RECORD WITHOUT FEE
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. *S200005555

PARKLAND AGREEMENT

BETWEEN

THE CITY OF SANTA CLARA,

a chartered California municipal corporation,

AND

SANTA CLARA PACIFIC ASSOCIATES

a California Limited Partnership

AND COVENANTS AND RESTRICTIONS FOR

PRIVATE RECREATIONAL AMENITIES

PREAMBLE

This PARKLAND AGREEMENT ("Agreement") is entered into between the CITY OF SANTA CLARA, a chartered California municipal corporation ("City") and Santa Clara Pacific Associates, a California 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 intends to construct a six-story mixed use development with 200 affordable residential apartment units (including 2 manager's units) ("Development"), subject to conditions, on certain real property located at 80 Saratoga Avenue (APN 294-38-016), in the City of Santa Clara, County of Santa Clara, State of California.

B. Under the provisions of Santa Clara City Code ("SCCC") Chapter 17.35 ("Park and Recreational Land 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 14, 2022, described in **Exhibit D** ("Conditions of Approval").

D. 80 Saratoga Ground Owner LP, a Delaware limited partnership ("Owner"), is the fee title owner of that certain real property located in the City and more particularly described on Exhibit A attached hereto (the "Development Project Site"), and Owner has leased the Project Site to Developer pursuant to a ground lease (the "Ground Lease") between Owner and Developer, a memorandum of which was recorded pursuant to that certain Memorandum of Ground Lease dated as of November 13, 2023 and recorded on November 13, 2023 in the Official Records of the Santa Clara County as Instrument No. 25558307.

E. In order for Developer to satisfy Developer's Parkland Dedication Requirement for the residential units identified in the Project approved at the Development Review Hearing on September 14, 2022, 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** ("Private Improvements") within the Development in conjunction with the construction of the Development in accordance with the requirements of the Conditions of Approval 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 Four Million, Six Hundred Thirty Nine Thousand Five Hundred One and NO/100 Dollars ($4,639,551).

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 F – Insurance Requirements

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

Effective Date. The term ("Term") of this Agreement shall commence on the Effective Date and shall continue for a period of five (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.

3. REPRESENTATIONS AND WARRANTY

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

A. The documents approved at the Development Review Hearing on September 14, 2022, as subsequently updated by Developer and approved by City, remain true and correct in all material respects.

B. Any and all documents provided to City pursuant to the terms of this Agreement, or in connection with the execution of this Agreement, are now in full force and effect and contain no material inaccuracies or misstatements of fact. Developer covenants that if Developer has knowledge that any of these documents contain material inaccuracies, material 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.

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 C** and **Exhibit D**. Developer shall complete the installation of the private recreational improvements described in **Exhibit C** and **Exhibit D** 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 which shall not be unreasonably withheld, conditioned or delayed, and in full compliance with this Agreement, and all applicable Parkland Fees are paid.

B. With respect to any credit for private recreational improvements which have not been completed pursuant to Section 5A 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 C** and **Exhibit D** 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 approval on September 14, 2022 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 in the Development Review Hearing on September 14, 2022.

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 PARK & 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 the date of final occupancy, or prior to the date the certificate of occupancy is issued, whichever occurs first.

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 towards 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 forms approved by City and from sureties authorized by the California Insurance Commissioner to transact the business of insurance.

ii. 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 recordation of the issuance of the 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. Subject to Force Majeure Events, Developer's failure to timely cure any defect in the Private Improvements.

ii. Subject to Force Majeure Events, Developer's failure to perform substantial construction work for a period of thirty (30) consecutive 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 sixty (60) days.

iv. Developer assigns this Agreement in violation of Section 9.

v. Developer fails to perform or satisfy any other material term, condition, or obligation under this Agreement.

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.

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 thirty (30) 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.

E. The foregoing notwithstanding, Developer's investor limited partner and special limited partner under Developer's amended and restated agreement of limited partnership shall have the right, but not the obligation, to cure any default under this Agreement on behalf of Developer and City shall accept such cure on the same basis as if it was made by Developer.

9. ASSIGNMENT

City and Developer bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without prior written notice to the City. 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.

