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City of Santa Clara, California

When Recorded, Mail to:
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City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Form per Gov't Code Section 27361.6

[SPACE ABOVE THIS LINE FOR RECORDER'S USE]

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.

**PARK IMPROVEMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SANTA CLARA, CALIFORNIA
AND TASMAN EAST STATION HOLDCO, LLC**

This PARK AGREEMENT (this "**Agreement**") is entered into by and between the CITY OF SANTA CLARA, a chartered California municipal corporation with its principal place of business located at 1500 Warburton Ave, Santa Clara, CA ("**City**"), and TASMAN EAST STATION HOLDCO, LLC, a Delaware limited liability company with its principal place of business located at 444 W. Ocean Blvd Suite 650 Long Beach CA, 90802 ("**Developer**"). City and Developer may be referred to herein individually as a "**Party**" or collectively as the "**Parties**" or "Parties to this Agreement." It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

RECITALS

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

A. Developer is the owner of approximately 2.62 acres of real property, consisting of two parcels (Assessor's Parcel Nos. 097-46-019 ("**Parcel 19**") and 097-46-029 ("**Parcel 29**")), located at the northeastern corner of Calle del Sol and Tasman Drive in the City of Santa Clara, State of California, as more particularly described on **Exhibits A-1 and A-2** attached hereto (the "**Property**"). The Property is located within the boundaries of the Tasman East Specific Plan Area.

B. Developer intends to develop: (1) Parcel 19 with a new residential development consisting of 311 dwelling units with private recreational amenity space, 15,870 sq. ft. of retail space, parking, and other associated improvements on approximately 1.87 acres (the "**Parcel 19 Project**") and; (2) Parcel 29 with a new residential development consisting of 192 dwelling units with private recreational amenity space, 8,000 sq. ft. of retail space, parking, and other associated improvements on approximately 0.75 acres (the "**Parcel 29 Project**"; and together with the Parcel 19 Project, the "**Project**"). City approved Architectural Review (PLN2018-13442) for the Project in July of 2019.

C. Santa Clara City Code ("**SCCC**") Chapter 17.35 requires new residential development to dedicate adequate park and recreational land, pay a fee in-lieu of parkland dedication, or provide a combination of such dedication and fee, at the discretion of the City, for the purpose of developing new or rehabilitating existing parks and recreational facilities (the "**Parkland Requirements**"). The development of the Project, which will occur in phases as described below, is subject to the Parkland Requirements.

D. Developer proposes to submit the Project uniformly under the Mitigation Fee Act provisions of SCCC Chapter 17.35. The Project will generate an estimated 1,127 Residents (2.24 persons/household x 503 units). Based on the FY2017-18 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 2.8506 acres. The equivalent fee due in-lieu of parkland dedication is \$11,595,659. The new resident demand associated with the Parcel 19 Project is 697 new residents, which equates to a parkland dedication requirement of 1.7625 acres or an equivalent fee due in-lieu of parkland dedication of approximately \$7,169,483. The new resident demand associated with the Parcel 29 Project is 430 new residents, which equates to a parkland dedication of 1.0881 acres or an equivalent fee due in-lieu of parkland dedication of approximately \$4,426,176.

E. Developer intends to satisfy the Parkland Requirements for the Project in part by dedicating a 0.109-acre mini-park with the construction of the **Parcel 19 Project "Phase I Public Park,"** defined and depicted on **Exhibit B-1** attached hereto, and a 0.0218-acre Public Park Plaza with the construction of the **Parcel 29 Project "Phase II Public Plaza,"** generally as depicted on **Exhibit B-2** attached hereto, to be further defined and depicted at the time of permitting for Phase II (together, the "**Public Parks**") to City for parkland and recreational purposes in phases as described and in accordance with the provisions of this Agreement. Developer will dedicate **Phase I Public Park** as a fee simple estate and **Phase II Public Plaza** as an easement in favor of the public.

F. Developer is eligible to receive a credit of 50% of the value of the land devoted to eligible private recreational amenities against the Parkland Requirements as shown on **Exhibit C** (the "**Phase I Private Amenities**"). Eligible private recreational amenities constructed in Phase I shall receive a credit against the parkland dedication requirements for Phase I. Eligible private recreational amenities constructed in Phase II shall receive a credit against the parkland dedication requirements for Phase II. If Developer has not pulled building permits for Phase II within eight (8) years of building

permit issuance for Phase I, Developer shall return \$1,178,116, the value of the credit received against the parkland dedication requirement, to the City, as further described in Section 4 of this Agreement.

G. [Intentionally Omitted]

H. Developer intends to satisfy the remaining balance of the Parkland Requirements for each phase of the Project through payment of fees due in-lieu of parkland dedication established pursuant to SCCC Chapter 17.35 in accordance with the Mitigation Fee Act.

I. Developer intends to construct and improve the Public Parks with certain park improvements and recreational facilities (the “**Park Improvements**”) as described and depicted in the plans and specifications attached as **Exhibit D** hereto (the “**Park Improvement Plans**”).

J. Developer intends to construct and improve the Phase II Public Plaza as part of the Parcel 29 Project. Prior to occupancy of the Parcel 29 Project, the Parties will enter into a separate “Memorandum of Understanding Regarding Phase 2 Park Agreement” (the “**Phase II MOU**”) which will include a plat and legal description for the Phase II Public Plaza, as well as the associated calculations for credits associated with eligible private recreational amenities for Phase II.

K. Upon completion of the Park Improvements for each phase, City intends to accept the Phase I Public Park, the Phase II Public Plaza, and the Park Improvements constructed thereon for such phase in accordance with this Agreement.

L. Calculation of the SCCC Chapter 17.35 Parkland Requirements for the Project, including the acreage of the dedicated Public Parks (as described in Recital L below) of the Project, the credit for eligible private recreational amenities for each Phase, and the remaining fee due in lieu of parkland dedication for each Phase, is attached hereto as **Exhibit E**.

M. Developer intends to construct the Project in the following Phases: “**Phase I**”, consisting of the Parcel 19 Project, including a total of four thousand, seven hundred and forty-eight (4,748) square feet of Phase I Public Park, a portion of which would be located on Parcel 29, twenty-seven thousand, nine hundred and seventy-six (27,976) square feet of Phase I Private Amenities; and “**Phase II**” consisting of the Parcel 29 Project, including nine hundred and fifty (950) square feet of Phase II Public Plaza and approximately twelve thousand, three hundred and fifty-four (12,354) square feet of eligible private recreational amenities. The final amount of eligible private recreational amenities and Phase II will be refined and validated in connection with the permitting process for Phase II and memorialized in the Phase II MOU.

N. Developer and City intend for the fees in lieu of parkland dedication to be paid and the Park Improvements to be constructed and completed as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals Incorporated.** The foregoing recitals are true and correct, and are part of this Agreement for all purposes.

2. **Design and Construction of Park Improvements.**

(a) **Construction Documents.** City has previously approved the schematic design plans for the Park Improvements as shown in the Park Improvement Plans attached hereto as **Exhibit D**. For each phase, Developer shall prepare and submit to City final plans and specifications for the Park Improvements (the "**Construction Documents**"), which shall substantially conform to the Park Improvement Plans. The Developer shall also submit soil and geotechnical reports, as well as GIS CAD drawings for the areas of the Park Improvements for each respective phase at the same time as the Construction Documents.

(b) **Approval of Construction Documents.** City shall review and approve the Construction Documents, including plans and specifications, for the construction, design and improvements of the Public Parks prior to the start of construction, or review and provide comments regarding any necessary corrections thereto, in a prompt and timely manner, and in no event more than thirty (30) days after receipt of the Construction Documents from Developer. In the event that City provides comments regarding any necessary corrections to the Construction Documents, Developer shall promptly, within thirty (30) days, revise and resubmit the Construction Documents to City. City shall then approve such revised Construction Documents, or provide any further comments regarding any necessary corrections thereto, within ten (10) days after receipt of the revised Construction Documents from Developer. In the event that City provides any further comments regarding any necessary corrections to the Construction Documents, Developer shall promptly, within thirty (30) days, revise and resubmit the Construction Documents to City. City and Developer shall repeat this process for the approval of the Construction Documents specified in this Section until the City approves the Construction Documents. City's review of the Construction Documents pursuant to this Section shall be limited to conformance with Park Improvement Plans, Parks & Recreation Department Park Amenity & Design Standards, and City's applicable Standard Specifications for Public Works Construction.

(c) **Construction.** The Park Improvements for the Public Parks shall be constructed in compliance with City-approved Construction Documents. Developer, through its design professionals, shall review and approve all materials of construction and provide a copy of all approved material submittals to City for use during the construction phase. Developer and Developer's construction contractor shall provide regular construction updates of construction schedule activities to allow City, at its discretion, to perform inspection of work progress and, if desired by City, testing of

materials. At City's discretion, City may inspect the Park Improvements during construction to ensure conformity with plans and standards. Developer shall commence and complete the construction of the Park Improvements at such times as Developer deems desirable, subject to the phasing requirements set forth in Section 3 below. Developer shall provide no less than two weeks advance notice prior to the start of construction on the Public Park and the Public Plaza.

(d) Changes to Park Improvement Plans. Any material changes to the Park Improvement Plans for the Public Parks must be proposed in writing and shall be subject to the prior written approval of City and Developer in their respective reasonable discretion. Within sixty (60) days of completion of each phase of the Park Improvements, Developer shall provide the City with one complete set of paper and digital format files of the as-built drawings showing all Park Improvements as actually constructed in the field.

(e) Completion of Construction; Final Inspection. When Developer completes the construction of the Park Improvements for each Phase (the Phase I Public Park and the Phase II Public Plaza), Developer shall provide written notice of completion to City ("**Notice of Completion**") and request that City perform a walk-through inspection. Within five (5) business days following the date of City's receipt of the Notice of Completion for the Phase I Public Park or the Phase II Public Plaza, City shall conduct a final inspection of the applicable Park Improvements (the "**Final Inspection**"). If, during the Final Inspection, City determines that the Park Improvements have not been completed in accordance with the approved Construction Documents, City shall prepare a punch list of all items to be completed by Developer and shall provide such punch list to Developer within five (5) business days following the Final Inspection. If City delivers such punch list to Developer, then Developer shall undertake to complete or repair such punch list items in a diligent manner. Upon completion of the punch list work, Developer shall request another Final Inspection from City and within five (5) business days following such written notice from Developer, City shall conduct another Final Inspection. If City determines that the punch list work is complete, City shall immediately deliver a notification of final completion to Developer. If City determines that the punch list work is not complete, then City and Developer shall repeat the Final Inspection/punch list procedures specified in this Section until the successful completion of the punch list work.

