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PURSUANT TO GOVERNMENT CODE § 6103**

RECORDING REQUESTED BY:
Office of the City Attorney
City of Santa Clara, California

WHEN RECORDED, MAIL TO:
City of Santa Clara
City Clerk's Office
1500 Warburton Avenue
Santa Clara, California 95050

Form per Gov't Code Section 27361.6

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

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.

EBIX Insurance No. *S200005556

PRIVATE RECREATIONAL AMENITY AGREEMENT

3131 HOMESTEAD ROAD

BETWEEN

THE CITY OF SANTA CLARA,

a chartered California municipal corporation,

AND

EQR-LINCOLN LAGUNA CLARA L.P.,

a Delaware limited partnership

AND CONVENANTS 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 EQR-LINCOLN LAGUNA CLARA L.P., a Delaware limited partnership (“Developer”). 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 project (“Development”) on the Development Project Site (as hereinafter defined). Developer has obtained building permit BLD2020-60146 with the City’s Planning Department for the Development.
- B. Under the provisions of Santa Clara City Code (“SCCC”) Chapter 17.35 (“Park and Recreational Land Dedication Ordinance”), 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”). A developer that provides private active recreational amenity space may request to receive credit against the amount of parkland dedication or the amount of the parkland in-lieu fee (“Parkland Fees”).
- C. Developer has agreed to build private recreation amenities pursuant and subject to the Conditions of Approval and architectural review approved at the Development Review Hearing on September 16, 2020, described in **Exhibit D** (“Conditions of Approval”), and later modified as shown in **Exhibit B (“Private Improvements”)**, and approved under BLD2020-60146.
- D. Developer is the fee title owner of that certain real property located at 3131 Homestead Road, in the City of Santa Clara, County of Santa Clara, State of California and more particularly described in **Exhibit A** attached hereto (the “Development Project Site”).
- E. In order for Developer to satisfy Developer’s Parkland Dedication Requirement for the residential units identified in the Development Review Hearing approved on September 16, 2020, and later modified as shown in **Exhibit B**, Developer and City desire to enter into this Agreement pursuant to which Developer shall satisfy Project’s Parkland Dedication Requirement as follows:
 - i. Install private recreational amenity improvements as described in **Exhibit B** within the Development in conjunction with the construction of the Development in accordance with the requirements of the Conditions of Approval and later modifications as shown in **Exhibit B**, and for which Developer is also eligible to receive credit against its Parkland Dedication Requirement as set forth in the Park and Recreational Land Ordinance and this Agreement.

- ii. Pay City Mitigation Fee Act (“MFA”) Parkland Fees in the amount of Two Million Twenty-One Thousand Nine Hundred Eighty-Five Dollars (\$2,021,985).

City’s Director of Parks & Recreation (“Director”), or designee, is charged with the administration of this Agreement. The Director or their designee is responsible for the review, inspection, approval, and acceptance on behalf of the City of the Private 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 these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

- Exhibit A – Development Project Site
- Exhibit B – Private Recreational Amenity Improvements Plan
- Exhibit C – Parkland Requirements, Fees and Credit Summary
- Exhibit D – Conditions of Approval
- Exhibit E – Insurance Requirements
- Exhibit F – Bond Forms

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. 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

Term. The term (“Term”) of this Agreement shall commence on the Effective Date (as hereinafter defined) and shall continue for a period of 5 years, unless sooner terminated or extended as hereinafter provided.

Expiration. Following expiration of the Term or any extension, or if sooner terminated, this Agreement shall have no force and effect, subject, however, to post-termination obligations of Developer and City as set forth herein.

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, in all material respects, to the specifications, requirements, and instructions upon which this

Agreement is based. Developer agrees to 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 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. The statements and certificates made on the Development approved by the City Architectural Review Committee and documents filed in conjunction with the Development approved by the City Architectural Review Committee remain true and correct. Modifications to these documents, referenced in **Exhibit B**, have been approved under BLD2020-60146.
- B. Any and all documents provided to City pursuant to the terms of this Agreement, or in connection with the execution of this Agreement, shall contain no known inaccuracies or misstatements of fact. Developer covenants that if it becomes aware that any of these documents contain 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.
- C. 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. In the event the Developer is not the legal owner(s) of the Development Project Site, the legal owner(s) shall also be required to execute this Agreement and shall be subject to all terms, conditions, and obligations of this Agreement.

4. **CREDIT FOR PRIVATE RECREATIONAL IMPROVEMENTS**

- A. The Development is eligible to receive credit for private recreational improvements pursuant to the Park and Recreational Land Ordinance. The itemized inventory and description of the private recreational improvements to be included in the Development by Developer that will receive credit pursuant to Chapter 17.35 is set forth in **Exhibit B** and **Exhibit C**. Developer shall complete the installation of the private recreational improvements described in **Exhibit B** and **Exhibit C** on or before the issuance of certificate of occupancy for the Development (including any temporary certificate of residential occupancy). The final certificate of occupancy for the Development shall not be issued, unless and until, all private recreational improvements have been constructed, accepted at City's discretion, and in full compliance with this Agreement, and all Parkland Fees are paid.
- B. With respect to any credit for private recreational improvements which have not been completed pursuant to Section 4A of this Agreement, Developer shall be ineligible for credit and shall be required to pay all applicable Parkland Fees in accordance with the fee rate in effect at the time of this Agreement or the amount of the credit received, whichever is greater, as set forth in the Park and Recreational Land Dedication Ordinance.

- C. Developer acknowledges and agrees that use of the private recreational improvements shall be restricted for active recreational uses by this recorded covenant which runs with the land in favor of the future owners/renters of the residential units located within the Development and which expressly cannot be defeated or eliminated without the consent of the City.
- D. Developer shall provide maintenance and repair of the private recreational improvements for the life of the development, keeping such property in good condition and repair. “Maintenance” or to “maintain” shall mean the act of caring for property and keeping it in its existing state, preserving it from failure or deterioration, including painting, cleaning, and minor, non-structural upkeep, or replacement when the improvement has significantly deteriorated and has reached the end of its useful life. In the case of landscaping, “maintenance” or to “maintain” shall mean regular fertilizing, irrigation, pruning, and other garden management practices necessary to promote healthy plant growth free of weeds or dead or dying plants.
- E. Developer acknowledges and agrees that Developer shall not receive any credit for eligible private recreational improvements pursuant to Park and Recreational Land Dedication Ordinance except those private recreational improvements that are set forth in **Exhibit B** and **Exhibit C** and constructed in full compliance with this Agreement.

