert full name of Surety]*, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City, and unto all contractors, subcontractors, suppliers, laborers, materialmen and other persons employed in the performance of the Contract and referred to in the aforesaid Civil Code, as obligees, in the sum of *[insert bond amount]*, on the condition that if Principal shall fail to pay for any materials or equipment furnished or used or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses, and fees, including attorney's fees, reasonably incurred by any obligee in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in the judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect, and shall bind Principal, Surety, their heirs, executors, administrators, successors, and assigns, jointly and severally.

IT IS HEREBY EXPRESSLY STIPULATED AND AGREED that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions, and State agencies entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their

assigns in any suit brought upon this bond. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

Principal name)

(Seal)

(Surety name)

(Seal)

BY: _____
(Signature)

BY: _____
(Signature)

Print name and title)

Print name and title)

Principal address and telephone:

Surety address and telephone:

(1) Affix Corporate Seals

(2) Attach Notary Acknowledgments for All Signatures

(3) Attach Power-of-Attorney if executed by Attorney-in-Fact

Bond No. _____

Premium _____

WARRANTY BOND

WHEREAS, the City of Santa Clara, a municipal corporation of the State of California (“City”) and *[insert name of Developer/Contractor, type of entity, and state of incorporation if applicable]* as principal (“Principal”) have entered into an agreement entitled *[insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project]*, incorporated herein by reference and referred to as the “Contract,” which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond to City to make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work so contracted for, which shall have appeared or been discovered, within the period of one (1) year from and after the completion and final acceptance of the work done under the Contract.

NOW, THEREFORE, we the Principal and *[insert full name of Surety]*, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California (“Surety”), are held firmly bound unto the City in the sum of *[insert bond amount – 25% of Performance Bond]*, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal shall well and truly make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work performed under the Contract, which shall have appeared or been discovered within said one-year period from and after completion of all work under the Contract and final acceptance by City of said work, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

(Principal name)
(Seal)

(Surety name) (Seal)

BY: _____

BY: _____
(Signature)

(Signature)

(Print name and title)

(Print name and title)

Surety address and telephone:

Principal address and telephone:

(1) Affix Corporate Seals

(2) Attach Notary Acknowledgments for All Signatures

(3) Attach Power-of-Attorney if executed by Attorney-in-Fact

EXHIBIT H

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$5,000,000 Each occurrence
 - \$5,000,000 General Aggregate
 - \$5,000,000 Products/Completed Operations Aggregate
 - \$5,000,000 Personal Injury
 - \$5,000,000 Project Aggregate
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than five million dollars (\$5,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors involved in such activities shall provide coverage with a limit of two million dollars (\$2,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends

the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. POLLUTION LIABILITY

In the event that this contract involves hazardous or regulated wastes and/or hazardous or regulated materials, Contractor and/or its subcontractors shall provide a Contractor's Pollution Liability Insurance policy with coverage limits not less than two million dollars (\$2,000,000) each claim in connection with the Work performed under this Contract. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations." Any deductible must be declared to and approved by City. Such policy shall cover, at a minimum, liability for bodily injury, damage to and loss of use of property, and clean-up costs arising from sudden, accidental and gradual pollution and remediation in connection with the Work under this Agreement. Contractor will use its best efforts to have the City, Council, officers, employees and volunteers added as additional insureds under this policy. The following provisions shall apply:

1. The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.
2. Products/completed operations coverage shall extend a minimum of three (3) years after project completion.
3. If the insured is using subcontractors the Policy must include work performed "by or on behalf" of the insured.
4. Policy shall specifically provide for a duty to defend on the part of the insurer.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for the City.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other applicable insurance which the indemnitied may possess, including any self-insurance or self-insured retention they may have. Any other applicable insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Document 00820.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Requirements of specific insurance coverage features described in this Agreement shall not be construed to be a limitation of liability on the part of Contractor or any of its subcontractors, nor to relieve any of them of any liability or responsibility under the Contract Documents, as a matter of law or otherwise. Such requirements are not intended by any Party to be limited to providing coverage for the vicarious liability of the City or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this Agreement in any way relating to City is intended to apply to the full extent of the policies involved.
2. Contractor shall maintain all required insurance policies in full force and effect during entire period of performance of the Services under this Agreement of

Contract Documents. Contractor shall also keep such insurance in force during warranty and guarantee periods. At time of making application for extension of time, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time.

3. City reserves the right, at any time during the term of this Agreement to annually change the amounts and types of insurance required by giving the Contractor thirty (30) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate in good faith additional compensation proportional to the increased benefit to City.
4. Any type of insurance or any increase of limits of liability not described in this Exhibit which Contractor requires for its own protection or in compliance with applicable statutes or regulations, shall be Contractors' responsibility and at its own expense.
5. No liability insurance coverage provided by Contractor to comply with the terms of this Agreement shall prohibit Contractor, or Contractor's employees, or agents, from waiving the right of subrogation prior to a loss. Contractor waives its right of subrogation against Indemnitees. Any property insurance policies affected by Contractor shall be endorsed to delete the subrogation condition as to indemnitees or shall specifically allow Contractor to waive subrogation prior to a loss. Contractor hereby waives any right of recovery against the indemnitees and agrees to require any subcontractor to do so.
6. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage to ensure that such coverage is provided in conformity with the requirements of this Agreement.
7. Contractor shall cooperate fully with City and Contractor's insurance companies in any safety and accident prevention program and claims handling procedures as established for the performance of Services under this Agreement.
8. Contractor shall not make any reductions in scope of coverage which may affect City's protection without City's prior written consent.
9. For purposes of applying insurance coverage only, all contracts pertaining to the performance of services will be deemed to be executed when finalized and any activity commences in furtherance of performance under this agreement.
10. Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any of the insurance requirements set forth in this Agreement in no way imposes any additional obligations on City nor does it waive any of the City's rights under this Agreement or any other regard.
11. Any provision in this Agreement dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the

requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the Parties here to be interpreted as such.

12. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
13. Contractor agrees to obtain and provide to City evidence of Professional Liability insurance for Architects or Engineers if engaged by Contractor to perform any of the Services required under this Agreement. City and contractor shall determine the minimum coverage and policy limits required, after consultation.
14. The City acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Contractor. The Contractor's insurance obligations under this Agreement under may be satisfied in whole or in part by adequately funded self-insurance retention, but only after approval from the City Attorney's Office upon satisfactory evidence of financial capacity.
15. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at their own respective cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, reasonably satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara [*insert City department name here]

P.O. Box 100085 - S2

Duluth, GA 30096

or 1 Ebix Way

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

EXHIBIT I

SAMPLE CERTIFICATE OF ACCEPTANCE

CERTIFICATE OF ACCEPTANCE

GRANT DEED

Pursuant to California Government Code Section 27281, this is to certify that the interest
in real

property conveyed by deed or grant dated _____, 202__ from *insert

name, a[n] choose one: _____ (enter State name) corporation / limited liability

company / partnership / individual to the City of Santa Clara, California, a chartered

municipal California corporation ("City") is hereby accepted by the undersigned officer

on behalf of the City Council of the City pursuant to authority conferred by City Council

action on *insert date of Council action; and the City as Grantee consents to recordation

by its duly authorized officer.

DATED: This _____ day of _____, 202__.

APPROVED AS TO FORM:

GLEN R. GOOGINS
City Attorney

JŌVAN D. GROGAN
City Manager