(f) Acceptance. The Public Parks, including the Park Improvements, shall be granted by Developer to City by separate instruments after the Park Improvements thereon have been inspected and accepted by City pursuant to Section 2(e) of this Agreement. The City shall accept the Park Improvements prior to their use by the general public. City shall accept dedication of fee title to the Phase I Public Park by means of a grant deed in form and substance acceptable to Developer and City (the "**Park Grant Deed**"). Developer shall record an easement over the Phase II Public Plaza in favor of the public (the "**Plaza Easement**") within sixty (60) days of being inspected and accepted by City pursuant to Section 2(e) of this Agreement. The Park Grant Deed and the Plaza Easement shall each include language describing the date of the City's acceptance of the Phase I Public Park and the Phase II Public Plaza, respectively. The close of escrow for the Phase I Public Park shall occur no later than sixty (60) days after the completion and acceptance of the Phase I Public Park by the City. City shall open

escrow and request a preliminary title report for the Phase I Public Park to facilitate the transfer of fee title from Developer to City. Developer shall cause to be provided to City, concurrently with the conveyance of the Phase I Public Park to City, and at a later date, of the Phase II Public Plaza to City, a Pro Forma ALTA standard owner's form policy of title insurance, issued by the title company where escrow is open, with City named as the insured. The amount for the title insurance shall be determined using the value of the land listed in the Municipal Fee Schedule for the fiscal year of the title transfer plus the actual cost of construction which shall be provided by Developer. All title and escrow fees shall be paid by Developer. Transfer shall be at Developer's sole cost.

(g) Maintenance and Repair. Prior to the acceptance of Park Improvements for the Public Parks by City, Developer shall, at its sole cost and expense, maintain, repair, replace and insure the Park Improvements until City acceptance of the Park Grant Deed and recordation of the Plaza Easement. Following City acceptance of the Park Improvements, Developer shall maintain the Park Improvements pursuant to, and as governed solely and exclusively by, a separate Park Maintenance Agreement entered into between Developer and City concurrently with or subsequent to their execution of this Agreement (the "**Park Maintenance Agreement**").

(h) Hold Harmless/Indemnification. Developer and its successors in interest agree to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, agents, and employees from and against any and all claims, injury, demands, losses, damages, liabilities, costs, expenses, charges, administrative and judicial proceedings and orders, judgments, and reasonable attorneys' fees and costs (collectively, the "**Losses**") to the extent caused by Developer's failure to perform its construction or maintenance obligations under this Agreement, except to the extent arising from the willful misconduct or grossly negligent acts or omissions of the City or its officers, employees and agents, or to the extent arising from the use of the Public Parks by the public (except as set forth below). City shall defend, indemnify and hold Developer, and its officers, directors, shareholders, members, managers, agents, and employees harmless from and against any and all Losses to the extent caused by the use of the Public Parks by members of the public; provided, however, the indemnity obligations of City under this paragraph shall not apply to the extent of any injury, damage or loss that results from the breach of Developer's obligations to maintain or repair the Public Parks in accordance with this Agreement prior to City acceptance.

3. Phasing of Park Improvements. Developer shall have the right to construct the Project in the Phases as set forth in the Recitals; provided, however, that in constructing the Project, Developer shall comply with the following phasing and completion requirements.

(a) Phase I Park Improvements. Developer shall complete construction of the Park Improvements for Phase I Public Park in accordance with the City-approved Construction Documents and prior to issuance of the Final Certificate of Occupancy for the apartment building component of the Parcel 19 Project, in accordance with the City-approved Construction Documents.

(b) Phase II Park Improvements. Developer shall complete construction of the Park Improvements for Phase II in accordance with the City-approved Construction Documents within twelve (12) months following issuance of the Certificate of Occupancy for the apartment building component of the Parcel 29 Project, in accordance with the City-approved Construction Documents.

(c) Completion of Park Improvements. For the purposes of this Section 3, the Park Improvements for each phase shall be deemed to be "completed" when Developer has completed construction of the applicable Park Improvements in accordance with City-approved Construction Documents and delivered the Notice of Completion (as defined in Section 2(f)) to City. The Parties agree that the Park Improvements shall be deemed complete for the purpose of this Section 3 prior to such Park Improvements undergoing Final Inspection by City and prior to their acceptance by City. For the avoidance of doubt, there will be two separate Notices of Completion, one for each respective Phase.

4. Payment of Parkland In Lieu Fee. Developer and City agree that the Parkland In Lieu Fee to be paid for each Phase of the Project is set forth on the schedule attached hereto as Exhibit E ("Parkland In Lieu Fee Payment Schedule"). The Parkland In Lieu Fee payments take into account the calculation of SCCC Chapter 17.35 Parkland Requirements for the Project, the acreage of the dedicated Public Parks, the value of the Park Improvements to the dedicated parkland, the credit at 50% for eligible on-site Private Amenities, and the credit at 50% for the Greenway.

(a) Park Fees and Credits. The Project will generate an estimated 1,127 residents (2.24 persons/household x 503 units). Based on the 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 2.8506 acres. The equivalent fee due in lieu of parkland dedication is calculated at \$11,595,659.

- i. Public Park Dedication. Developer is providing: (A) the four thousand, seven hundred and forty-eight (4,748) square foot "Central Plaza" public park in fee title to the City in Phase I, and (B) the nine hundred and fifty (950) square foot "Gateway Plaza" public park in fee title to the City in Phase II. The Central Plaza dedication in Phase 1 will reduce the parkland requirement by 0.1090 acres from 2.8506 acres (resulting in a reduction in the in-lieu fee amount by \$399,921), and the Gateway Plaza dedication in Phase II will reduce the parkland requirement by 0.0218 acres (resulting in a reduction in the in-lieu fee amount of \$79,984), as shown in Exhibit E.
- ii. Phase I Private Amenities Credit. Developer is providing: twenty-seven thousand, nine hundred and seventy-six (27,976) square feet of Private Amenities space in Phase I per Exhibit E. The credit for the Phase I Private Amenities, which amounts to 0.6422 acres, is provided at 50%, for a total of \$1,178,116.

- iii. Phase I Public Park Fees. The total balance of fees due for Phase I of the park fee is \$5,591,446, as shown in **Exhibit E**.
- iv. Phase II Public Plaza Fees. The total balance of fees due for Phase II of the park fee, including application of credits for eligible private recreational amenity space proposed as part of Phase II, will be reconciled before issuance of the first building permit for Phase II.

(b) The Parties acknowledge that SCCC Chapter 17.35 requires that total eligible Private Amenities must be at least three-quarters acre in size to receive credit against the project's parkland dedication requirement. The Parties further acknowledge that the Project will exceed the eligible private amenity acreage requirement upon completion of Phase II. The Phase I Private Amenities to be constructed with Phase I will serve the residents of the Parcel 19 Project, and shall be credited against the Phase I Park Fees, provided that if a building permit for Phase II is not issued within eight (8) years of building permit issuance for Phase I, Developer shall return the credited amount of \$1,178,116 to the City. If a building permit for Phase II is issued after the credit for the Phase I Private Amenities is returned to the City (i.e., after 8 years from the date a building permit is issued for Phase I), the Parkland Requirements for Phase II shall be reduced by the same amount. As additional consideration for providing the Phase I Private Amenities credit upfront, Developer shall (i) pay \$50,000 to the City for deposit into the Park Impact Fee Fund on or before the fourth anniversary of the Effective Date (the "Voluntary Contribution"), which shall be in addition to the in-lieu fees owed under SCCC Chapter 17.35 and will not count as a credit against future in-lieu fees due for Phase II, and (ii) execute and send to the City a guaranty from Developer's parent company substantially in the form attached as **Exhibit G** within thirty days of the Effective Date of this Agreement.

(c) Timing of Payments. Developer shall pay the Parkland In Lieu Fee allocable to each Phase of the Project as shown on **Exhibit H** prior to issuance of the first residential building permit for such Phase.

5. Private Amenities. Developer shall maintain all Private Amenities as private parkland and recreational amenities devoted to active residential uses for the lifetime of the Project.

6. Notices. All notices, demands, consents, requests, approvals, disapprovals, designations or other communications (all of the foregoing hereinafter referred to as "notice") pursuant to this Agreement shall be in writing and delivered in person, by commercial courier or by first-class certified mail, postage prepaid. Notices shall be deemed to have been properly given if (a) served personally, or (b) mailed, when deposited with the United States Postal Service within the boundaries of the continental United States for registered or certified delivery, return receipt requested, with postage prepaid, or (c) sent by receipted overnight courier, postage prepaid, in each case addressed to the applicable recipient as follows:

If to City:

City of Santa Clara
Attn: Director of Parks & Recreation
1500 Warburton Avenue
Santa Clara, California 95050
Or by facsimile at (408).260-9719

If to Developer:

Tasman East Station Holdco, LLC
c/o Ensemble Real Estate Investments
4722 North 24th Street, Ste. 400
Phoenix, Arizona 85016
Attention: Rob Gomez

Copy to:

Coblentz Patch Duffy & Bass LLP
1 Montgomery Street, Suite 3000
San Francisco, CA 94104
Attention: Frank Petrilli

Either Party may change its address for purposes of this Section by giving written notice to the other Party. All notices shall be deemed given and received, if served personally, when actually received and receipt is acknowledged in writing, upon delivery if delivered by commercial courier, or two (2) days after mailing if sent by United States Postal Service. If delivery of a notice is refused between the hours of 9:00 A.M. and 5:00 P.M. on a business day, or fails because of a changed address of which no notice was given, then such notice shall be deemed given and received, if mailed or sent by courier, at the time delivery was first attempted, as shown by postal or courier receipt.

7. **Default.** Any failure by either Party to perform any term or provision of the Agreement, including Developer's failure to pay the Voluntary Contribution by the Contribution Deadline, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other Party (unless such period is extended by mutual written consent), will constitute a default under the Agreement. Any notice given will specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, will be deemed to be a cure within such 30-day period. Upon the occurrence of a default under the Agreement, the non-defaulting Party may institute legal proceedings to enforce the terms of the Agreement or, in the event of a material default, terminate the Agreement. If the default is cured, then no default will exist and the noticing party shall take no further action.

8. **Amendment.** The provisions of this Agreement may be waived, altered, amended, or repealed, in whole or in part, only by the mutual agreement of the Parties in writing.

9. **Term.** All of the obligations and requirements specified in this Agreement shall be fully satisfied once both the Park Grant Deed and the Plaza Easement have been recorded.

10. **Estoppel Certificate.** Developer may, at any time and from time to time, or in connection with the sale or transfer of the Property or any part thereof, or in connection with the leasing or financing or refinancing of the Property or any part thereof, deliver written notice to the City, requesting City to certify in writing to Developer or the prospective or current mortgagee, or prospective lessee or purchaser of its Property or any part thereof, that to the knowledge of the City (i) Developer is not in default in the performance of any of its obligations owed to the City hereunder, or, if in default, to describe therein the nature of any and all defaults, (ii) whether this Agreement has been modified, amended or assigned in any way by the City (and if it has, then stating the nature thereof), (iii) this Agreement as of that date is in full force and effect, and (iv) such other information as the Developer may reasonably request. City shall execute and return such certificate within fifteen (15) days following the receipt thereof.

11. **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, it shall in no way affect, impair or invalidate any other provisions hereof, and the other provisions shall remain in full force and effect.