5. COMPLIANCE WITH THE PARKLAND DEDICATION ORDINANCE

- A. City acknowledges and agrees that Developer’s performance of this Agreement shall satisfy Developer’s obligations under the City’s Park and Recreational Land Ordinance for the residential units identified in the Development Review Hearing for the Development. Provided that Developer is not in material default hereunder, and provided further that Developer satisfies all other terms, conditions, and requirements associated with the Development and this Agreement, City shall issue all building permits necessary for the residential units identified on the Tentative Map.
- B. The Parties acknowledge and agree that the calculation of the Developer’s Parkland Dedication Requirement is accurately set forth in **Exhibit C**, including the parkland dedicated, the calculation of the Parkland Fees, the credits for the Private Recreational Improvements (“Credits), and any other fees, charges, or reimbursements. Developer shall pay to City the Parkland Fees specified in accordance with the payment instructions set forth in **Exhibit C**.
- C. In the event there is an increase in the number of residential units to be built, a change in the dwelling unit type, or any change to the private amenity area calculations, Developer agrees to immediately notify the Director and to provide additional parkland and/or pay such additional Parkland Fees as required by the Park and Recreational Land Ordinance. Where Developer makes such a notification to the Director, and additional Parkland Fees are owed, the fee in effect at the time of the notification shall apply to the additional residential units, the units affected by change in unit type, and/or the reduction/elimination of recreational amenity space that received credit against the project’s parkland dedication requirement.

For example: Developer submitted an application to City to amend its project. In the event there is a change in the number of residential units to be built, a change in dwelling unit type, and/or the reduction/elimination of recreational amenity space that received credit against the project's parkland dedication requirement, City will prepare an amendment to this Agreement to change the amount of parkland that must be dedicated, or the Parkland Fees to be paid to City in accordance with the number and type of residential units identified on the new or amended project application or request for this Development.

6. REVIEW FOR FEES AND CHARGES RELATED TO PRIVATE IMPROVEMENTS

- A. Developer shall pay to City a fee for review and approval of the Project Specifications for the Private Improvements and the inspection of the Private Improvements (collectively, "Review Fee"). City's Review Fee shall be based on:
- i. The 2% Administrative Fee portion of the applicable in lieu fee schedule in effect when the project was deemed complete by the City Planning Department.
 - ii. Developer shall pay all applicable Parkland Fees to the City prior to issuance of a building permit for each dwelling unit.

7. BONDS AND SECURITY

Developer shall furnish to City the following security prior to the issuance of a Notice to Proceed and commencement of any work 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 Private Improvements for credit toward the total Parkland Fees owed to City, Developer shall furnish a performance security in an amount of One Hundred Percent (100%) of the estimated credit of the Private Improvements (hereinafter "Performance Security").

B. Conditions.

- i. Developer shall provide the required security on the forms attached hereto as **Exhibit F** or as otherwise approved by City and from sureties authorized by the California Insurance Commissioner to transact the business of insurance.
- ii. 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 adjustments in Parkland Fees owed based on changes to Development plans.

- iii. 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 may 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 issuance of the final certificate of occupancy.
 - ii. City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees.
- D. 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 Private Improvements.

8. DEFAULT

- A. Developer shall be in default hereunder upon the occurrence of any one or more of the following events ("Event of Default"):
- i. Developer's failure to timely cure any defect in the Private Improvements.
 - ii. Developer's failure to perform substantial construction work for a period of thirty (30) calendar days after commencement of the work.
 - 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, subject to any applicable notice and cure periods.
- B. If an Event of Default occurs and the Event of Default is not cured by Developer, City shall rescind Developer's eligibility for credit towards its Parkland Fee requirement. 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. Developer acknowledges and agrees that City's right to draw upon or use the security is in addition to any other remedies available by 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 Private Improvements, and therefore, City's damages in the

Event of Default by Developer shall be measured by the actual cost of completing the required Private Improvements to the satisfaction of City.

- C. Unless the Director determines that the circumstances warrant immediate enforcement of the provisions of this Section 8 in order to preserve the public health, safety, and welfare, the 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 8 if Developer commences to cure the default within the Notice Period, and prosecutes the same to completion within a reasonable time thereafter.
- D. City's rights and remedies specified in this Section 8 shall be deemed cumulative and in addition to any rights or remedies City may have at law or in equity.

9. ASSIGNMENT AND SUBCONTRACTING

City and Developer bind themselves, their successors and assigns to all covenants of this Agreement. Prior to completion of the Private Improvements and issuance of the certificate of occupancy therefore ("Completion"), this Agreement shall not be assigned or transferred without the prior written approval of City, not to be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Developer have the right to assign this Agreement to an entity under the direct or indirect control of Developer or an Affiliate of Developer without prior approval of City. Any attempts to assign or transfer any terms, conditions, or obligation under this Agreement without the express written consent of City, except as otherwise expressly set forth herein, shall be voidable at City's sole discretion. Subject to this Section, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors, assignees, transferees, and legal representatives. From and after completion, no consent or approval shall be required to assign or transfer this Agreement, however, Developer shall provide City with written notice of any assignment or transfer within 30 days following such transaction. For the purposes of this paragraph, "Affiliate" shall mean (1) any corporation, limited liability company, partnership or other entity which directly or indirectly controls, is controlled by, or is under common control with Developer, ERP Operating Limited Partnership, an Illinois limited partnership ("ERP"), or Equity Residential, a Maryland real estate investment trust ("EQR"); and (2) a limited partnership (or a limited liability company) in which Developer or an entity controlled by Developer, ERP, or EQR is the managing general partner (or managing member)

10. 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.

11. 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 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 and shall expressly include passive or active negligence by City connected with the services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. 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.

12. INSURANCE REQUIREMENTS

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

13. WAIVER

Developer agrees that waiver by City 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 City'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.