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 Developer, against City (either alone, or jointly with Developer), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

12. INSURANCE REQUIREMENTS

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

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:

Santa Clara Pacific Associates, A California Limited Partnership
c/o Pacific West Communities
430 East State St., Ste 100, Eagle, ID 83616
calebr@tpchousing.com
Copies to:

McReynolds & McCormack, PLLC
430 E. State Street, Ste.140
Eagle, ID 83616
Attention: Sarah McCormack

With a copies to Developer's investment limited partner and special limited partner at:

Bank of America, N.A.
100 Federal Street, 4th Floor
MA5-100-04-11
Boston, MA 02110
Attention: Asset Management

And

Banc of America CDC Special Holding Company, Inc.
100 Federal Street, 4th Floor
MA5-100-04-11
Boston, MA 02110
Attention: Asset Management

And

Buchalter, a Professional Corporation
1000 Wilshire Blvd., Suite 1500
Los Angeles, California, 90017-2457
Attn: Michael A. Williamson, Esq.

And with a copies to Developer's ground lessor at:

80 Saratoga Ground Owner LP
c/o Safehold Inc.
1114 Avenue of the Americas, 39th Floor
New York, New York 10036
Attention: Chief Legal Officer
Reference: 80 Saratoga
Telephone: 212-930-9400
Email: SafeNotices@safeholdinc.com

And

Safehold Inc.
1114 Avenue of the Americas, 39th Floor
New York, New York 10036
Attention: Asset Management
Reference: 80 Saratoga

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. For the avoidance of doubt, any notice sent by email shall also be sent by the next business day via reliable overnight courier service.

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, 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 (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. Reserved.

   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 with respect to this Agreement.

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 written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Developer's address indicated for receipt of notices in this Agreement.

C. Developer shall provide copies of such records, which may be electronic, if City has a reasonable belief that the documents will be lost due to dissolution, disbarment, or termination of developer's business.

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.

E. Developer has read each and every part of this Agreement, including without limitation, its exhibits, and Developer freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such Party may have drafted this Agreement or any of its provisions.

F. Whenever in this Agreement words of obligation or duty are used, such words shall have the force and effect of covenants. Any obligation imposed by either Party shall

include the imposition on such Party of the obligation to pay all costs and expenses necessary to perform such obligation.

G. This Agreement is entered into pursuant to 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.

H. Amendment. City Manager, or designee, is authorized on behalf of City to execute any amendments pursuant to Section 3C of this Agreement.

I. 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 a conflict arises.

J. Fair Employment. 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.

K. 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.

L. 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.

M. 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 PAGE 15

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

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

"CITY"

SANTA CLARA PACIFIC ASSOCIATES,
A CALIFORNIA LIMITED PARTNERSHIP

By: TPC HOLDINGS IX, LLC,
an Idaho limited liability company

Its: Co-Administrative General Partner
By: Pacific West Communities, Inc.,
an Idaho corporation
Its: Manager

By: _____
Name: Caleb Roope
Its: President and CEO

By: CENTRAL VALLEY COALITION FOR AFFORDABLE HOUSING,
a California Nonprofit Public Benefit Corporation
Its: Managing General Partner

By: _____
Name: Christina Alley
Its: Chief Executive Officer

"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.

STATE OF CALIFORNIA)
) SS
COUNTY OF SANTA CLARA)

On _____ before me _____,
(Name, Title of officer – e.g. Jane Doe, 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.

_____ (Seal)
(Signature of Notary)

GENERAL ACKNOWLEDGEMENT

STATE OF _____)
) ss
COUNTY OF _____)

On this ____ day of _____, in the year of 2024, before me, _____, a notary public appeared Caleb Roope, known or identified to me to be the President and CEO of Pacific West Communities, Inc., an Idaho corporation, the Manager of TPC Holdings IX, LLC, an Idaho limited liability company, the Co-Administrative General Partner of SANTA CLARA PACIFIC ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP, a California limited partnership, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

[SEAL]

_____
Notary Public
My commission expires: _____

Signatures continue on the following page.

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 _____

County of _____

On _____ before me, _____, Notary Public, personally
DATE NAME OF NOTARY
appeared _____
NAME(S) OF SIGNER(S)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledge 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 OF NOTARY

JOINDER AND CONSENT OF GROUND LESSOR

The undersigned, as fee owner of the Property, joins in the execution of this Agreement for the following purpose: The undersigned hereby acknowledges and agrees, for itself and its successors and assigns, (i) that notwithstanding anything to the contrary in the Ground Lease, the undersigned has approved this Agreement and the execution of this Agreement will not constitute a default by Owner under the Ground Lease, (ii) that this Agreement may be recorded against the fee interest of the Property, and (iii) that upon recordation the undersigned's Property shall be bound by this Agreement and in the event that the Ground Lease is terminated and not replaced, Ground Lessor or its successors and assigns shall assume all obligations and liabilities of "Owner" under this Agreement.