12. **Assignment.** Developer's rights and obligations set forth in this Agreement shall be transferable and assignable to any subsequent fee owner of the Project without the need for City's prior consent or approval; provided, however, that at the time of any such transfer or assignment of Developer's fee interest in the Project, Developer shall (i) notify City in writing of the transfer/assignment and (ii) deliver to City an assignment and assumption agreement executed by Developer and its transferee/assignee pursuant to which Developer's transferee/assignee assumes all of Developer's obligations set forth herein with respect to the Project which accrue or arise from and after the date of the assignment, including the obligations for installation of the Park Improvements, dedication of the Public Park in fee title, and payment of the Parkland In-Lieu Fee (to the extent such construction or payment obligations have not been completed) . After the date that such transfer/assignment occurs and a copy of the fully executed assignment and assumption agreement has been delivered to City, the transferor/assignor shall be released from all liabilities and obligations hereunder which accrue or arise from and after the date of the assignment. As used in this Agreement, the term "Developer" shall be deemed to include any such transferee/assignee after the date such transfer/assignment occurs.

13. **Construction of Agreement.** This Agreement and each of the provisions herein, has been reached as a result of negotiations between the Parties and their respective attorneys; This Agreement shall not be deemed to have been prepared by, or drafted by, any particular Party or Parties hereto, and the normal rule of construction to

the effect that any ambiguities are to be resolved against the drafting Party or Parties shall not be employed in the interpretation of this Agreement. The language in this Agreement in all cases shall be construed as a whole and in accordance with its fair meaning.

14. **Attorney's Fees.** In the event of litigation between the Parties, or if a Party becomes involved in litigation because of the wrongful acts of the other Party, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit.

15. **Governing Law.** This Agreement shall be construed in accordance with and governed by the 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.

16. **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; and, the Parties agree that the signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

17. **Mortgagee Protection.** Nothing in this Agreement shall be interpreted to render invalid any deed of trust or mortgage encumbering any portion of the Property. No beneficiary under any such deed of trust, purchaser at a foreclosure sale of such deed of trust, or grantee of a deed in lieu of foreclosure shall be obligated to cure any default of the previous owner of the Property unless such obligation is expressly assumed in writing, provided that the purchaser or grantee upon receiving title to the Property shall take title subject to this Agreement and shall assume the obligations of Developer accruing from and after the date the purchaser or grantee received title.

[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. 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: _____

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”

Dated: July 31, 2024

Tasman East Station Holdco, LLC,
a Delaware limited liability company

By: Ensemble Investments, LLC,
an Arizona limited liability company, its Manager


Name: Michael Moskowitz
Title: Manager

“DEVELOPER”

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 Los Angeles)

On July 31, 2024, before me, MARY JUNE REYES HOFILENA, a Notary Public, personally appeared Michael Moskowitz, 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.

Signature *Mary June Reyes Hofilena*



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 _____)

On _____, before me, _____, a Notary Public, personally appeared _____, 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.

Signature _____

EXHIBIT A-1
PARCEL 19 LEGAL DESCRIPTION
[Attached]

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SANTA CLARA, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel 22, as shown upon that certain Map entitled, "Parcel Map being a portion of the Ulistac Rancho", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on February 27, 1976, in Book 368 of Maps at Pages 14 and 15.

APN: 097-46-019

EXHIBIT A-2

PARCEL 29 LEGAL DESCRIPTION

[Attached]

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SANTA CLARA, IN THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel One:

Parcel 1, as shown on that certain Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on December 16, 1996 in Book 684 of Maps at Pages 45 and 46.

Excepting therefrom that portion of said land conveyed to the Santa Clara County Transit District in that certain Grant Deed recorded December 06, 1999 as Instrument No. 15079054, and more particularly described as follows:

All of that certain property situated in the City of Santa Clara, County of Santa Clara, State of California, and being a portion of Parcel 1, as said Parcel 1 is shown on that certain Parcel Map filed in Book 684 of Maps at Pages 45-46, records of Santa Clara County, California and more particularly described as follows:

Beginning at the southeasterly corner of Parcel 1, said point also being on the northerly line of Tasman Drive as said Parcel and Drive are shown on said Parcel Map, thence southwesterly along the southerly line of said Parcel 1 (northerly line of Tasman Drive) the following two (2) described courses: 1) from a tangent bearing of South 63° 22' 16" West along a curve concave northwesterly with a radius of 2951.84 feet through a central angle of 2° 22' 12" and an arc length of 122.10 feet to the beginning of a compound curve concave northerly with a radius of 40.00 feet; 2) westerly along the last said curve (with radius 40.00 feet) through a central angle of 76° 10' 54" and an arc length of 53.18 feet to a point of cusp with a curve concave northerly with a radius of 37.00 feet; thence leaving said southerly line of Parcel 1 (northerly line of Tasman drive) from a tangent bearing of South 50° 57' 32" East along the last said curve (with radius 37.00 feet) through a central angle of 62° 56' 16" and an arc length of 40.64 feet; thence South 23° 53' 48" East 3.00 feet; thence North 66° 06' 12" East 127.93 feet to the northeasterly line of said Parcel 1; thence southeasterly along said northeasterly line of Parcel 1; thence southeasterly along said northeasterly line of Parcel 1 South 27° 00' 29" East 3.74 feet to the point of beginning.

By Deed recorded December 21, 2010 as Instrument No. 21012786, the Santa Clara Valley Transportation Authority, a public agency, assigned and conveyed their interest to the City of Santa Clara, a chartered municipal corporation of the State of California.

Parcel Two:

An easement for Private Ingress-Egress 13 feet wide over Parcel 2 for the benefit of Parcel 1, as shown on the Map filed December 16, 1996 in Book 684 of Maps at Pages 45 and 46.

Parcel Three:

An easement for Emergency Vehicle Ingress-Egress 13 feet wide over Parcel 2 for the benefit of Parcel 1, as shown on the Map filed December 16, 1996 in Book 684 of Maps at Pages 45 and 46.

APN: 097-46-029

EXHIBIT B-1

PHASE I PUBLIC PARK PLATS AND LEGAL DESCRIPTIONS

[Attached]

PARCEL DEDICATION
2272 Calle De Luna, Santa Clara, CA

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

Being a portion of Lot 22, as said Lot is 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 22, said corner being also a point on the northeasterly line of Calle Del Sol, being 60.00 feet in width, as shown on said Parcel Map;

Thence leaving said corner and along the southeasterly line of said Lot 22, North 62°58'48" East, 137.67 feet;

Thence leaving said southeasterly line of said Lot 22, North 14°25'22" West, 16.26 feet;

Thence South 62°54'11" West, 140.99 feet to a point on said northeasterly line of Calle Del Sol, said point being also the beginning of a non-tangent curve, concave to the northeast, having a Radius of 2239.88 feet, with a radial line that bears South 64°00'23" West;

Thence along said northeasterly line of Calle Del Sol, southeasterly along said curve, through a central Angle of 00°24'04", with an arc Length of 15.68 feet to the point of **BEGINNING**.

Containing an area of 2,197 square feet, more or less.

Being a portion of Santa Clara County Assessor's Parcel Number 097-46-019 per Roll Year 2021-22.

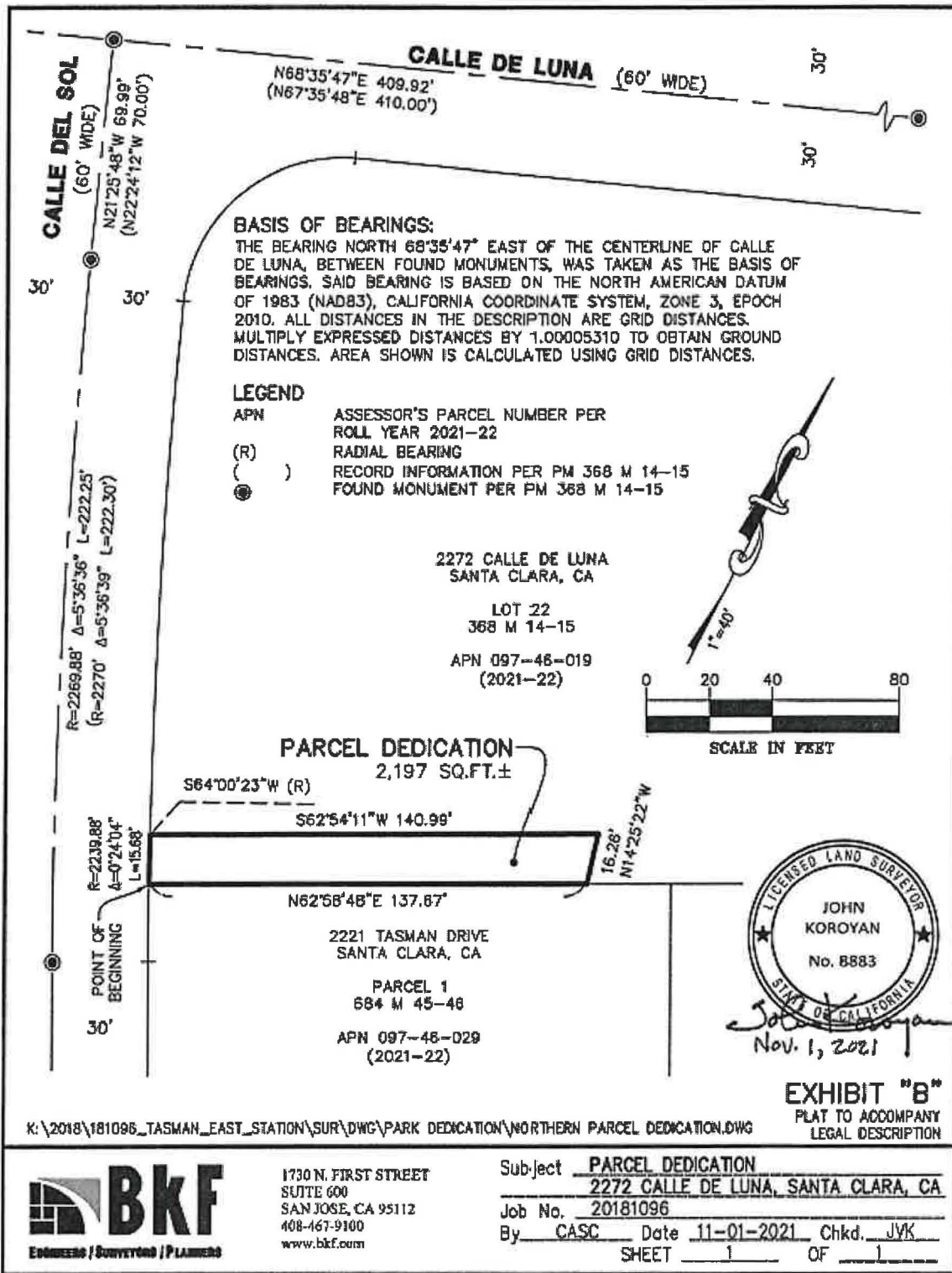
BASIS OF BEARINGS: The bearing North 68°35'47" East of the centerline of Calle De Luna, between found monuments, was taken as the basis of bearings. Said bearing is based on the North American Datum of 1983 (NAD83), California Coordinate System, Zone 3, Epoch 2010. All distances in the description are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

As shown on **EXHIBIT "B"** attached hereto and by this reference made a part hereof.