14. 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:

EQR-Lincoln Laguna Clara, L.P.
c/o Equity Residential
135 Main Street, Suite 1600
San Francisco, CA 94105
Attn: Drew Sullins
and by e-mail at dsullins@eqr.com

With a copy to:

Equity Residential
Two North Riverside Plaza, Suite 400
Chicago, IL 60606
Attn: General Counsel

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.

15. TIME OF ESSENCE

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

16. FORCE MAJEURE

A. "Force Majeure Event" shall be defined as any matter or condition beyond the reasonable control of a Party, including war, public emergency or calamity, fire, earthquake, extraordinary inclement weather, Acts of God, strikes, labor disturbances or actions, civil disturbances or riots, epidemics, quarantine restrictions, shortages in necessary materials, freight embargoes, subsurface conditions (environmental and geotechnical) not known or anticipated as of the Effective Date, litigation brought by third parties against either the City or Developer or both, actions (or inaction when action is required) of governmental authorities or utilities, or any governmental order or law which causes an interruption in the construction of the Private 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 shall notify the other Party within ten business (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.

17. 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. Developer shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the activities performed by Developer under this Agreement, including without limitation those relating to the construction of the Private 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 Private Improvements, whichever is longer. Notwithstanding this previous sentence, Developer shall retain such records beyond three (3) years so long as any 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 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 135 Main Street, Suite 1600, San Francisco, CA 94105.

- 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, 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**.

18. 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 18(D) in all agreements with contractors and subcontractors for the performance of the improvements hereunder.
- E. This Agreement binds and inures to the benefit of the Parties and their respective successors, assigns and legal representatives. This Agreement and all provisions thereof constitute covenants running with the land and shall be binding upon Developer, and Developer's successors and assigns during the term of their respective ownership of the private recreational improvements.
- F. 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.
- G. Whenever in this Agreement words of obligation or duty are used, 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.

- H. This Agreement is entered into pursuant to and shall be governed by the Park and Recreational Land Ordinance. If not otherwise defined in this Agreement, capitalized terms shall have the meanings set forth in Chapter SCCC 17.35.
- I. Amendment. City Manager, or designee, is authorized on behalf of City to execute any amendments pursuant to Section 3C of this Agreement.
- J. Compliance with Laws. 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, to Developer's knowledge, a conflict arises.
- K. Fair Unemployment. Developer shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.
- L. No Use of City Name or Emblem. Developer shall not use City's name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.
- M. 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, Santa Clara, California.
- N. 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.

19. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

20. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of Developer warrant and represent that they have the authority to execute this Agreement on behalf of Developer, and further represent that they have the authority to bind Developer to the performance of its obligations in this Agreement.

21. COUNTERPARTS

This Agreement may be executed in multiple originals, each of which is deemed an original, and may be signed in counterparts.

SIGNATURES FOLLOW ON PAGES 15 & 16

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

GLENN R. GOOGINS
City Attorney

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

“CITY”

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

EQR-LINCOLN LAGUNA CLARA, L.P., a Delaware limited partnership

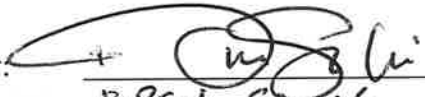
By: EQR-Lincoln Santa Clara, L.L.C., a Delaware limited liability company, its general partner

By: EQR-Rehab Master Limited Partnership, a Delaware limited partnership, its managing member

By: EQR-Rehab Master GP, L.L.C., a Delaware limited liability company, its general partner

By: ERP Operating Limited Partnership, an Illinois limited partnership, its member

By: Equity Residential, a Maryland real estate investment trust, its general partner

By: 
Name: DREW SULLINS
Title: FIRST VICE PRESIDENT
DEVELOPMENT

Dated: 12-30-24
Local Business Address: c/o Equity Residential, 135 Main Street, Suite 1600,
San Francisco, CA 94105
Email Address: dsullins@eqr.com
Telephone: (415) 744-4287

“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.

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 ~~SANTA CLARA~~ ^{Marin}) SS

On 12/30/2024 before me Jonathan Emanuel Quevedo, Notary public,
(Name, Title of officer – e.g. Jane Doe, Notary Public)

personally appeared Andrew Sullins 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.

Jonathan Emanuel Quevedo (Seal)
(Signature of Notary)

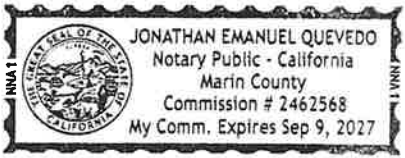


EXHIBIT A

LEGAL DESCRIPTION / DEVELOPMENT PROJECT SITE

The Land referred to herein below is situated in the City of Santa Clara, County of Santa Clara, State of California, and is described as follows:

PARCEL B AS SHOWN ON CERTIFICATE OF LOT LINE ADJUSTMENT, AS EVIDENCED BY DOCUMENT RECORDED JUNE 17, 2014 AS INSTRUMENT NO. 22623085 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL ONE AND A PORTION OF PARCEL TWO AS DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED AUGUST 7, 2000, AS DOCUMENT NUMBER 15346919, SANTA CLARA COUNTY RECORDS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL ONE, SAID POINT ALSO BEING ON THE NORTHERLY RIGHT-OF-WAY LINE OF HOMESTEAD ROAD.

THENCE ALONG THE EXTERIOR LINES OF SAID PARCELS ONE AND TWO THE FOLLOWING SEVEN (7) COURSES AND DISTANCES:

1. WEST, 705.38 FEET TO THE BEGINNING OF A TANGENT CURVE TO THE RIGHT;
2. ALONG SAID CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET, THROUGH A CENTRAL ANGLE OF 89°57'33" FOR AN ARC DISTANCE OF 31.40 FEET TO A POINT ON THE EASTERLY LINE OF QUINCE AVENUE;
3. ALONG SAID EASTERLY LINE OF QUINCE AVENUE, NORTH 00°02'27" WEST, 460.01 FEET TO THE SOUTHWEST CORNER OF PARCEL "A" AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON AUGUST 2, 2007 IN BOOK 816 OF MAPS AT PAGES 42 AND 43, SANTA CLARA COUNTY RECORDS;
4. LEAVING LAST EASTERLY LINE, EAST, 130.00 FEET ALONG THE SOUTHERLY LINE OF PARCELS "A", "B", "C" AND "D" TO THE SOUTHEAST CORNER OF PARCEL "D" OF SAID PARCEL MAP;
5. NORTH 00°02'27" WEST, 260.52 FEET ALONG THE EASTERLY LINE OF SAID PARCEL "D" AND THE EASTERLY LINE OF LOTS 3 AND 4 AS SHOWN ON THAT CERTAIN MAP OF TRACT NO. 8355 FILED FOR RECORD ON JULY 2, 1990 IN BOOK 615 OF MAPS AT PAGES 28 AND 29, SANTA CLARA COUNTY RECORDS, TO A POINT ON THE SOUTHERLY LINE OF PARCEL "A" AS SHOWN ON THAT CERTAIN PARCEL MAP FILED FOR RECORD ON FEBRUARY 17, 1971 IN BOOK 278 OF MAPS AT PAGE 56, SANTA CLARA COUNTY RECORDS;

6. EAST, 695.90 FEET ALONG THE SOUTHERLY LINE OF LAST SAID PARCEL A AND THE SOUTHERLY LINE OF LOTS 6, 7, 8 AND 9 AS SHOWN ON THAT CERTAIN MAP OF TRACT NO. 5585 FILED FOR RECORD ON AUGUST 26, 1974 IN BOOK 344 OF MAPS AT PAGE 55, SANTA CLARA COUNTY RECORDS, TO THE NORTHWEST CORNER OF LOT 9 AS SHOWN ON THAT CERTAIN MAP OF TRACT NO. 1589 FILED FOR RECORD ON OCTOBER 18, 1955 IN BOOK 63 OF MAPS AT PAGES 18, 19 AND 20, SANTA CLARA RECORDS;

7. SOUTH ALONG THE WESTERLY LINE OF LOTS 4, 5, 6, 7, 8 AND 9 AS SHOWN ON SAID MAP OF TRACT NO. 1589, 378.32 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT NORTHERLY 82.20 FEET, MEASURED AT RIGHT ANGLES FROM THE SOUTHERLY LINE OF SAID PARCEL TWO;

THENCE LEAVING THE EXTERIOR LINE OF SAID PARCEL TWO AND CONTINUING THE FOLLOWING TWO (2) COURSES AND DISTANCES:

1. WEST, ALONG LAST SAID PARALLEL LINE, 100.00 FEET;

2. LEAVING SAID PARALLEL LINE, SOUTH, 82.20 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL ONE;

THENCE SOUTH ALONG THE EASTERLY LINE OF SAID PARCEL ONE, A DISTANCE OF 280.00 FEET TO THE POINT OF BEGINNING.