80 SARATOGA GROUND OWNER LP,
a Delaware limited partnership

By: _____
Name: _____
Title: _____

Signatures continue on the following page.

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 _____

County of _____

On _____ before me, _____, Notary Public, personally
DATE NAME OF NOTARY
appeared _____
NAME(S) OF SIGNER(S)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledge 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

_____

EXHIBIT A

DEVELOPMENT PROJECT SITE

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:

That certain parcel shown and designated as "1.980 acres" on that certain Parcel Map filed in the Office of the Recorder of the County of Santa Clara, State of California in Book 333 of Parcel Maps at Page 32.

APN: 294-38-016

EXHIBIT B

PRIVATE RECREATIONAL AMENITY IMPROVEMENTS PLANS

See attached.

CONCEPT GRAPHICS SCHEDULE

- SPORT COURT BASKETBALL — *TAKEOFF: 2,738 SF*
- EXERCISE STATIONS — *TAKEOFF: 386 SF*
- PERIMETER GREEN SPACE — *TAKEOFF: 7,640 SF*
- ACTIVE PLAY, 2-5 YEARS OLD — *TAKEOFF: 2,104 SF*
- ACTIVE PLAY, 5-12 YEARS OLD — *TAKEOFF: 2,388 SF*
- PICNIC AREA — *TAKEOFF: 909 SF*
- OFF-STREET PATH & BENCHES — *TAKEOFF: 3,703 SF*
- COMMUNITY RECREATION ROOMS, AT FRONT — *TAKEOFF: 4,313 SF*
- SARATOGA FRONT PLAZA — *TAKEOFF: 1,939 SF*
- OUTDOOR SOCIAL SPACE COURTYARD (LESS PEDESTRIAN ACCESS) — *TAKEOFF: 2,034 SF*
- ACTIVE PLAY WITH CORN HOLE, BADMINTON, GAME TABLES — *TAKEOFF: 2,311 SF*
- INTERIOR AMENITY SPACE, SECOND FLOOR — *TAKEOFF: 2,404 SF*
- COMMUNITY RECREATION ROOMS, AT CORNER — *TAKEOFF: 1,569 SF*
- CORNER PLAZA — *TAKEOFF: 744 SF*

80 SARATOGA AVE: PRIVATE OPEN SPACE*

PER ORDINANCE 17.35.070, SECTION (F), 1-8

THE COMBINED AREA OF ACTIVE RECREATIONAL USES FOR A FACILITY TO QUALIFY IS A MINIMUM OF THREE-QUARTERS ACRE. (32,670 SQ. FT.) REQUIRED OPEN SPACE