By: John Koroyan
John Koroyan
P.L.S. No. 8883

Date: Nov. 1, 2021





1730 N. FIRST STREET
 SUITE 600
 SAN JOSE, CA 95112
 408-467-9100
 www.bkf.com

Subject PARCEL DEDICATION
2272 CALLE DE LUNA, SANTA CLARA, CA
 Job No. 20181096
 By CASC Date 11-01-2021 Chkd. JYK
 SHEET 1 OF 1

PARCEL DEDICATION
2221 Tasman Drive, Santa Clara, CA

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

Being a portion of Parcel 1, as said Parcel is shown on that certain Parcel Map, filed for record on December 16, 1996 in Book 684 of Maps at Pages 45 and 46, Records of Santa Clara County, more particularly described as follows:

BEGINNING at the most westerly corner of said Parcel 1, said corner being also a point on the northeasterly line of Calle Del Sol, being 60.00 feet in width, as shown on said Parcel Map;

Thence leaving said corner and along the northwesterly line of said Parcel 1, North 62°58'48" East, 137.67 feet;

Thence leaving said northwesterly line of said Parcel 1, South 14°25'22" East, 1.69 feet;

Thence South 27°11'56" East, 9.81 feet to the beginning of a tangent curve to the right, having a Radius of 8.50 feet;

Thence Southerly along said curve, through a central Angle of 40°30'21", with an arc Length of 6.01 feet;

Thence South 62°59'13" West, 135.44 feet to a point on said northeasterly line of Calle Del Sol, said point being also the beginning of a non-tangent curve, concave to the northeast, having a Radius of 2239.88 feet, with a radial line that bears South 63°10'17" West;

Thence along said northeasterly line of Calle Del Sol, northwesterly along said curve, through a central Angle of 00°26'03", with an arc Length of 16.97 feet to the point of **BEGINNING**.

Containing an area of 2,329 square feet, more or less.

Being a portion of Santa Clara County Assessor's Parcel Number 097-46-029 per Roll Year 2021-22.

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.

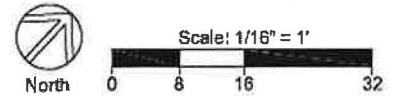
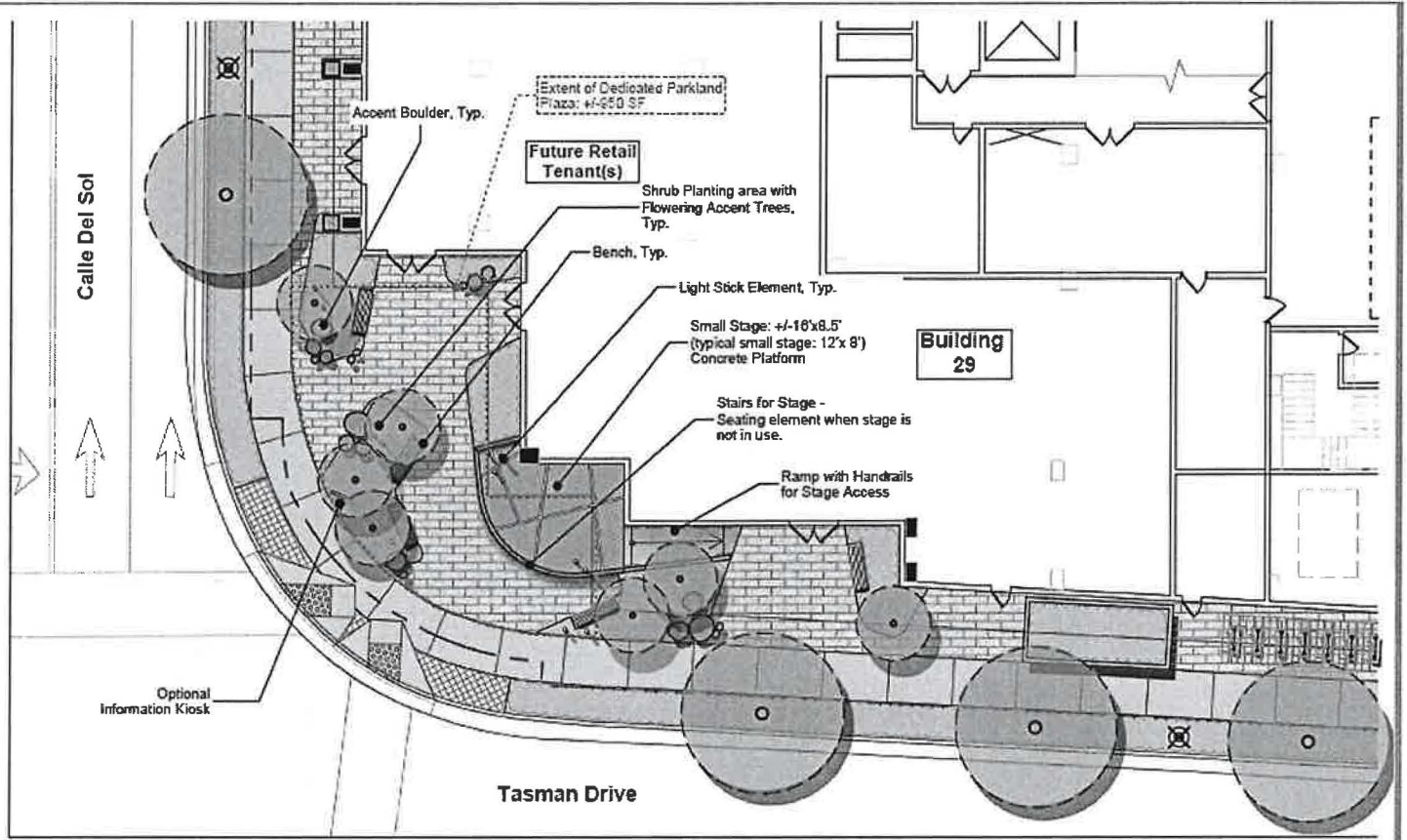
As shown on **EXHIBIT "B"** attached hereto and by this reference made a part hereof.

By: John Koroyan
John Koroyan
P.L.S. No. 8883

Date: Nov. 1, 2021

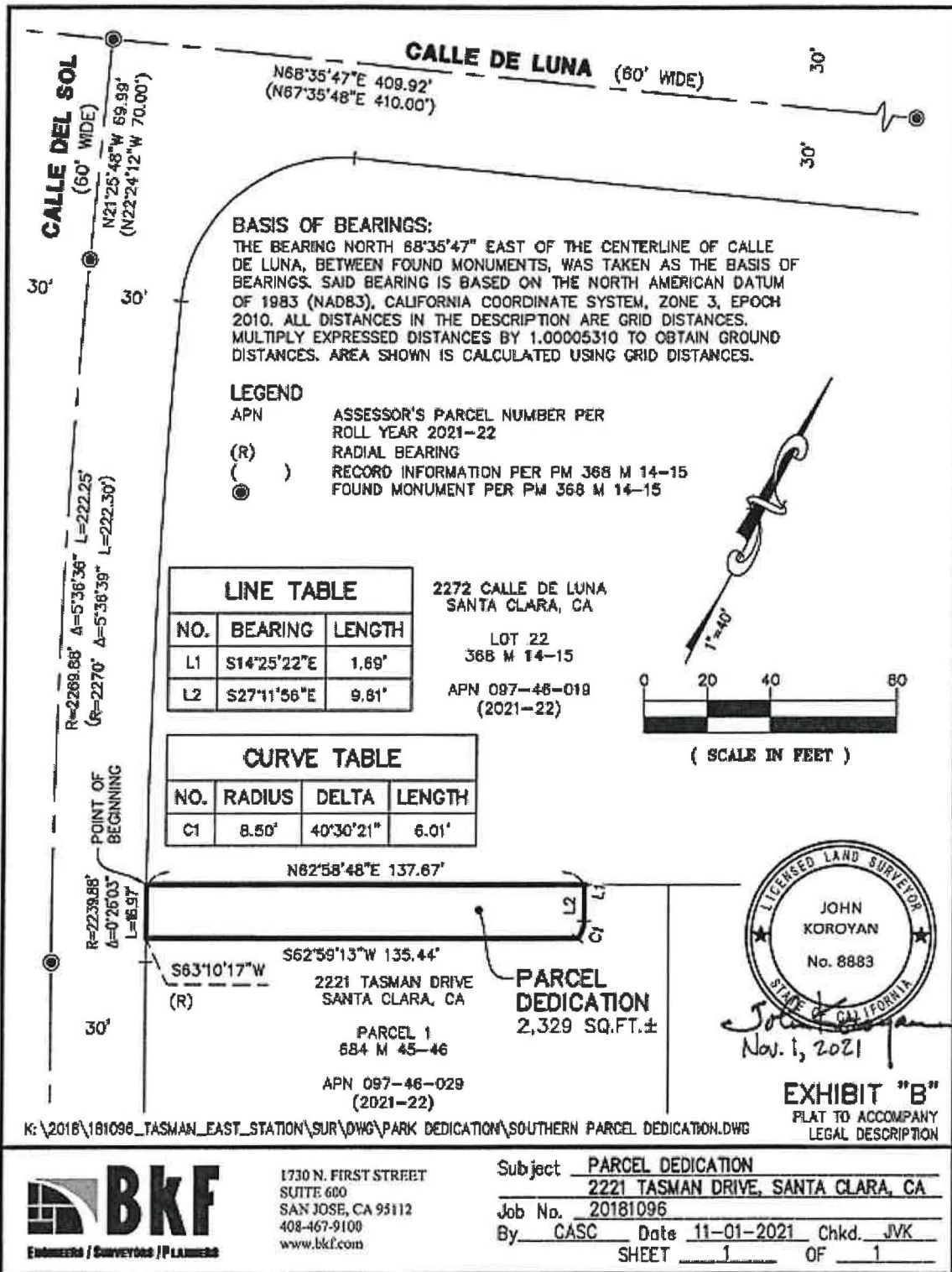


EXHIBIT B-2
PHASE 2 PUBLIC PLAZA SITE PLAN



Tasman Station
 Santa Clara, CA

Park Plaza Plan
 01.21.2020



BASIS OF BEARINGS:

THE BEARING NORTH 88°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.