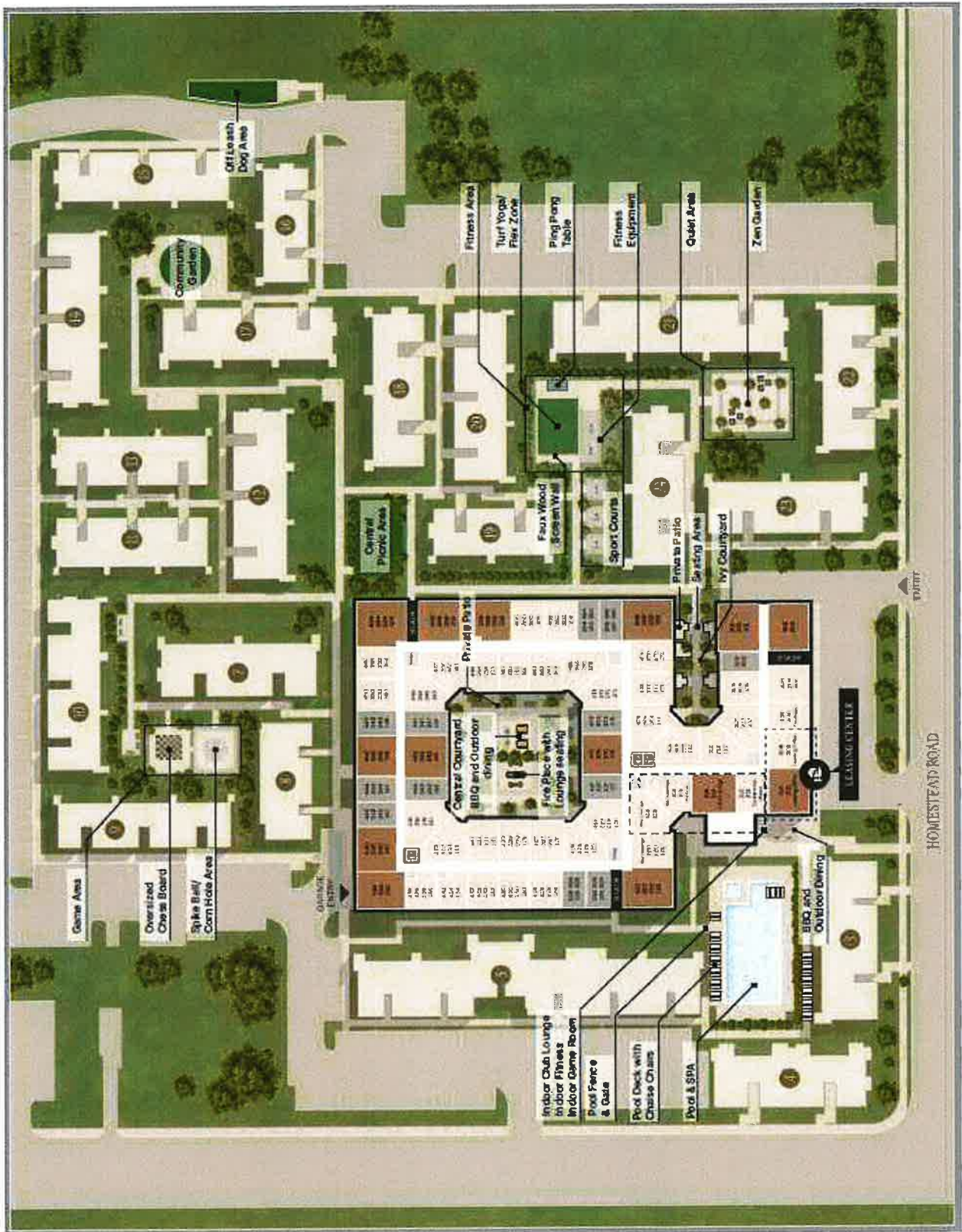
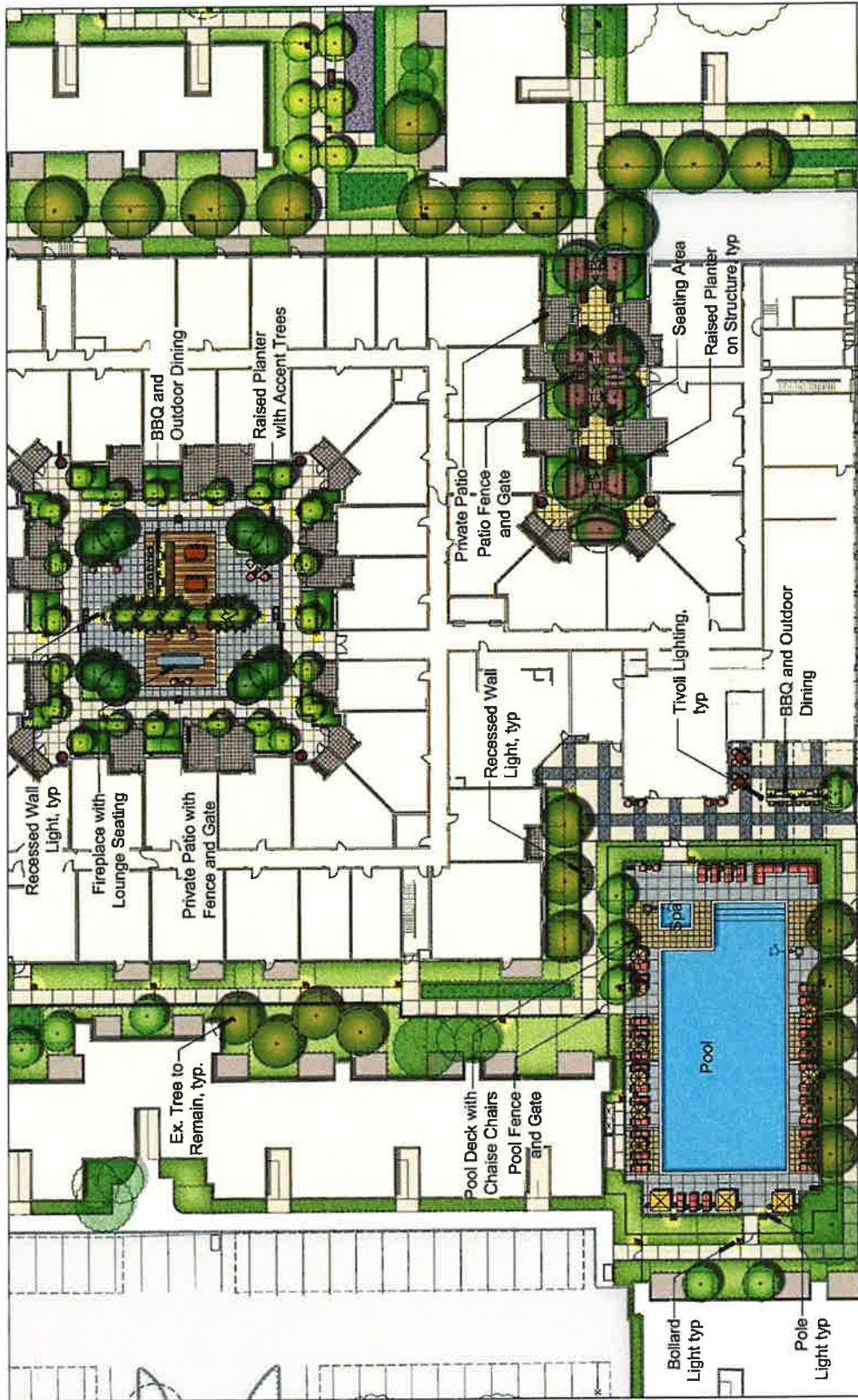


EXHIBIT B

PRIVATE RECREATIONAL AMENITY IMPROVEMENTS PLANS
(beginning on the next page)