TOTAL ACTIVE RECREATIONAL USE AREAS = 35,182 SF (0.81 AC.)
*ACCOUNTS FOR PROPERTY LINE SETBACKS

PRIVATE OPEN SPACE

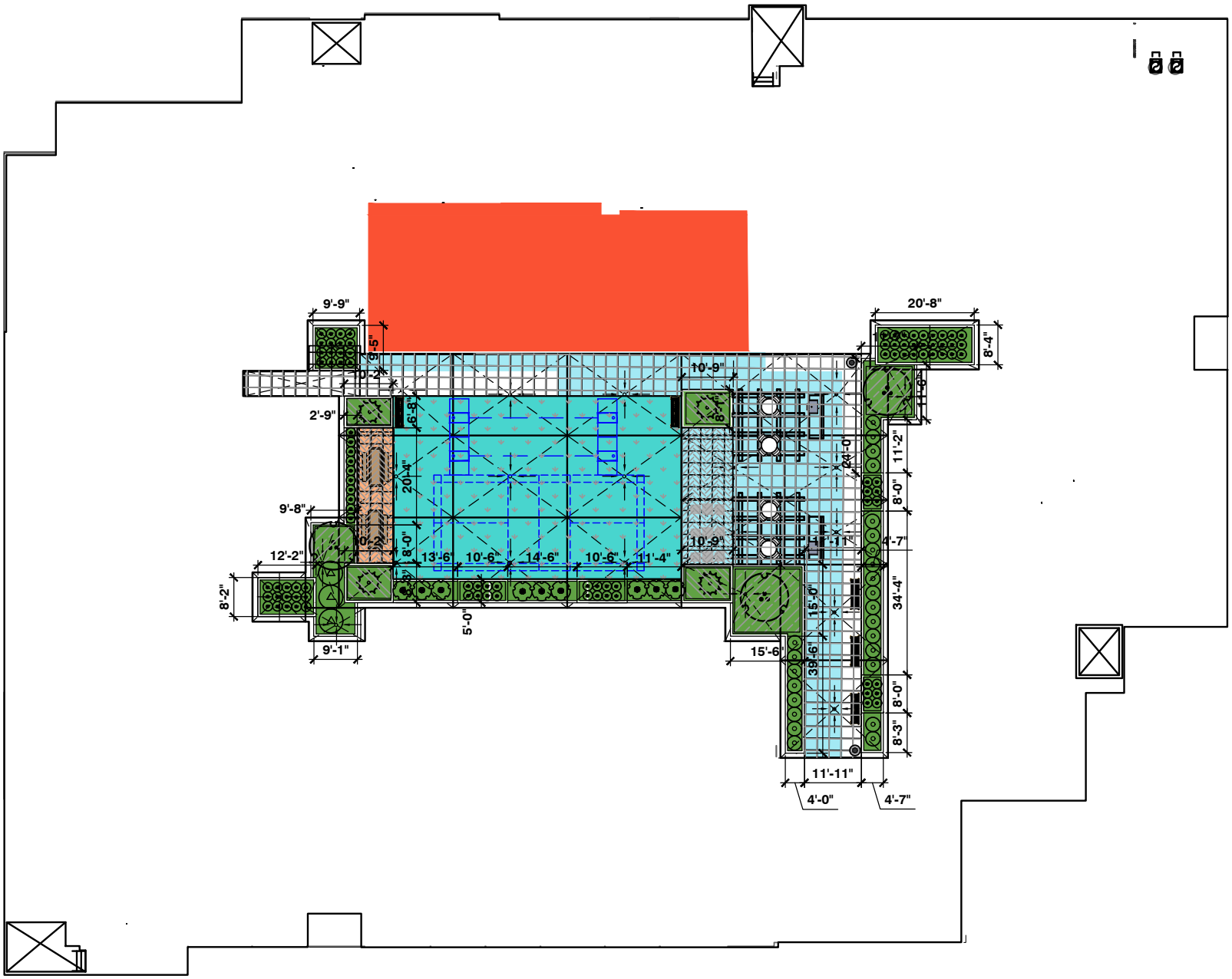
PER ORDINANCE 17.35.070 (SECTION (F) 1-8

KEY NOTE	TYPE	AREA IN SF	PROVISION
A	SPORT COURT	2,738	F6
B	EXERCISE STATIONS	386	F6
C	PERIMETER GREEN SPACE	7,640	F3
D	ACTIVE PLAY 2-5 YRS OLD	2,104	F2
E	ACTIVE PLAY, 5-12 YRS OLD	2,388	F2
F	PICNIC AREAS AT THE PLAYGROUND & COURTYARD	909	F5
G	OFF-STREET PATH & BENCHES	3,703	F3
H	COMMUNITY RECREATION ROOMS, AT CORNER	1,569	F8
H	COMMUNITY RECREATION ROOMS, AT FRONT	4,313	F8
I	SARATOGA FRONT PLAZA	1,939	F3
J	CORNER PLAZA	744	F3
K	OUTDOOR SOCIAL SPACE COURTYARD (LESS PEDESTRIAN ACCESS)	2,034	F3, F5
L	ACTIVE PLAY WITH CORN HOLE, BADMINTON, GAME TABLES	2,311	F3
M	INTERIOR AMENITY SPACE, SECOND FLOOR	2,404	F8
	TOTAL	35,182	
	ACRE	43,560	
	TOTAL % OF ACRE	81%	

GROUND LEVEL

REFERENCE NOTES SCHEDULE

SYMBOL	DESCRIPTION
1	PICNIC TABLE – 6` RECTANGLE `ULTRA SITE #208' BLACK COLOR. ONE TABLE PER GROUP TO BE ADA ACCESSIBLE.
2	PICNIC SPAN-LEG TABLE – `ULTRA SITE #3696' 46" ROUND ADA ROUND` BLACK COLOR. SURFACE MOUNT ON PODIUM, INGROUND AT GRADE.
3	BENCH – 6` WITH BACK `ULTRA SITE- HAMILTON COLLECTION' BLACK COLOR, WITH HORIZONTAL SLATS, NO ARMS. SURFACE MOUNT MODEL, SECURE TO THE GROUND. COMPLIES WITH THE CA CBC CHAPTER 11B (ADA) DIMENSIONS
4	TRASH RECEPTACLE – `ULTRA SITE' #32 BLACK COLOR, DIAMOND PATTERN
5	PEDESTAL PAVER SYSTEM. 24" X 24" 'MUTUAL MATERIALS VANCOUVER BAY SERIES COLOR 'LATTE', OVER 'AWS PEDESTAL STSTEM', REFER TO THE ARCH DWGS.
6	PICNIC SHADE STRUCTURE -SUBMIT SHOP DRAWINGS FOR APPROVAL
7	ELECTRIC BABRBEQUE WITH PEDESTAL
8	4` HIGH TUBULAR STEEL FENCE WITH SELF CLOSING GATES. BLACK. SEE DETAIL
9	42" HIGH TUBULAR STEEL FENCE SECURED TO THE TOP OF THE STORM WATER TREATMENT PLANTER CONCRETE STEM WALL, REFER TO THE CIVIL DWGS FOR PLANTER DETAILS
10	6' HIGH TUBULAR STEEL FENCE WITH EVA ACCESSIBLE GATES. REFER TO THE ADDITIONAL INFORMATION INCLUDED ON THIS SHEET.
11	5-12 YR OLD USER PLAYGROUND EQUIPMENT. DEFERRED SUBMITTAL FOR OWNER APPROVAL
12	`KOMPAN` (OR EQUAL) OUTDOOR EXERCISE EQUIPMENT LOCATION. COMPONENT SELECTION TO BE A DEFERRED SUBMITTAL FOR OWNER APPROVAL
13	'KOMPAN' #KSW92010 SWING, 8 FT H, 1 SHELL SEAT, ANTI-WRAP. AGE GROUP 2 – 12, PLAY CAPACITY (USERS) 8
14	PRE-K $ 2-5 YR OLD USER PLAYGROUND EQUIPMENT. DEFERRED SUBMITTAL FOR OWNER APPROVAL
15	'SYNLAWN' ARTIFICIAL TURF SURFACING OVER FOAM FALL ZONE MATERIAL
16	DOG WASTE SYSTEM DISPENSER – `ULINE #H-2891` WITH DOG WASTE SYSTEM SIGN #H-5942
17	'TOURNESOL' RECTANGULAR PLANTER #WCR-962424 GFRC CLAY COLOR, ACID ETCH SHARK TEXTURE, WITH IRRIGATION #CWM-R2014-3K. (WEIGHT 575 LB, VOLUME 27.0 CF)
18	'TOURNESOL' SQUARE PLANTER #WCR-4800F GFRC 48" X 48" CLAY COLOR, ACID ETCH SHARK TEXTURE, WITH IRRIGATION #CWM-R2920-2K
19	PERVIOUS PAVERS FOR SELF-RETAINING STORM WATER MANAGEMENT: 'BASALITE PERMEABLE 84MM PLANK, TORINO COLOR BLEND', PLACED IN A RUNNING BOND PATTERN.
20	+42" HIGH STORM WATER FLOW-THROUGH PLANTER, REFER TO THE CIVIL ENG. DWGS. REFER TO THE DETAIL
21	+42" HIGH CMU PLANTER, SEE DETAIL
22	+34" HIGH CMU PLANTER. SEE DETAIL
23	CORN HOLE PLAY DIMENSIONS
24	BADMINTON COURT DIMENSIONS
25	'DEPORTES URBANOS' 2-PERSON GAME TABLE #MACCB2RZ. SURFACE MOUNT
26	HALF COURT BASKETBALL WITH BASKETBALL STANDARD AND COURT STRIPING AS SHOWN
27	'U' BICYCLE RACK – `ULINE 1-LOOP #H-2892BL` 3 BIKE CAPACITY, BLACK COLOR.
28	EXISTING TREE TO REMAIN. REFER TO THE CIVIL DEMOLITION PLAN FOR TREE PROTECTION MEASURES.
29	EXISTING FENCE OR WALL TO REMAIN
30	'CLEANLINE' 4" BLACK COLOR ALUMINUM EDGING. STAKE AT EVERY PREFORMED LOOP (MANUFACTURER DOES NOT INCLUDE ENOUGH STAKES)



PODIUM LEVEL

EXHIBIT C

PARKLAND REQUIREMENTS, FEES AND CREDIT SUMMARY

Developer will construct 200 affordable apartment units generating an estimated 480 new residents (200 multi-family units at 2.4 persons/unit density is 480 persons). Based on the City's Mitigation Fee Act standard of 2.6 acres of public neighborhood and community parkland per 1,000 residents, the Project is required to dedicate 1.0608 acres of public parkland (includes 15% credit for 100% affordable project) and/or pay an equivalent fee due in lieu of the total parkland dedication in the amount of $4,639,551. In lieu fees are published in the Municipal Fee Schedule.

Developer has proposed to meet the required parkland dedication of 1.0608-acres through the dedication of eligible private improvements. According to City code 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 private recreational amenities devoted to Active Recreation Uses provided the development meets the requirements contained in Santa Clara City Code 17.35. This project includes 0.8077-acres of private amenity improvements. The credit is therefore approximately 0.4038 acres, or $2,067,629 in value. Developer will construct these private improvements. The balance of fees due in lieu of parkland dedication is therefore $4,639,551.

In summary, the calculations above are:

$7,890,800	Fee In Lieu of Parkland Dedication
-1,183,620	15% Credit Applied for 100% Affordable Housing Projects
$6,707,180	Subtotal
-2,067,629	Credit for Private Recreational Amenity Improvements
$4,639,551	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	2.4
Multi Family Project Units	200
Total New Residents	480
Parkland Dedication Required (acres): R/1,000 x 2.6	1.0608 (includes 15% credit for 100% affordable project)
Equivalent Fee Due in- Lieu of Parkland Dedication	$6,707,180 (incl. 15% credit for 100% affordable project)

Table 2. Credit for proposed Private On-site Park & Rec "Active Rec Uses"

Private Recreational Amenity	**Square Feet**	**Acres**
Sport Court	2738	0.0629
Exercise Stations	386	0.0089
Perimeter Grass	7640	0.1754
Playground for ages 3-5 years	2104	0.0483
Playground for ages 6-12 years	2388	0.0548
Picnic areas at the playground w various size multi-use tables	909	0.0209
Plaza	744	0.0171
Off-street path and benches (less 4' building perimeter)	3703	0.0850
Recreation Room - at corner	1569	0.0360
Recreation Room - front	4313	0.0990
Outdoor space with 4-foot high steel fence for front Recreation	1939	0.0445
Outdoor Courtyard Seating Area	2034	0.0467
Outdoor Courtyard Game Area	2311	0.0531
Fitness Room & Restrooms	2404	0.0552
Total	35182	0.8077
Credit 50% for private Active Recreation & Equivalent Value:		0.4038 / $2,067,629
Balance of Fees Due in Lieu of Parkland Dedication:		**$4,639,551**

EXHIBIT D

PARKS & RECREATION DEPARTMENT CONDITIONS OF APPROVAL

*Please note the Conditions of Approval below represent those required by the Park and Recreation Department. Other Conditions of Approval by other City departments still apply.

PR1. This memo assumes the Project is not a subdivision and the Mitigation Fee Act (MFA) provisions will apply. The project will generate an estimated 480 residents (2.4 persons/household x 200 units). Housing developments for which 100% of the units are affordable to low and/or moderate-income households are eligible for an additional 15% credit toward the parkland dedication requirement or fees in lieu thereof. Based on the MFA standard of 2.6 acres/1000 residents, using the FY2021-22 Municipal Fee Schedule, and applying a 15% credit, the amount of public parkland required for this Project to mitigate the impact of the new resident demand is approximately 1.0608-acres. The equivalent fee due in lieu of parkland dedication applying a 15% credit and deducting 50% of eligible private amenity space dedicated to active recreation uses is therefore $4,639,551. Final calculations will depend upon the actual number and type of units and the mix of parkland dedicated and remaining fee due, at the discretion of the City.

PR2. If the project meets the requirements of Government Code section 66007(b)(2)(A), and is subject to the Mitigation Fee Act, park in lieu fees are due and payable to the City prior to the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. Otherwise, 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.

To qualify under 66007(b)(2)(A), there are two requirements:

1. The project must be developed by a nonprofit housing developer.

2. At least 49% of the units must be reserved for occupancy by lower-income households at an affordable rent. Lower income in this context means ≤ 80% AMI, so moderate-income developments would not qualify.

NOTE: Government Code section 66007 is a provision in the Mitigation Fee Act, so it only applies to parkland dedication in lieu fees that do not involve a subdivision. This clause does not apply to Quimby fees.

PR3. Application for Credit. This project includes 33,472sf of private on-site active recreational amenities, after deducting a 4-foot set-back for ingress and egress, and will receive credit at 50%, or 16,736sf. See Table 2. The area for the bike storage located in the 2,213sf ground level community space is not a recreational amenity and should be deducted from calculations. Notify this department if calculations change.

PR4. Update all pages of the plan set to include all of the proper labels for the private amenity spaces (i.e. Sheet A1.2 label shows “commercial space” in the location of a proposed private amenity space. Include the dimensions of the amenity space, show the 4-foot setback from the building for exterior amenity spaces on the plan set, provide the amenity area calculations in square feet & in acres, show the amenity space name and location in table format on the plan set.

PR5. Additional information/discussion is needed about the planned programming for the two community recreation rooms.

PR6. Developer to enter into a Covenant with the City to construct, and to maintain, in perpetuity at sole cost of developer and/or HOA, the private amenity space for which credit is being applied against the project's parkland dedication requirement and balance of in lieu fees due. This Covenant will be recorded with the County.

PR7. The children's play area should have separate areas serving ages 2-5 and 6-12 that include the six + one elements of play (climbing, balancing, spinning, brachiating, swinging, sliding, and running/free play/imagination) – see sample table below (template was emailed) that will need to be submitted to this Department.

Park Playground

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

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

This is the completed matrix received from the developer. Developer to add a swinging element for ages 2-5 (preferably an expression swing) and ages 6-12:

Park Playground

Elements of Play	Ages 2-5	Level of Play	* Proposed Capacity	Ages 6-12	Level of Play	* Proposed Capacity	Total Capacity
Balancing		B= 4 I= 1 A= 0	8		B= 1 I= 1 A= 2	13	21
Sliding		B= 1 I= 1 A= 0	4		B= 1 I= 1 A= 1	6	10
Brachiating		B= 0 I= 1 A= 0	4		B= 0 I= 0 A= 1	5	9
Spinning		B= 2 I= 0 A= 0	3		B= 0 I= 2 A= 0	3	6
Climbing		B= 1 I= 1 A= 1	9		B= 1 I= 2 A= 1	15	24
Swinging		B= 0 I= 0 A= 0	0		B= 0 I= 1 A= 0	1	1
Running/Free Play		N/A			N/A		
Total:			27 60MAX			43 65-75MAX	70 120-135 MAX
Inclusive Play Elements			6			7	13

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

PR8. Dwelling Unit Tax. A dwelling unit tax (DUT) is also due based on the number of units and additional bedrooms per City Code Chapter 3.15. The Project mix includes 71 studio units, 21 one-bedroom units, 54 two-bedroom units and 54 three-bedroom units for a total DUT of $3,810.

PR9. Calculations may change if the number of units change, it any areas do not conform to the Ordinance and City Code Chapter 17.35, and/or if the fee schedule for new residential development fees due in lieu of parkland dedication changes before this Project is deemed complete by Planning.

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 at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the 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, 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.

   b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective

date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit C, 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 or Developer 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.

3. The City reserves the right to withhold payments from the Developer in the event of material noncompliance with the insurance requirements set forth in this Agreement.

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, 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 the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.
City of Santa Clara Parks & Recreation Department
P.O. Box 100085 – S2 or 1 Ebix Way
Duluth, GA 30096 John's Creek, GA 30097
Telephone number: 951-766-2280
Fax number: 770-325-0409
Email address: ctsantaclara@ebix.com

H. QUALIFYING INSURERS

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