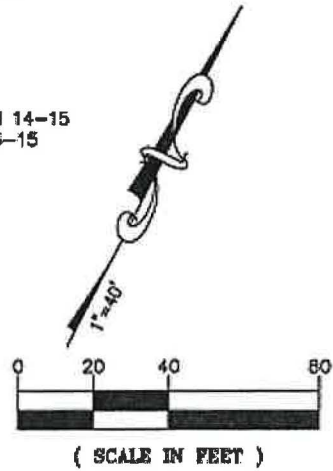
LEGEND

- APN ASSESSOR'S PARCEL NUMBER PER ROLL YEAR 2021-22
- (R) RADIAL BEARING
- () RECORD INFORMATION PER PM 368 M 14-15
- FOUND MONUMENT PER PM 368 M 14-15

LINE TABLE		
NO.	BEARING	LENGTH
L1	S14°25'22"E	1.69'
L2	S27°11'56"E	9.81'

2272 CALLE DE LUNA
SANTA CLARA, CA
LOT 22
368 M 14-15
APN 097-46-018
(2021-22)

CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	8.50'	40°30'21"	6.01'



POINT OF BEGINNING
R=2239.86' Δ=0°26'03" L=46.97'
R=2270' Δ=5°38'39" L=222.30'

N62°58'48"E 137.67'
S63°10'17"W (R)
S62°59'13"W 135.44'
2221 TASMAN DRIVE
SANTA CLARA, CA
PARCEL 1
584 M 45-46
APN 097-46-029
(2021-22)
PARCEL DEDICATION
2,329 SQ.FT.±



John Koroyan
Nov. 1, 2021

EXHIBIT "B"
PLAT TO ACCOMPANY
LEGAL DESCRIPTION

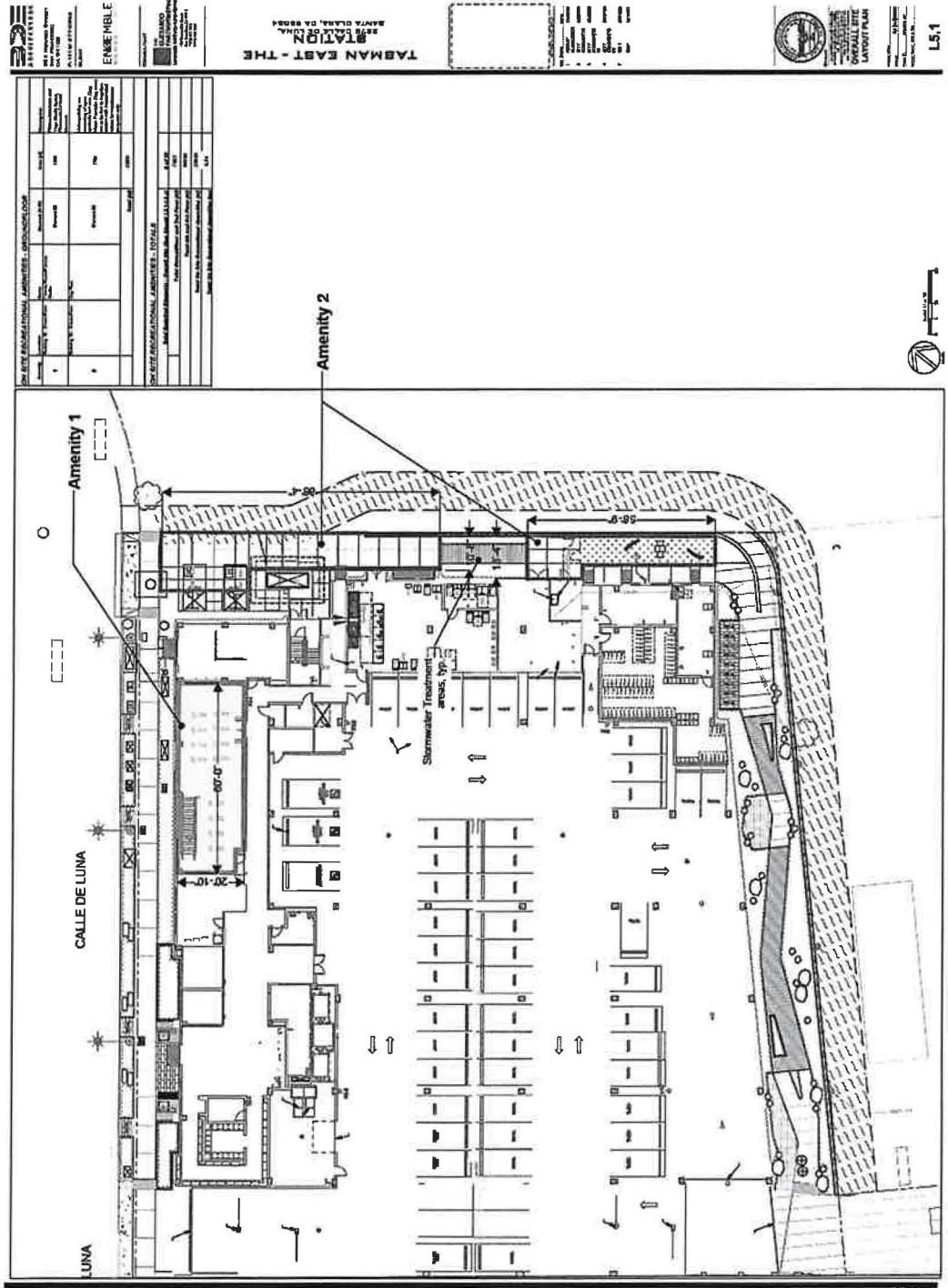
K:\2018\181096_TASMAN_EAST_STATION\SUR\DWG\PARK DEDICATION\SOUTHERN PARCEL DEDICATION.DWG



1730 N. FIRST STREET
SUITE 600
SAN JOSE, CA 95112
408-467-9100
www.bkf.com

Subject PARCEL DEDICATION
2221 TASMAN DRIVE, SANTA CLARA, CA
Job No. 20181096
By CASC Date 11-01-2021 Chkd. JVK
SHEET 1 OF 1

EXHIBIT C PRIVATE AMENITIES



NO.	DESCRIPTION	DATE	BY	CHKD.
1	ISSUED FOR PERMIT	08/14/2014	...	...
2	ISSUED FOR PERMIT	08/14/2014	...	...

NO.	DESCRIPTION	DATE	BY	CHKD.
1	ISSUED FOR PERMIT	08/14/2014	...	...
2	ISSUED FOR PERMIT	08/14/2014	...	...

TABMAN EAST - THE STATION
 SANTA CLARA, CA 95054

NO.	DESCRIPTION	DATE	BY	CHKD.
1	ISSUED FOR PERMIT	08/14/2014	...	...
2	ISSUED FOR PERMIT	08/14/2014	...	...

EMBLEM

ARCHITECT

SCALE

L5,1



ASBESTOS
 101 JEFFERSON STREET
 SUITE 100
 PALM BEACH, FL 33480
 (561) 833-1111

ENGINEER
 101 JEFFERSON STREET
 SUITE 100
 PALM BEACH, FL 33480
 (561) 833-1111

CONSULTANT
 101 JEFFERSON STREET
 SUITE 100
 PALM BEACH, FL 33480
 (561) 833-1111

TASMAN EAST - THE STATION
 SANTA CLARA, CA 95054

- 1. GENERAL NOTES
- 2. EXISTING CONDITIONS
- 3. PROPOSED CONDITIONS
- 4. FINISHES
- 5. MATERIALS
- 6. DIMENSIONS
- 7. SCHEDULES
- 8. SPECIFICATIONS
- 9. CONTRACT ADMINISTRATION