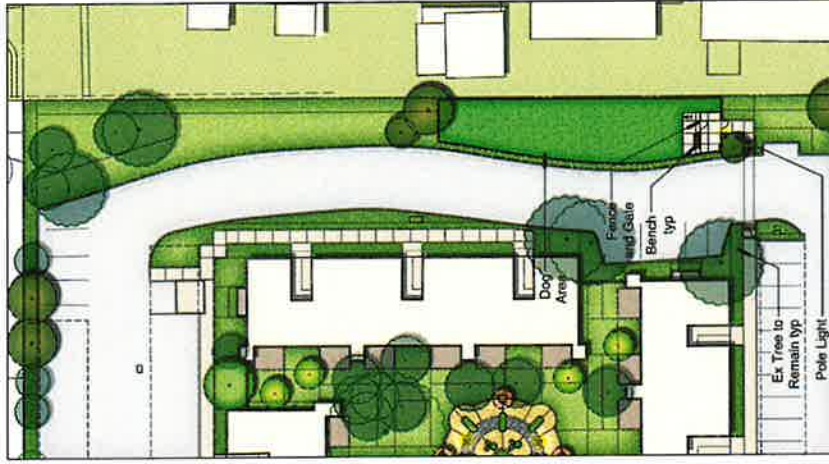


SCHEMATIC LANDSCAPE PLAN - ENLARGEMENTS
 31311 HOMESTEAD ROAD - LAGUNA CLARA APARTMENTS | 2.14.24 | L-23

THE GUZZARDO PARTNERSHIP INC.
 Landscape Architects - Lead Planner

Equity Residential
 EQUITY RESIDENTIAL

0 15 30 60



Scale: 1" = 30'-0" | 2.14.24 | L-24

3131 HOMESTEAD ROAD - LAGUNA CLARA APARTMENTS

THE GUZZARDO PARTNERSHIP INC.
Landscape Architects - Land Planning

0 15 30 60

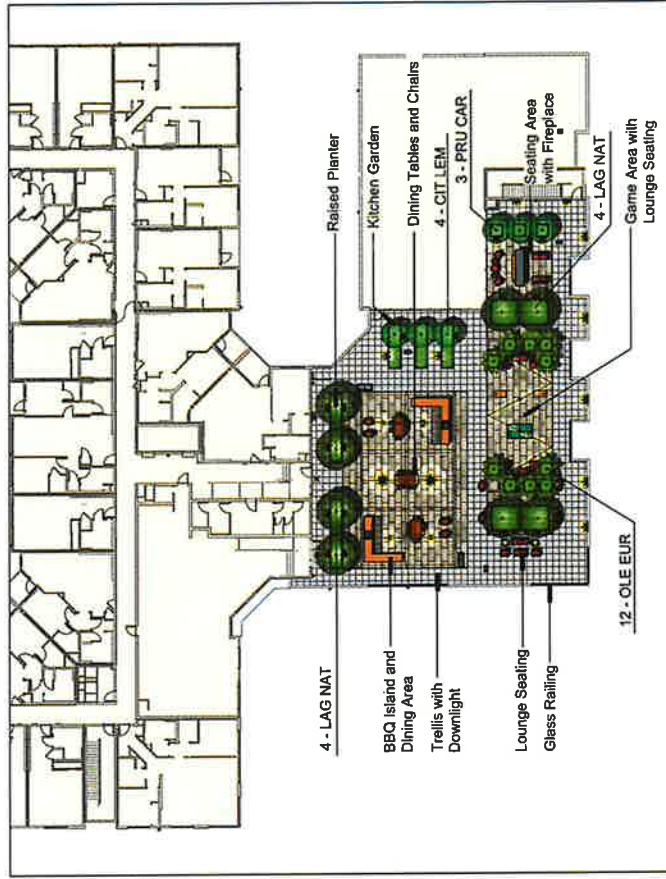
Equity Residential



SCHEMATIC LANDSCAPE PLAN - ENLARGEMENTS
 Scale: 1" = 30'-0"

3131 HOMESTEAD ROAD - LAGUNA CLARA APARTMENTS | 2.14.24 | L-2.5



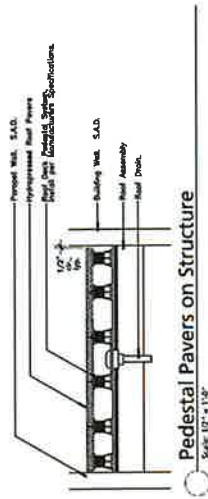


SCHEMATIC LANDSCAPE PLAN - LEVEL 4
Scale: 1" = 30'-0"

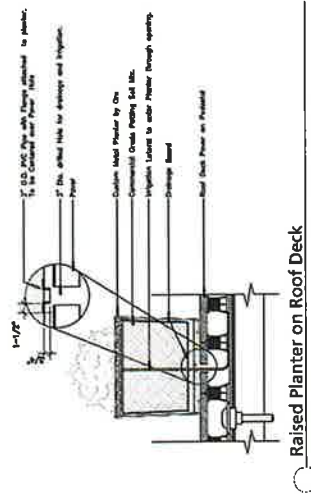
L-2.6

2.14.24

3131 HOMESTEAD ROAD - LAGUNA CLARA APARTMENTS

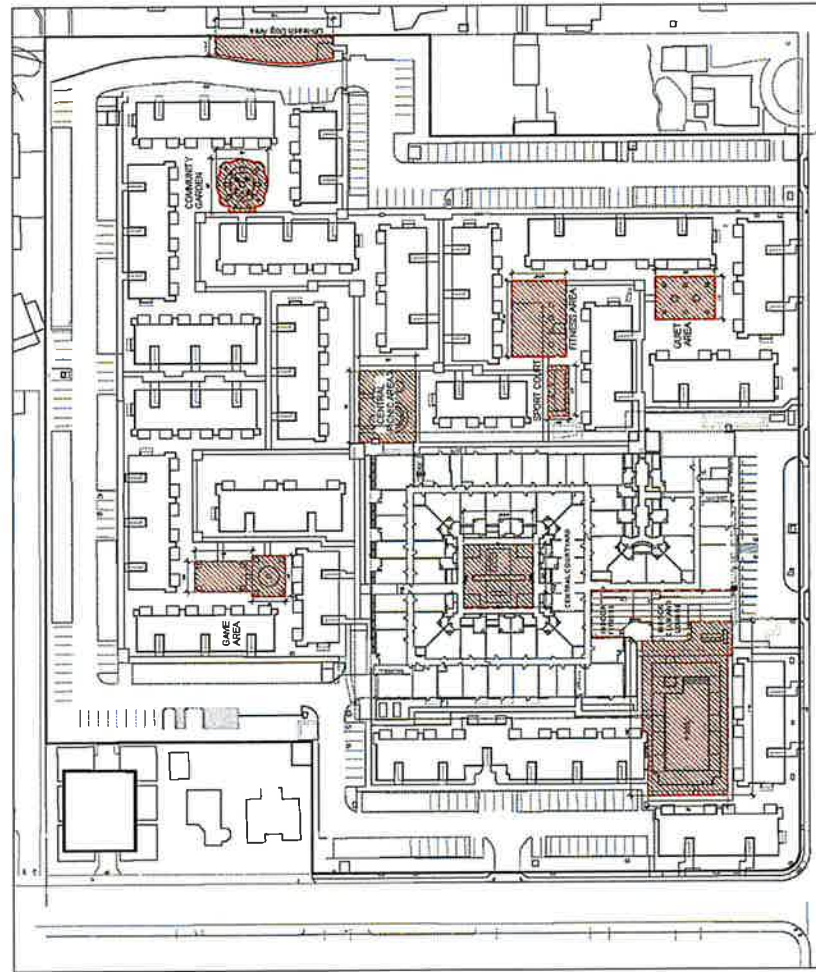


Pedestal Pavers on Structure
Scale: 1/2" = 1'-0"



Raised Planter on Roof Deck
Scale: 3/4" = 1'-0"