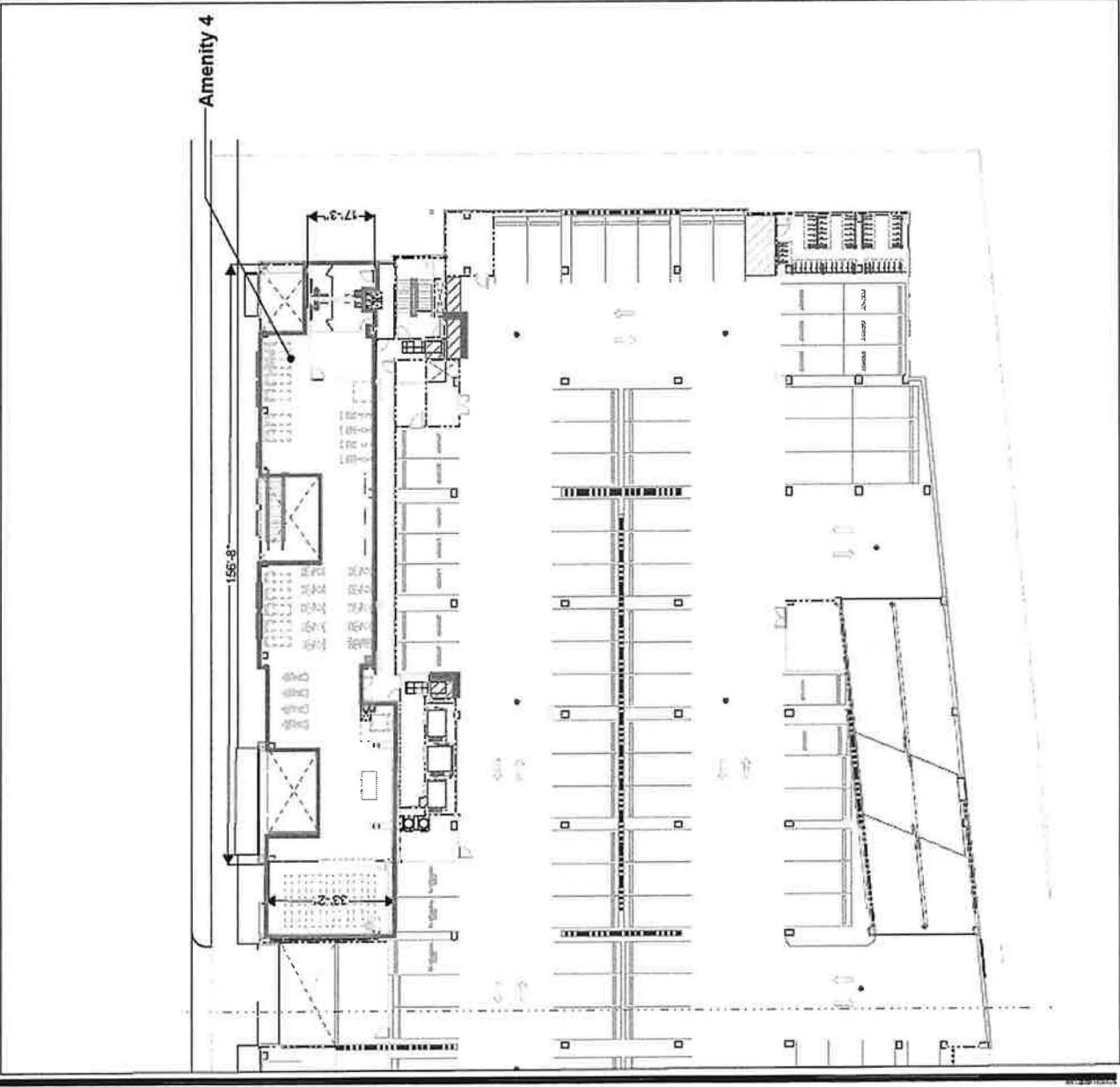
GENERAL SITE LAYOUT PLAN

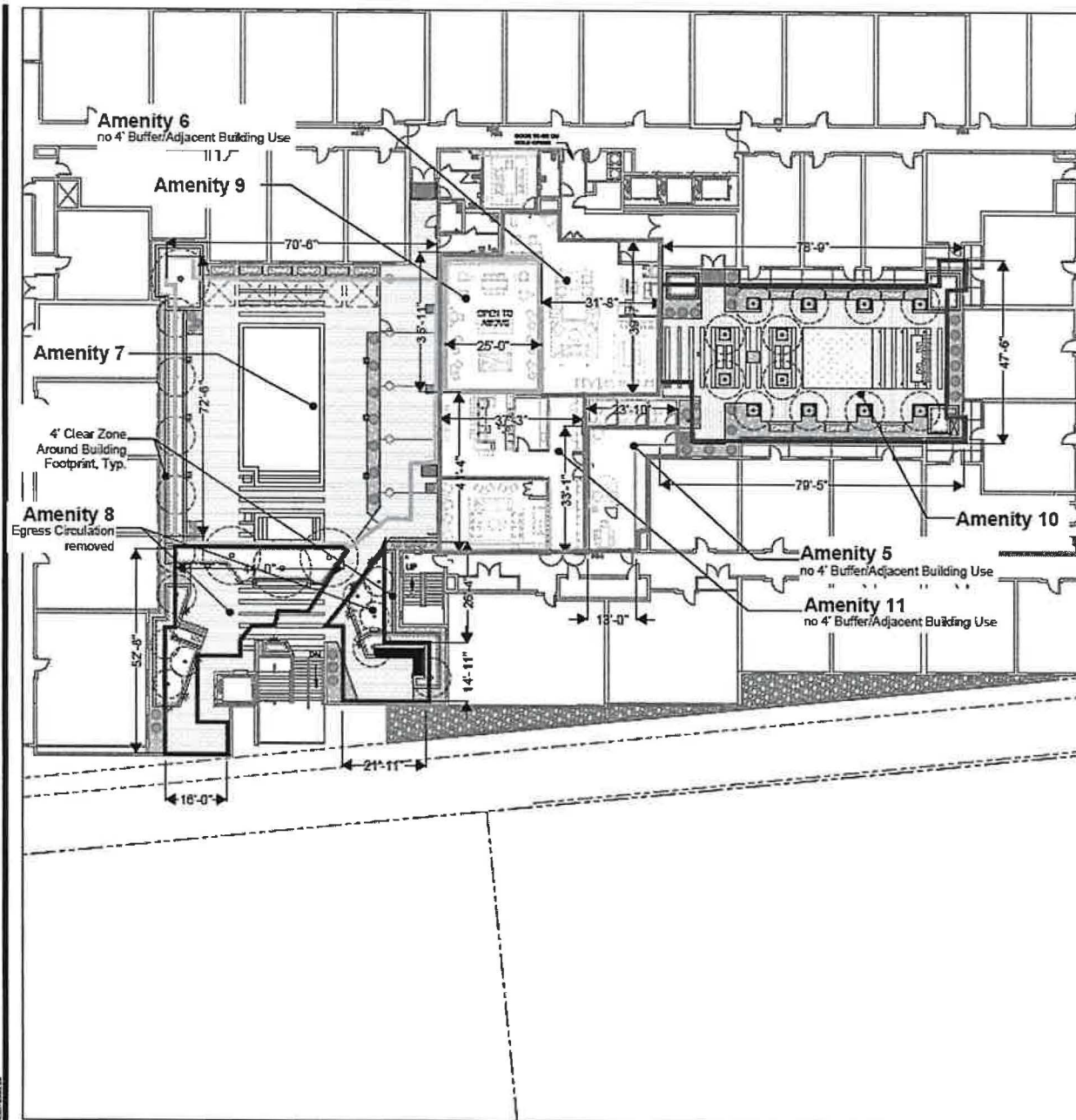
DATE: 01/15/2014
 DRAWN BY: [Name]
 CHECKED BY: [Name]

L5.2

ON SITE RECREATIONAL AMENITIES - Building 1A - 2nd Floor

Room	Area (sq. ft.)	Notes
A	17,300	Amenity 4
B	15,500	Amenity 3
C	15,500	Amenity 2
D	15,500	Amenity 1





ON SITE RECREATIONAL AMENITIES - Building 19 - 4th Floor

Amenity	Building	Floor	Area (sq. ft.)	Area (sq. ft.)	Description
5	Building 19	4th Floor	1,200	1,200	Open deck area, with adjacent building use. The deck is located on the south side of the building and is used for outdoor seating and lounge.
6	Building 19	4th Floor	1,200	1,200	Open deck area, with adjacent building use. The deck is located on the north side of the building and is used for outdoor seating and lounge.
7	Building 19	4th Floor	1,200	1,200	Open deck area, with adjacent building use. The deck is located on the east side of the building and is used for outdoor seating and lounge.
8	Building 19	4th Floor	1,200	1,200	Open deck area, with adjacent building use. The deck is located on the west side of the building and is used for outdoor seating and lounge.
9	Building 19	4th Floor	1,200	1,200	Open deck area, with adjacent building use. The deck is located on the south side of the building and is used for outdoor seating and lounge.
10	Building 19	4th Floor	1,200	1,200	Open deck area, with adjacent building use. The deck is located on the north side of the building and is used for outdoor seating and lounge.
11	Building 19	4th Floor	1,200	1,200	Open deck area, with adjacent building use. The deck is located on the east side of the building and is used for outdoor seating and lounge.

ABSTRACT

214 Argonne Street
 San Francisco, CA 94115
 P. 415.437.0088

ENSEMBLE
 C.A. 11.11

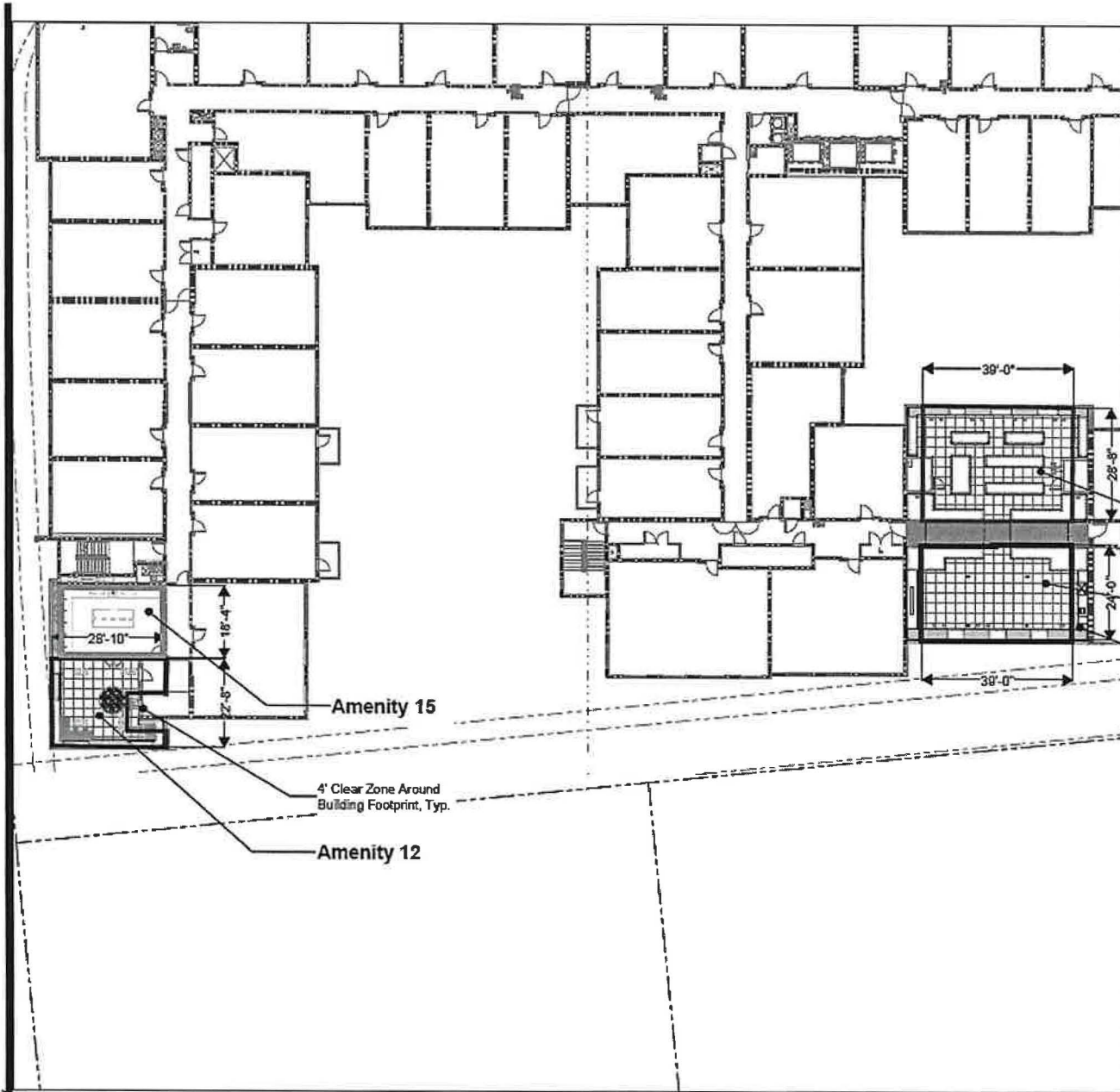
STUARDO PARTNERSHIP
 1000 California Street
 San Francisco, CA 94108

TABMAN EAST - THE STATION
 SANTA CLARA, CA 95054

LEVEL 4 POOLUM
 DECK LAYOUT PLAN

DATE: 10/11/11
 DRAWN BY: [Name]
 CHECKED BY: [Name]
 APPROVED BY: [Name]

L5.3



DW 8724 RECREATIONAL AMENITIES - Building 19 - 8th Floor

Room No.	Room Name	Room Size	Area (sq. ft.)	Comments
12	Small square amenity	16'-4" x 28'-10"	467	Small square amenity
13	Rectangular amenity	39'-0" x 28'-8"	1107	Rectangular amenity
14	Rectangular amenity	39'-0" x 24'-0"	936	Rectangular amenity
15	Rectangular amenity	39'-0" x 28'-10"	1107	Rectangular amenity
Total (sq. ft.)				3417

ENSEMBLE
ARCHITECTS
1000 10th Street
Santa Clara, CA 95050
408.253.8888

TASMAN EAST - THE STATION
SANTA CLARA, CA 95054

DATE	DESCRIPTION
10/10/19	ISSUED FOR PERMITS
09/10/19	ISSUED FOR PERMITS
08/10/19	ISSUED FOR PERMITS
07/10/19	ISSUED FOR PERMITS
06/10/19	ISSUED FOR PERMITS
05/10/19	ISSUED FOR PERMITS
04/10/19	ISSUED FOR PERMITS

LEVEL 8 ROOF DECK LAYOUT PLAN

Scale: 1/8" = 1'-0"

EXISTING BUILDING
 The existing building is a 4-story structure with a total area of approximately 4,256 SF. The building is located on the corner of Calle de Luna and Luna. The building is currently vacant and is being proposed for conversion into a multi-family residential building. The conversion will involve the removal of existing interior walls and the installation of new walls to create individual units. The conversion will also involve the installation of new plumbing, electrical, and mechanical systems. The conversion will be completed in two phases. The first phase will involve the conversion of the first two floors, and the second phase will involve the conversion of the top two floors. The conversion will be completed by the end of 2011.

GREENWAY
 The Greenway is a multi-use path that will run along the east side of the building. The path will be approximately 18 feet wide and will include a paved surface for walking and jogging, a grassy area for sitting and playing, and a bicycle lane. The path will be surrounded by landscaping, including trees and shrubs. The path will provide a safe and convenient way for residents to get to work, school, and the grocery store. The path will also provide a place for residents to exercise and enjoy the outdoors. The path will be a valuable addition to the neighborhood and will help to make the building a more attractive and livable place.

Greenway	4,256 SF
----------	----------

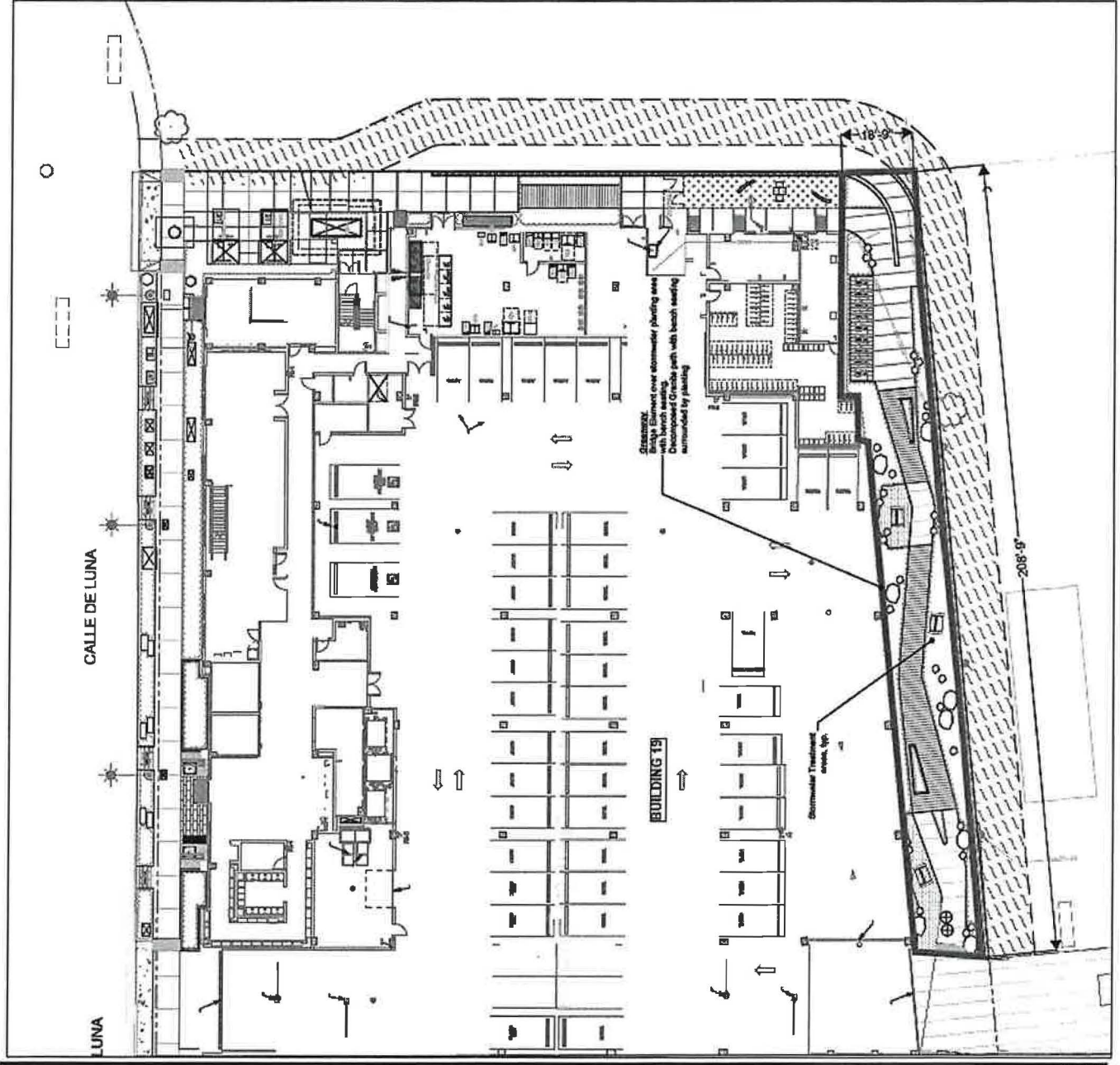


EXHIBIT D
PARK IMPROVEMENTS

[Attached]

EXHIBIT E

CALCULATION OF PARKLAND REQUIREMENTS

Developer's Project will generate an estimated 1,127 Residents (2.24 persons/household x 503 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 2.8506 acres. The equivalent fee in-lieu of parkland dedication is anticipated to be \$11,595,659 before accounting for deductions and credits.

As the Developer is only permitting Phase I for Parcel 19 at this time, the calculations are only being done in reference to Phase I's 311 units, associated park dedication, and private recreational amenities associated with Parcel 19. The new resident demand associated with the Parcel 19 Project (Phase I) is 697 new residents, which equates to a parkland dedication requirement of 1.7634 acres or an in-lieu fee of approximately \$7,169,483. The new resident demand associated with the Parcel 29 Project is 430 residents, which equates to a parkland dedication of 1.0879 acres or an in-lieu fee of approximately \$4,426,176.

Developer has proposed to meet the required parkland dedication through dedication of the Phase I Public Park (.11 acres) and the Phase II Public Plaza (950 sq. ft.); development of the Phase I and Phase II Private Recreational Amenities (40,330 sq. ft.) for a total of 0.9258 acres; and to pay the remainder owed as a fee in lieu of parkland dedication for Phase I in the amount of \$5,591,446 and for Phase II in the amount of \$3,825,837.

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. The Project includes 0.9258 acres of private active recreational amenities with Phase I and Phase II. The credit is therefore approximately \$1,178,116 in value attributable to Phase I and approximately \$520,355 in value attributable to Phase II.

Table 1. Computation of Parkland Dedication

Project Unit Type: Multi-Family Dwelling	Mitigation Fee Act
Persons / Dwelling Type	2.24
Multi-Family Project Units	503
Residents	1,127
Parkland Dedication Required (acres): R/1,000x2.53	2.8506 acres
Fee in Lieu of Parkland Dedication	\$11,595,659

Table 2. Public Parkland Dedications Proposed for Phase I, Service Level

Parkland Proposed	Square Feet	Acres	Type of Dedication
Phase I	4,748	0.1090	Phase I Public Park: Fee Title

Table 3. Credit for Proposed Private Onsite Park & Recreation (Phase 1)

See Exhibits Tables for Individual Element Square Footage Breakdown

	Square Feet	Acres
Private Open Space	27,976	0.6422
Credit at 50% for Private Active Recreation & Equivalent Value. .6422 acres x 50% x \$3,669,000 per acre: \$1,178,116		

EXHIBIT F

PARKLAND IN LIEU FEE PAYMENT SCHEDULE

Phase I	\$5,591,446	To be paid before issuance of first residential building permit for each respective Phase.
Phase II	\$3,825,837	

EXHIBIT G
FORM OF GUARANTY

[Attached]

GUARANTY

This GUARANTY ("**Guaranty**") is given as of _____, 2024, by Ensemble Investments LLC, an Arizona limited liability company ("**Guarantor**"), to the CITY OF SANTA CLARA, a chartered California municipal corporation ("**City**").

RECITALS

WHEREAS, Tasman East Station Holdco, LLC, a Delaware limited liability company ("**Developer**") is a wholly-owned subsidiary of Guarantor;

WHEREAS, Developer and City entered into a Park Improvement Agreement dated as of [____], 2024, and recorded in the official records administered by the Recorder of the County of Santa Clara (the "**Official Records**") as Document No. [_____] (as same may be amended from time to time, the "**PIA**");

WHEREAS, Developer is the owner of approximately 2.62 acres of real property, consisting of two parcels (Assessor's Parcel Nos. 097-46-019 ("**Parcel 19**") and 097-46-029 ("**Parcel 29**")), located at the northeastern corner of Calle del Sol and Tasman Drive in the City of Santa Clara, State of California (the "**Property**"). The Property is located within the boundaries of the Tasman East Specific Plan Area.

WHEREAS, Developer intends to develop: (1) Parcel 19 with a new residential development consisting of 311 dwelling units, 15,870 sq. ft. of retail space, parking, and other associated improvements (the "**Parcel 19 Project**") and (2) Parcel 29 with a new residential development consisting of 192 dwelling units, 8,000 sq. ft. of retail space, parking, and other associated improvements (the "**Parcel 29 Project**"; and together with the Parcel 19 Project, the "**Project**"). City approved Architectural Review (PLN2018-13442) for the Project in July of 2019.

WHEREAS, Santa Clara City Code ("**SCCC**") Chapter 17.35 requires new residential development to dedicate adequate park and recreational land or pay a fee in-lieu of parkland dedication for the purpose of developing new or rehabilitating existing parks and recreational facilities (the "**Parkland Requirements**"). The development of the Project, which will occur in phases as described below, is subject to the Parkland Requirements.

WHEREAS, Developer proposes to submit the Project uniformly under the Mitigation Fee Act provisions of SCCC Chapter 17.35. The Project will generate an estimated 1,127 Residents (2.24 persons/household x 503 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 2.8506 acres. The equivalent fee in-lieu of parkland dedication is anticipated to be \$11,595,659 before accounting for credits. The new resident demand associated with the Parcel 19 Project is 697 new residents, which equates to a parkland dedication requirement of 1.7625 acres or an in-lieu fee of approximately \$7,169,483. The new resident demand associated with the Parcel 29 Project is 430 residents, which equates to a parkland dedication of 1.0879 acres or an in-lieu fee of approximately \$4,426,176.

WHEREAS, Developer is eligible to receive partial credit against the Parkland Requirements for the Project by developing eligible on-site private open space and recreational amenities devoted to active residential uses ("**Private Amenities**") as shown on Exhibit C of the PIA. Private Amenities constructed with the Parcel 19 Project shall be credited against the Parkland Requirements for the Parcel 19 Project. If building permits for the Parcel 29 Project are not issued within eight (8) years of building permit issuance for the Parcel 19 Project, Developer shall return the credited amount to the City (the "**Guaranteed Obligation**"), as described herein.

WHEREAS, Developer's Guaranteed Obligation is being guaranteed by Guarantor as set forth in this Guaranty; and

WHEREAS, Guarantor will directly or indirectly benefit from the Developer's interest in the PIA and deems it to be in Guarantor's best interest to provide this Guaranty to City; and

WHEREAS, Guarantor is willing to guarantee the Guaranteed Obligation under the terms set forth below.