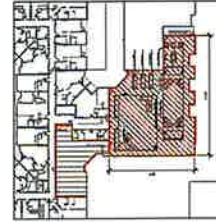




PARK CREDIT LEGEND

CATEGORY	ELEMENT #	COMPONENTS	AREA PROVIDED
POOL COURTYARD	7	POOL (42' x 75' IN.) POOL DECK, LOUNGERS, OUTDOOR SHOWER, TABLES AND CHAIRS SEATING AREA WITH RESEAT	13,726 SF
WINDY AREA	8	WINDY AREA WITH RESEAT AND DRINKING AREAS SEATING AREA WITH RESEAT	4,246 SF
GAME AREA	5	TRUSS COVERED BOWLS, CHAMBER TOPS AND PANO AREAS GAME TABLES WITH SOFT SEATING, POOL OVERLOOK, VEGETABLE GARDEN AND FRUIT TREES IN PAVED DECK	7,439 SF
GAME AREA	6	OVERSEED GOLF BOARD AND SPIKE BALL CORN HOLE COURT WITH ADJACENT SEATING AND FRUIT TREES	2,800 SF
COMMUNITY GARDEN	4	VEGETABLE PLANTING GARDEN AND FRUIT TREES IN PAVED DECK WITH TOOL STORAGE	2,120 SF
CENTRAL PLOTTING AREA	5	MEANDERING PATH IN GARDEN PLANTING WITH VARIOUS SEED PICKING BINS AND MULTI USE TABLES	3,600 SF
DOG WASH AND DOG AREA		FINISHED OFF LEASH DOG AREA WITH PET STATION, WATER AND FENCED GATED ENTRY	2,728 SF
SPORT COURT	6	RETIKULE COURT WITH BENCH SEATING	1,000 SF
FITNESS AREA	6	YOGA AREA WITH BENCH SEATING, ACCENT WALL, FITNESS EQUIPMENT AND SHADED GAME TABLES	3,822 SF
SUITE AREA	3	CENTRAL ACCENT PLANTING WITH SOFT SEATING AND OUTDOOR WORK SPACE UNDER ADJACENT TREE GROVE	2,408 SF
INDOOR CLUB AND LOUNGE	8	COMMUNITY ROOM PROVIDING SPACE FOR ENTERTAINMENT, PARTY, MEETINGS, AND SPACE FOR TENNIS TO HOST PARTY EVENTS	3,343 SF
INDOOR FITNESS	9	COMMUNITY SPACE WITH EXERCISE EQUIPMENT FOR THE PURPOSE OF PHYSICAL EXERCISE	2,115 SF
INDOOR GAME ROOM	8	COMMUNITY ROOM PROVIDING SPACE FOR ENTERTAINMENT, PARTY, MEETINGS, AND SPACE FOR TENNIS TO HOST PARTY EVENTS	2,888 SF
			52,301 SF TOTAL

SEE ARCHITECTURAL DRAWINGS FOR BUILDING INTERIOR AMENITY AREA LOCATIONS



LEVEL 4 - ROOF DECK

PARK CREDIT DIAGRAM

Scale: 1" = 100'-0"



3131 HOMESTEAD ROAD - LAGUNA CLARA APARTMENTS

11.11.19

L-4.1



EXHIBIT C

PARKLAND REQUIREMENTS, FEES AND CREDIT SUMMARY

Developer will construct 185 dwelling units generating an estimated 414 net new residents (2.24 persons/household x 185 net new multi-family dwelling 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 for this Project to mitigate the impact of the total new resident demand is 1.0484 acres. The equivalent fee in-lieu of parkland dedication is anticipated to be \$4,172,860 before accounting for deductions and credits.

Developer has proposed to meet the required parkland dedication of 1.0484 acres through the dedication of 1.2007 acres (52,301 sq. ft.) of private recreational amenities, and to pay the remainder owed as a fee in lieu of parkland dedication in the amount of \$2,021,985.

According to City Code Chapter 17.35, projects may submit a written request for up to 50% credit against the amount of parkland dedication or the amount of the in-lieu fee thereof for eligible onsite private parkland and recreational amenities devoted to active recreational uses provided the development meets the requirements contained in City Code. This Project includes 1.2007 acres of private recreational amenities. The credit is therefore approximately 0.6003 acres with a value of \$2,150,875. The balance of fees due in lieu of parkland dedication is \$2,021,985.

In summary, the calculations above are:

\$4,172,860	Fee Due in Lieu of Parkland Dedication
<u>\$2,150,875</u>	Credit for Onsite Private Parkland and Recreational Amenities
\$2,021,985	Balance of Fee Due in Lieu of Parkland Dedication

Table 1. Computation of Parkland Dedication

Project Unit Type: Multi Fam Dwelling	Mitigation Fee Act
Persons/Dwelling Type	2.24
Net New Multi Family Project Units	185
Total New Residents	414
Parkland Dedication Required (acres): R/1,000 x 2.53	1.0484
Equivalent In Lieu Fee	\$4,172,860

Table 2. Public Parkland Dedications Proposed, Service Level

Parkland Proposed	Square Feet	Acres	Type of Dedication
N/A			
Total to be dedicated:	0	0	

Table 3. Credit for Proposed Private Onsite Park & Recreation “Active Rec Uses”

	Square Feet	Acres
Accessible Swimming Pool w Adjacent Deck	13275	0.3048
Picnic Area on the Podium	4245	0.0975
Picnic Area on the Roof Deck	7630	0.1752
Game Area	2960	0.0680
Community Garden	2120	0.0487
Picnic Area – centrally located	3920	0.0900
Off Leash Dog Area	2738	0.0629
Sport Court	1000	0.0230
Fitness Area	3932	0.0903
Park-Like Quiet Area	2436	0.0559
Recreation Building – Community Room	3245	0.0745
Fitness Room	2115	0.0486
Game Room	2685	0.0616
Total:	52301	1.2007
Credit at 50% for Private Active Recreation & Equivalent Value:	0.6003 / \$2,150,875	
Balance of Fees Due In-Lieu of Parkland Dedication:	\$2,021,985	

EXHIBIT D

PARKS & RECREATION DEPARTMENT CONDITIONS OF APPROVAL

*Please note the Conditions of Approval below represent those required by the Park and Recreation Department and have been updated with current numbers and changes to the private recreational amenities; other Conditions of Approval by other City departments still apply.