NOW THEREFORE, in consideration of City's entry into the PIA (which Guarantor acknowledges constitutes adequate consideration for its obligations hereunder), Guarantor, intending to be legally bound, agrees as follows:

1. Obligations of Guarantor. Guarantor unconditionally and irrevocably guarantees to City the due and punctual payment (and not merely the collectability) and performance, as applicable, of the Guaranteed Obligation as and when the same shall become due and/or payable, on the terms provided in this Guaranty. In addition, Guarantor shall pay, and upon City request shall reimburse City promptly for, all reasonable out-of-pocket costs and expenses actually and reasonably incurred by City to enforce City's rights, powers or remedies under this Guaranty (including, without limitation, reasonable collection charges and Attorneys' Fees and Costs (as defined below)) (together with any late payment interest on amounts due as set forth below). With respect to Guaranteed Obligation, any amount due and payable by Guarantor under this Guaranty but not paid within forty-five (45) days after receipt of City's written demand therefor shall be accompanied by interest on such amounts at the higher of ten percent (10%) per annum or the maximum amount permitted by law, calculated from the date of Guarantor's receipt of City's written demand therefor through and including the date of payment of such amounts (calculated on the basis of a 365-day year and for the actual number of days elapsed).

2. Amount. The Guaranteed Obligation shall equal the sum of \$1,178,116, which amount the City and Guarantor agree to be sufficient to pay for 100% of the costs to reimburse the City for the credit for Private Amenities constructed with the Parcel 19 Project.

3. Duration. This Guaranty shall continue in full force and effect until the earlier to occur of (a) building permit issuance for the Building 29 Project or (b) the

Guaranteed Obligation is fully satisfied. City shall not be bound or obligated to exhaust its recourse against the Developer or other persons or, except as specifically provided in this Guaranty, to take any other action before being entitled to demand performance by Guarantor hereunder. This Guaranty shall continue to be effective even in the event of the insolvency, bankruptcy or reorganization of Developer. This Guaranty will also survive and be binding upon Guarantor following any merger, reorganization, consolidation or other change in Guarantor's structure, personnel, business or affairs.

4. Remedies of City. The rights and remedies of City under this Guaranty are cumulative and concurrent and shall not be exclusive of any other rights or remedies that City may have against Developer, Guarantor or any other person. No set-off, counterclaim, reduction or diminution of an obligation or any defense of any kind or nature that Guarantor has or may have against the Developer or City shall affect, modify or impair the obligations of Guarantor under this Guaranty.

5. Waivers. Guarantor hereby waives: (a) notice of acceptance of this Guaranty; (b) demand of payment, notice of nonperformance, notice of dishonor, presentation, protest, and indulgences and (except as specifically provided in this Guaranty) notices of any kind whatsoever; (c) any right to require City to proceed against the Developer or any other person or entity liable to City; (e) any right to require City to pursue or enforce any remedy that City now has or may later have against the Developer or any other person or entity; (f) any right to participate in any security now or later held by City; and (h) any defense that may arise by the reason of: (1) the incapacity, lack of authority, death, disability or other defense of the Developer or any other person or entity (other than satisfaction of the applicable Guaranteed Obligation or the applicable Guaranteed Obligation is not then due); (2) the revocation or repudiation of this Guaranty by Guarantor; (3) failure of City to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of the Developer or any others; (4) any election by City in any proceeding instituted under the United States Bankruptcy Code, as amended (11 U.S.C. §§ 101, *et seq.*); (5) any borrowing or granting of a security interest under section 364 of the United States Bankruptcy Code; (6) City's election of any remedy against Guarantor, the Developer or any other party to the extent permitted hereunder, as applicable; or (7) any offset by Guarantor against any obligation now or later owed to Guarantor by the Developer or any other person, it being the intention of this Guaranty that Guarantor remain liable to the full extent set forth in this Guaranty until the full performance of the Guaranteed Obligation.

6. Further Assurances. Guarantor agrees to do all such things and execute all such documents as City may consider necessary or desirable to give full effect to this Guaranty and to perfect and preserve the rights and powers of City hereunder; provided, however, that the same shall not increase Guarantor's obligations or liabilities, or decrease Guarantor's rights. Guarantor acknowledges and confirms that Guarantor itself has established its own adequate means of obtaining from the Developer on a continuing basis all information desired by Guarantor concerning the financial condition of the Developer and that Guarantor will look to the Developer to keep adequately informed of its financial condition.

7. Independent Obligations; Continuing Guaranty. This Guaranty is a primary and original payment and performance obligation of Guarantor and is absolute, unconditional, continuing and irrevocable. No member, officer, partner, shareholder, director, board member, agent, or employee of Guarantor will be personally liable to City, and City will have no recourse against any of the foregoing, in the event of a default by Guarantor or for any amount which may become due to City or on any obligations under the terms of this Guaranty or any claim based upon this Guaranty.

8. Effect of Bankruptcy. In the event that, pursuant to any insolvency, bankruptcy, reorganization, receivership or other debtor relief law or any judgment, order or decision thereunder, City must rescind or restore any payment, or any part thereof, received by City, any prior release or discharge from the terms of this Guaranty shall be without effect, and this Guaranty will remain in effect as if the payment had not been made to City.

9. Assignment. This Guaranty is for the benefit of City and its successors and assigns, and is binding upon Guarantor. Subject to the terms of Section 21 of this Guaranty, Guarantor may not assign or transfer any of its obligations under this Guaranty, whether by operation of law or otherwise, without the prior written consent of City in its sole discretion.

10. Representations and Warranties. Guarantor represents and warrants to City that (a) the execution, delivery and performance of this Guaranty by Guarantor have been duly authorized by all requisite action of Guarantor and do not require the consent of any governmental agency or other third party which has not been obtained, (b) this Guaranty has been duly executed and delivered to City, (c) Guarantor is subject to civil and commercial law with respect to its obligations under this Guaranty and enjoys no immunity, sovereign or otherwise, from any suit or proceeding, the jurisdiction of any court, recoupment, setoff or legal process (and hereby waives any defense of immunity to the extent available to Guarantor), (d) no taxes are imposed by virtue of Guarantor's execution or delivery of this Guaranty other than any payable by Guarantor and which have already been paid, and (e) this Guaranty is a legal and binding obligation of Guarantor and is enforceable in accordance with its terms, except as limited by general principles of equity and bankruptcy, insolvency or other laws of general application relating to the enforcement of creditors' rights.

11. Payments. All payments by Guarantor under this Guaranty shall be made (a) in U.S. dollars to such account in the United States as City may from time to time designate to Guarantor and (b) free and clear of, and without deduction or withholding for or on account of any present or future income, stamp or other taxes or levies, imposts, duties, charges, fees, deductions or withholdings now or hereafter imposed, levied, collected, withheld or assessed by an governmental authority (collectively "**Taxes**"). If any Taxes are required to be withheld from any amounts payable by Guarantor under this Guaranty, the amounts payable shall be increased to the extent necessary to provide the full amount (after payment of all Taxes) owing by Guarantor under this Guaranty.

12. Subrogation. If Guarantor makes any payment to City as a part of the Guaranteed Obligation pursuant to this Guaranty, then Guarantor shall be subrogated to the rights of City against the Developer or others with respect to such paid Guaranteed Obligation, and City agrees to take such steps as Guarantor may reasonably request to implement such subrogation (provided that City shall not incur any liabilities in taking any such steps).

13. Governing Law. This Guaranty shall be construed in accordance with and governed by the 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.

14. Consents.

(a) Guarantor irrevocably and unconditionally submits to the exclusive jurisdiction of any California state or federal court sitting in the County Of Santa Clara, California, in the United States of America in any action or proceeding arising out of or relating to this Guaranty. Guarantor waives any objection to venue in the County of Santa Clara, California and any objection to any action or proceeding on the basis of forum non conveniens. Final judgment against Guarantor in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction.

(b) Guarantor acknowledges and agrees that City, by action or inaction, in its sole and absolute discretion and without notice to Guarantor, may refuse or fail to enforce all or any portion of City's rights, powers or remedies under this Guaranty or any related documents without releasing, discharging, impairing, or otherwise affecting any obligations of Guarantor under this Guaranty or the validity or enforceability of this Guaranty. Further, Guarantor acknowledges and agrees that City, in its sole and absolute discretion and without notice to Guarantor may additionally: (a) compromise, settle, extend the time for payment or performance of all or any part of the Guaranteed Obligation; and (b) deal in all respects with Guarantor as if this Guaranty were not in effect. It is the intent of the Guarantor that Guarantor shall remain liable for the payment and performance of the Guaranteed Obligation and all other obligations guaranteed hereby to the extent set forth herein, notwithstanding any act or thing that might otherwise operate as a legal or equitable discharge of a surety other than payment or performance of the applicable Guaranteed Obligation.

15. Severability. If any term, provision, covenant, or condition of this Guaranty is held by a court of competent jurisdiction to be invalid, void or unenforceable, it shall in no way affect, impair or invalidate any other provisions hereof, and the other provisions shall remain in full force and effect.

16. Attorneys' Fees and Costs. In the event of litigation between the Parties, or if a Party becomes involved in litigation because of the wrongful acts of the other Party, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit.

17. Notices. All notices, demands, consents, requests, approvals, disapprovals, designations or other communications (all of the foregoing hereinafter referred to as "notice") pursuant to this Guaranty shall be in writing and delivered in person, by commercial courier or by first-class certified mail, postage prepaid. Notices shall be deemed to have been properly given if (a) served personally, or (b) mailed, when deposited with the United States Postal Service within the boundaries of the continental United States for registered or certified delivery, return receipt requested, with postage prepaid, or (c) sent by receipted overnight courier, postage prepaid, in each case addressed to the applicable recipient as follows:

If to City:

City of Santa Clara
Attn: Director of Parks & Recreation
1500 Warburton Avenue
Santa Clara, California 95050
Or by facsimile at (408).260-9719

If to Guarantor:

Ensemble Investments LLC
c/o Ensemble Real Estate Investments
4722 North 24th Street, Ste. 400
Phoenix, Arizona 85016
Attention: Rob Gomez

Copy to:

Coblentz Patch Duffy & Bass LLP
1 Montgomery Street, Suite 3000
San Francisco, CA 94104
Attention: Frank Petrilli

Either Party may change its address for purposes of this Section by giving written notice to the other Party. All notices shall be deemed given and received, if served personally, when actually received and receipt is acknowledged in writing, upon delivery if delivered by commercial courier, or two (2) days after mailing if sent by United States Postal Service. If delivery of a notice is refused between the hours of 9:00 A.M. and 5:00 P.M. on a business day, or fails because of a changed address of which no notice was given, then such notice shall be deemed given and received, if mailed or sent by courier, at the time delivery was first attempted, as shown by postal or courier receipt.

18. Entire Agreement. This Guaranty shall be the final expression of the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. This Guaranty shall constitute the complete and exclusive statement of its terms. Other than the PIA, no

extrinsic evidence (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Guaranty.

19. Construction of Guaranty. This Guaranty and each of the provisions herein, has been reached as a result of negotiations between the Parties and their respective attorneys. This Guaranty shall not be deemed to have been prepared by, or drafted by, any particular Party or Parties hereto, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party or Parties shall not be employed in the interpretation of this Guaranty. The language in this Guaranty in all cases shall be construed as a whole and in accordance with its fair meaning.

20. 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; and, the Parties agree that the signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

[Remainder of Page Intentionally Left Blank; Signatures Follow]

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed as of the date shown above.

GUARANTOR:

Ensemble Investments, LLC,
an Arizona limited liability company, its Manager



Name: Michael Moskowitz
Title: Manager

ACCEPTED:

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

GLEN R. GOOGINS
City Attorney

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