- PR1. This Project is not a subdivision and the Mitigation Fee Act provisions apply. The project will generate an estimated 414 new residents (2.24 persons/household x 185 net new units). Based on the Mitigation Fee Act 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 1.0484 acres. The equivalent fee due in lieu of parkland dedication is therefore \$4,172,860.
- PR2. In lieu fees imposed under Chapter 17.35 shall be due and payable to the City prior to issuance of a building permit for each dwelling unit.
- PR3. Application for Credit. Developers may request up to 50% credit for eligible private active recreational uses provided the development contains at least four (4) of the eight (8) elements itemized in the City Code. These elements must equal a minimum of 0.75 acres, or 32,670sf, of private open space. The calculation of private open space shall not include features required to be included by zoning, building codes and other applicable laws such as court areas, setbacks, decorative landscape, etc. The Project includes 52,301 sq. ft., after deducting a 4-foot set-back, of private on-site active recreational amenities and will receive credit at 50%, or 26,151 sq. ft. See Table 3.
- PR4. The balance of fees due in lieu of parkland dedication is \$2,021,985. See Table 3.
- PR5. Dwelling Unit Tax. According to City Code Chapter 3.15, a dwelling unit tax is also due based upon the number of units and additional bedrooms. The Project mix includes 46 studio units, 115 one-bedroom units, and 24 two-bedroom units. The total DUT owed for the net new units is \$2,895.
- PR6. Calculations may change if the number of units change or if any areas do not conform to the Ordinance and City Code Chapter 17.35.

EXHIBIT E

INSURANCE REQUIREMENTS

Without limiting the Developer's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Developer 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

2. Exact structure and layering of the coverage shall be left to the discretion of Developer; however, any excess or umbrella policies used to meet the required limits shall be sufficiently broad to meet the requirements of this Agreement.
3. To the extent that the following provisions are included in the ISO CG 00 01 form, they shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Developer 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 one million dollars (\$1,000,000) 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.

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 Developer 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 Developer 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. 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 Developer's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, a blanket additional insured endorsement, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Developer shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Developer'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. If such policies cannot be so endorsed, Developer shall be responsible to provide notice of such cancellation or modification.
 - 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. If such policies cannot be so endorsed, Developer shall be responsible to provide notice of such cancellation or modification.

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 D of this Exhibit E, above.

E. **ADDITIONAL INSURANCE RELATED PROVISIONS**

Developer and City agree as follows:

1. Developer 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 Developer, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Developer agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Developer agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Developer agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. 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.

F. **EVIDENCE OF COVERAGE**

Prior to commencement of any Services under this Agreement, Developer, and each and every subcontractor (of every tier) shall, at its sole 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. Developer 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.

G. **EVIDENCE OF COMPLIANCE**

Developer or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and 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. Upon City's request, Developer shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by

EXHIBIT F
BOND FORMS



AIA® Document A312™ – 2010

Bond No.

Performance Bond

CONTRACTOR:

(Name, legal status and address)
EQR-LINCOLN LAGUNA CLARA L.P.
135 Main Street, Suite 1600
San Francisco, CA 95050

SURETY:

(Name, legal status and principal place of business)
TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA
One Tower Square
Hartford, CT 06183

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312-2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

OWNER:

(Name, legal status and address)
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, CA 95050

CONSTRUCTION CONTRACT

Date:

Amount: Two Million One Hundred Fifty Thousand Eight Hundred Seventy Five and 00/100 Dollars
(\$2,150,875.00)

Description:

(Name and location)
Private Recreational Amenity Agreement 3131 Homestead Road

BOND

Date: December 3, 2024
(Not earlier than Construction Contract Date)

Amount: Two Million One Hundred Fifty Thousand Eight Hundred Seventy Five and 00/100 Dollars
(\$2,150,875.00)

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company: _____ *(Corporate Seal)*
EQR-LINCOLN LAGUNA CLARA L.P.

SURETY

Company: _____ *(Corporate Seal)*
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

Signature: _____

Name
and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

Signature: _____

Name Susan A. Welsh, Attorney-in-Fact
and Title:

(FOR INFORMATION ONLY --- Name, address and telephone)

AGENT or BROKER:

ACON RISK SERVICES CENTRAL, INC.
200 E. Randolph St.
Chicago, IL 60601
(312) 381-1000

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party.)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: _____

Name and Title: ,

Address:

Signature: _____

Name and Title: , Attorney-in-Fact

Address:



AIA® Document A312™ – 2010

Payment Bond

Bond No.

CONTRACTOR:

(Name, legal status and address)
EQR-LINCOLN LAGUNA CLARA L.P.
135 Main Street, Suite 1600
San Francisco, CA 95050

SURETY:

(Name, legal status and principal place of business)

TRAVELERS CASUALTY AND SURETY
COMPANY OF AMERICA
One Tower Square
Hartford, CT 06183

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312–2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

OWNER:

(Name, legal status and address)
CITY OF SANTA CLARA
1500 Warburton Avenue
Santa Clara, CA 95050

CONSTRUCTION CONTRACT

Date:

Amount: Two Million One Hundred Fifty Thousand Eight Hundred Seventy Five and 00/100 Dollars (\$2,150,875.00)

Description:

(Name and location)
Private Recreational Amenity Agreement 3131 Homestead Road

BOND

Date: December 3, 2024

(Not earlier than Construction Contract Date)

Amount: Two Million One Hundred Fifty Thousand Eight Hundred Seventy Five and 00/100 Dollars (\$2,150,875.00)

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company: _____ *(Corporate Seal)*
EQR-LINCOLN LAGUNA CLARA L.P.

SURETY

Company: _____ *(Corporate Seal)*
TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

Signature: _____

Name
and Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature: _____

Name Susan A. Welsh, Attorney-in-Fact
and Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

AON RISK SERVICES CENTRAL, INC.
200 E. Randolph St.
Chicago, IL 60601
(312) 381-1000

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name and Title: ,

Address:

Signature: _____

Name and Title: , Attorney-in-Fact

Address: