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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. *S20000_____

PARKLAND DEDICATION AGREEMENT

BETWEEN

THE CITY OF SANTA CLARA,

a chartered California municipal corporation,

AND

CRE-GS FREEDOM CIRCLE PHASE I OWNER, LLC

AND COVENANTS AND RESTRICTIONS FOR

PRIVATE RECREATIONAL AMENITIES

PREAMBLE

This PARKLAND DEDICATION AGREEMENT ("Agreement") is entered into between the CITY OF SANTA CLARA, a chartered California municipal corporation ("City") and CRE-GS FREEDOM CIRCLE PHASE I OWNER, LLC, a Delaware limited liability company ("Developer"). City and Developer may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

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

- A. Developer desires to develop a multi-family rental residential project (“Development”) on certain real property located at 3925 Freedom Circle (APN: xxx-xx-xxx) in the City of Santa Clara, County of Santa Clara, State of California. Developer is the fee title owner of that certain real property located in the City and more particularly described in **Exhibit A** attached hereto (the “Development Project Site”).
- B. Developer has obtained environmental clearance through the use of the Environmental Impact Report for the Freedom Circle Focus Area and Greystar General Plan Amendment in accordance with the California Environmental Quality Act (CEQA). The EIR and Notice of Availability were circulated for a 45-day period from November 5, 2021 to December 20, 2021 in accordance with CEQA requirements. The Freedom Circle Focus Area/Greystar General Plan Amendment EIR, case file PLN2017-12516, studied the subject project at a project level, and incorporates project-specific conditions into the Mitigation Monitoring and Reporting Program (MMRP). The Focus Area and General Plan Amendment were approved on June 7, 2022 (formerly referred to for file purposes only as 3905 Freedom Circle) (the “Development”), subject to certain Conditions of Approval (“Development Entitlements”).
- C. The Development Entitlements contemplate the construction of the overall Development in three phases, which could be built in any order in response to market conditions, referred to as Building B (Phase 1), Building A (Phase 2) and Building C (Phase 3) and as depicted on **Exhibit A**.
- D. 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 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”).
- E. As required by the Entitlements Condition of Approval No. 7, Developer is required to build a park within the Development Project Site on “Parcel 4” as depicted on **Exhibit A** and legally described on **Exhibit C** (the “Park Site”).
- F. In order for Developer to satisfy Developer’s Parkland Dedication Requirement for the residential units identified in the Development approved by *(insert the name of the body and the date the body approved the project)*, Developer and City desire to enter into this Agreement pursuant to which Developer shall satisfy Project’s Parkland Dedication Requirement as follows and as further described in this Agreement:
 - i. Design and construct park improvements on the approximately 2.014-acre Park Site in accordance with the Public Park Improvement Site Plan attached as **Exhibit C** (“Park Improvements”) including 20 off-street parking stalls and public restrooms to be located within Building B;

- ii. Dedicate an approximately 2.014-acre neighborhood park (real property) to the City to use for parkland purposes as described in Exhibit B and C attached hereto in accordance with the requirements of the City Council approved Master Plan Schematic Design upon completion of the Park Improvements;
 - iii. Install certain private recreational amenity improvements on approximately 1.922 acres within the Development in conjunction with the construction of the Development in accordance with the requirements of the Conditions of Approval and the Private Recreation Amenities Site Plan set forth in **Exhibit D** (“Private Recreational Amenity Improvements”) 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;
 - iv. Pay City Mitigation Fee Act (MFA) fees due in lieu of parkland dedication in the amount of Twenty-one Million Three Hundred Fifty-Six Thousand, Five Hundred Eighty-Two Dollars shown on **Exhibit F**; and
 - v. Enter into a separate Park Maintenance Agreement with the City for maintenance services for the neighborhood park.
- G. The official name of the Park will be established by City after the date of this Agreement in conformance with City policy.
- H. City’s Director of Parks & Recreation (“Director”) is charged with the administration of this Agreement. The Director or designee is responsible for the review, inspection, approval, and acceptance on behalf of the City of the Park Site and accompanying Park Improvements.

AGREEMENT

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

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Developer shall consist of 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 – Legal Description of Park Site

Exhibit C – Public Park and Improvements Site Plan Design and Phasing Plan

Exhibit D – Private Recreational Amenity Site Plan Design

Exhibit E – Design and Construction Requirements

Exhibit F – Parkland Requirements, Fees and Credit Summary

Exhibit G – Parks and Recreation Department Conditions of Approval

Exhibit H – Bond Forms

Exhibit I – Insurance Requirements
Exhibit J – Sample Certificate of Acceptance

This Agreement, including the Exhibits set forth above, contains all the agreements, representations, and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. The Parties acknowledge their mutual understanding that the Terms and Conditions and the Exhibits are consistent with each other and the Parties agree that the Terms and Conditions and the Exhibits shall be read and interpreted in a manner to maintain the greatest consistency between them and to accomplish, to the greatest practical and legal extent feasible, the mutual intent and goals of the Parties as set forth in this Agreement. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control. 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 “Effective Date” is the date that the final signatory executes this Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date. The term (“Term”) of this Agreement shall commence on the Effective Date set forth above.

Expiration. The Term shall expire upon City acceptance of the Park Improvements, which acceptance shall be evidenced by the issuance of a Certificate of Acceptance by the City Manager, as outlined in **Exhibit J** to this Agreement, the City’s acceptance of the Grant Deed for the park pursuant to the applicable provisions of Section 2 of **Exhibit E**, and the recordation of the Grant Deed, unless earlier terminated upon mutual agreement of the Parties. Following expiration of the Term or any extension, or if sooner terminated, this Agreement shall have no force and effect, subject, however, to any express post-termination obligation set forth herein in Sections 6.c, 12 and 18.

3. REPRESENTATIONS AND WARRANTY

Developer expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. Developer agrees to replace or correct any incomplete, inaccurate, or defective materials and services at no cost to City. If Developer fails to correct or replace materials and services within a reasonable period of time after delivery of the City’s notice, City may make corrections or replace materials and services and charge Developer for the cost incurred by City.

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

- A. The statements, certificates, and documents for this Development as approved by the (*insert name of the approving body) remain true and correct.

- A. Any and all documents provided to City pursuant to the terms of this Agreement, or in connection with the execution of this Agreement, are now in full force and effect and contain no material inaccuracies or misstatements of fact. Developer covenants that at such time City notifies Developer of City's intention to accept the Park Improvements, if any of these documents contain material inaccuracies, misstatements or have become obsolete, Developer shall notify City and provide City with the information required to render the documents accurate, complete and current.
- B. Developer has the legal ability to enter into this Agreement and Developer's signatories to this Agreement is (are) duly authorized to sign this Agreement on its behalf.

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

- A. Developer affirms its irrevocable offer to dedicate to City an approximately 2.014-acre Park Site legally described on **Exhibit B**. Developer shall be responsible for all recording and escrow fees, including the cost of an ALTA Standard Title Insurance Policy, as well as other customary and reasonable closing costs incurred in the conveyance of the Park Site to City, in accordance with the requirements and specifications set forth in this Agreement.
- B. Developer shall be responsible for the development of plans and specifications for, and the construction of the Park Improvements on the Park Site consistent with the Public Park Improvements Site and Phasing Plan as approved by City and attached as **Exhibit C**. Developer shall develop plans and specifications for the Park Improvements ("Project Specifications") for the review and approval of the Director, or his or her designee, as more particularly described in the attached **Exhibit E**. Subject to **Exhibit E** of this Agreement, Developer shall construct the Park Improvements in conformance with the latest version of Project Specifications and applicable standards and specifications approved by City.
- C. The Parties acknowledge that the exact size, dimensions, and other particular characteristics of the Park Improvements may not have been determined as of the Effective Date of this Agreement. The Parties, however, agree that the Park Improvements shall consist of the following specific Park Improvements: one (1) one-half (½) acre turf grass play field, approximately 3,513 sq ft landscaped & furnished park-like quiet seating area, approx. 7,770 sq ft, children's play area for ages 2-5 (~3,824 sq ft) and ages 6-12 (~3,946 sq ft), one (1) approx. 7,088 sq ft multi-use sports court (basketball & pickle ball), one (1) approx. 2,400 sq ft picnic area with shade structure & picnic table sets and BBQ grill, two (2) ADA accessible drinking fountains, four (4) dog waste stations, seven (7) trash receptacles, thirteen (13) bike racks, various wood benches, eighteen (18) moveable chairs, one approx. 1,170 sq ft bocce ball court, one (1) approx. 3,705 sq ft off-leash dog area (~1,175 sq ft small dog area & ~2,530 sq ft large dog area), two (2) chess game table sets,

one (1) trash enclosure, lighting and accessible walkways, all as depicted and phased in **Exhibit C**.

- D. Developer shall be responsible for all costs incurred for planning, design, construction, and supervision of the construction of all Park Improvements, including without limitation, City's plan review, inspections, title insurance, and title transfer. Developer shall cause all labor and material incorporated in the Park Improvements to be furnished in accordance with the requirements and specifications set forth in this Agreement.
- E. Developer shall follow the City's Planning Public Outreach Policy.
- F. The Park Improvements to be installed on the Park Site in accordance with Developer's Phasing Plan depicted on **Exhibit C**, as follows:
 - i. Park Phase 1 shall be fully completed per approved plans and specifications with the first to be completed of either Building B or Building C, and offered only and exclusively to the residents of the Development Site as a temporary private recreational amenity and shall be subject to the same in lieu fee credit for private recreational improvements as described in Section 5 below and shown on **Exhibit F**.
 - ii. Park Phase 2, and any necessary repair or maintenance to Park Phase 1, shall be completed per approved plans and specifications, with the last to be completed of both Building B and Building C and, upon completion, shall be offered, along with the Park Phase 1, to the City for acceptance as a public park. Upon completion, inspection, and acceptance, the City shall provide the remaining 50% in lieu fee credit for the full Park Improvements as shown on **Exhibit F**.
 - iii. For the purposes of clarity, Building A, which is not adjacent to the Park Site, shall have no obligation to build any portion of the Park Site, and shall instead pay in lieu fees, subject to any applicable credit for private recreational amenities within Building A, as shown on **Exhibit F**.
 - iv. The Park Improvements shall be fully constructed per plans and specifications (both Phase 1 and Phase 2) on or before the date of the issuance of a certificate of residential occupancy, including any temporary certificate of residential occupancy, for both Building B and Building C, as depicted on **Exhibit A**, which are both directly adjacent to the Park Site.
 - v. The Park Improvements shall be deemed completed and accepted by City upon recordation of the Certificate of Acceptance by City, or designee, as outlined in **Exhibit J** of this Agreement. The Director or designee may, at the Director's discretion, grant extensions of the completion requirement specified in this subsection.

5. 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 final certificate of occupancy for each phase of the Development, as applicable. The final certificate of occupancy for each phase of the Development shall not be issued, unless and until, all private recreational improvements have been constructed within such phase, as applicable, accepted at City's reasonable discretion to determine full compliance with this Agreement.
- B. With respect to any credit for private recreational improvements which have not been completed pursuant to Section 5A of this Agreement, the credits for any such uncompleted improvements shall be disallowed and Developer shall be required to pay the amount of the credit received hereunder.
- C. Developer acknowledges and agrees that use of the private recreational improvements shall be restricted for recreation purposes by this recorded covenant which runs with the land in favor of the future owners/renters of the residential units located within the Development and which expressly cannot be defeated or eliminated without the consent and approval of the City and payment of in-lieu fees in effect at the time.
- D. 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.

6. COMPLIANCE WITH THE PARKLAND DEDICATION ORDINANCE

- A. City acknowledges and agrees that Developer's performance of this Agreement shall satisfy all of Developer's obligations under the City's Park and Recreational Land Ordinance for the residential units identified in Exhibit F. 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 Exhibit F.
- B. The Parties acknowledge and agree that the calculation of the Developer's Parkland Dedication Requirement is accurately set forth in **Exhibit F**, including the parkland dedicated, the calculation of the parkland in-lieu fees ("Parkland Fees"), the credits for the Private Recreational Improvements, including the phasing of credits ("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 F**.

- C. In the event there is an increase in the number of residential units to be built, or change in the dwelling unit type, Developer agrees to immediately notify the Director and to provide additional parkland and/or pay such additional Park In-Lieu Fees as required by the Park and Recreational Land Ordinance. Where Developer makes such a notification to the Director, and additional Park In-Lieu Fees are owed, the fee in effect at the time of the notification shall apply to the additional residential units or units affected by change in unit type.
- D. Developer acknowledges that the costs and expenses for the design, development, construction, and supervision related to the Park Improvements may exceed the fees due in-lieu of Parkland dedication that the Developer would be obligated to pay under the Park and Recreational Land Dedication Ordinance. Because of the benefit to Development that will result from the Park Improvements, Developer agrees to design, develop, and construct the Park Improvements on the Park Site and dedicate the Park Site in fee simple as specified in this Agreement, without any obligation on the part of City.

7. REVIEW FOR FEES AND CHARGES RELATED TO PARK IMPROVEMENTS

- A. Developer shall pay to City a fee for review and approval of the Project Specifications for the Park Improvements and the inspection of the Park 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 City fees when submitting park construction documents to the City through the City's online permitting portal for review and approval.

8. BONDS AND SECURITY

Developer shall furnish to City the following security prior to the issuance of a permit to allow for construction of Phase 1 of the Park Improvements under this Agreement and for the purposes, in the amounts, and under the conditions that follow:

- A. Type and Amounts.
 - i. Performance Security. To assure the Developer's faithful performance of this Agreement to complete the Park Improvements in an amount of One Hundred Percent (100%) of the estimated cost of the Park Improvements (hereinafter "Performance Security"); and

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

B. Conditions.

- i. Developer shall provide the required security on forms approved by City and from sureties authorized by the California Insurance Commissioner to transact the business of insurance. Any bonds furnished by Developer to satisfy the security requirements in this Section 9 shall be in substantially the forms attached hereto as **Exhibit H**, as may be amended by City from time to time.
- ii. A condition of the Developer's security is that any changes not exceeding ten percent (10%) of the original estimated cost of the Park Improvements shall not relieve the security. In the event that changes to the Improvement Plans cause an increase of more than ten percent (10%) over the original estimated cost of the Park Improvements, Developer shall provide security as required by Section 9(A) of the Agreement for one hundred percent (100%) of the total estimated cost of the Park Improvements as changed.
- iii. Notwithstanding Section 9(B)(ii) above, Developer's security shall compensate City for the actual cost of completing the required Park Improvements in the Event of Default (as defined in Section 10 below) by Developer in the performance of this Agreement, regardless of whether City's cost of completion exceeds the estimated total cost of the Park Improvements.
- iv. A condition of Developer's security is that any request by Developer for an extension of time for the commencement or completion of the work under this Agreement may be granted by City without notice to Developer's surety and such extensions shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement.

- v. As a condition of granting any extension for the commencement or completion of the work under this Agreement, Director may require Developer to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by Director.
- vi. If Developer seeks to replace any security with another security, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by Developer to Director; and (3) upon its written acceptance by Director, be deemed to be a part of this Agreement. Upon Director's acceptance of a replacement security, the former security may be released by City.

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

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

D. **Injury to Park Improvements, Public Property or Public Utility Facilities.**

Until recordation of the Certificate of Acceptance of the Park Improvements, Developer assumes responsibility for the care and maintenance of, and any damage to, the Park Improvements. Developer shall replace or repair all Park Improvements, public utility facilities, and surveying or subdivision monuments and benchmarks which are destroyed or damaged for any reason, regardless of whether resulting from the acts of the Developer, prior to the recordation of the Certificate of Acceptance. Developer shall bear the entire cost of such replacement or repairs regardless of what entity owns the underlying property. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the Director.

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 Park Site or Park Improvements prior to recordation of the Certificate of Acceptance of the Park Site and Park Improvements.

9. Default

A. Developer shall be in default hereunder upon the occurrence of any one or more of the following events (“Event of Default”), each subject to the effect of any Force Majeure Event or extension thereof under the terms of this Agreement:

- i. Developer’s failure to commence construction of Phase 1 or Phase 2 of the Park Improvements within (1) one year of the issuance of a park permit for each respective phase under this Agreement, subject to extensions provided by the Director.
- ii. Developer’s failure to timely cure any defect in the Park Improvements.
- iii. Developer’s failure to perform substantial construction work for a period of thirty (30) consecutive calendar days after commencement of the work on Phase 1 or Phase 2 of the Park Improvements.
- iv. Developer’s insolvency, appointment of receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Developer fails to discharge within thirty (30) days.
- v. Developer assigns this Agreement in violation of Section 10.
- vi. 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 in accordance with Section 10(C) below, City in its sole discretion shall be entitled to terminate Developer’s control over work described herein and hold Developer and its surety liable for all damages suffered by City as a result of the Event of Default. City shall have the right, at its sole discretion, to draw upon or use the appropriate security to mitigate City’s damages in the Event of Default by Developer. Developer acknowledges and agrees that City’s right to draw upon or use the security is in addition to any other remedies available by law or in equity to City. The Parties acknowledge and agree that the estimated costs and security amounts may not reflect the actual cost of construction of the Park Improvements, and therefore, City’s damages in the Event of Default by Developer shall be measured by the actual cost of completing the required Park Improvements to the satisfaction of City. City may use the sums provided by the securities for the completion of the Park Improvements in accordance with the Project Specifications.

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

- C. Unless the Director determines that the circumstances warrant immediate enforcement of the provisions of this Section 10 in order to prevent an immediate threat to public health, safety, and welfare, the Director shall give twenty (20) working days' prior written notice of termination to Developer ("Notice Period"), which notice shall state in reasonable detail the nature of Developer's default and the manner in which Developer can cure the default. During the Notice Period, Developer shall have the right to cure any such default; provided, however, if a default is of a nature which cannot reasonably be cured within the Notice Period, Developer shall be deemed to have timely cured such default for purposes of this Section 10 if Developer commences to cure the default within the Notice Period, and prosecutes the same to completion within a reasonable time thereafter.
- D. Developer's failure to comply with any terms, conditions, or obligations under this Agreement shall constitute Developer's consent for City, at its sole discretion, to file a notice of violation against all lots in the subdivision, or to rescind or otherwise revert the subdivision to acreage. Developer specifically recognizes that the determination of whether a reversion to acreage or rescission of the subdivision constitutes an adequate remedy for default by Developer shall be within the sole discretion of the City.
- E. City's rights and remedies specified in this Section 10 shall be deemed cumulative and in addition to any rights or remedies City may have at law or in equity.

10. ASSIGNMENT AND SUBCONTRACTING

City and Developer bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City, which approval will not be unreasonably withheld, conditioned or delayed. Any attempts to assign or transfer any terms, conditions, or obligation under this Agreement without the express written consent of City shall be voidable at City's sole discretion. Notwithstanding the foregoing, Developer shall have the right, without any consent or approval by City, to assign or transfer its rights and obligations under this Agreement to any affiliate of Developer, any third party that acquires all or substantially all of the assets of Developer, or to any third party that acquires fee title to the entire Development Site, provided such assignee or transferee agree in writing by recorded document to be bound by the obligations of Developer under this Agreement and the City is given notice of such assignment. In the event a purchaser acquires less than the entirety of the Development Site, the parties shall enter a written partial assignment agreement that shall clearly allocate the entirety of the rights and obligations hereunder in a form reasonably acceptable to the Director. Developer shall also have the right to pledge or collaterally assign this Agreement to lenders. 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.

11. INDEPENDENT CONTRACTOR

Developer and all person(s) employed by or contracted with Developer to furnish labor and/or materials under this Agreement are independent contractors and do not act as

agent(s) or employees(s) of City. Developer has full rights to manage its employees in their performance under this Agreement.

12. HOLD HARMLESS/INDEMNIFICATION

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

13. INSURANCE REQUIREMENTS

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

14. WAIVER

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

15. NOTICES

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

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

And to Developer addressed as follows:

CRE-GS Freedom Circle Phase I Owner, LLC
c/o Greystar Real Estate Partners, LLC
450 Sansome Street, Suite 500
San Francisco, CA 94111
Attention: Troy Vernon
Email: tvernon@greystar.com
Phone: (415) 527-2857
With a copy to:

Holland & Knight, LLP
560 Mission St. Suite 1900
San Francisco, CA 94105
Attention: Tamsen Plume
Email: tamsen.plume@hklaw.com
Phone: (415) 596-8232

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

16. TIME OF ESSENCE

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

17. FORCE MAJEURE

A. "Force Majeure Event" shall be defined as any matter or condition beyond the reasonable control of a Party, including but not limited to war, public emergency

or calamity, fire, earthquake, extraordinary inclement weather, Acts of God, strikes, labor disturbances or actions, civil disturbances or riots, litigation brought by third parties against either the City or Developer or both, epidemic or pandemic (including COVID-19 or any variant), default by the other Party, or any governmental order or law which causes an interruption in the timely delivery of materials, availability of labor or otherwise interrupts construction of the Park Improvements (the “Work” for purposes of this section).

- 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. Performance under this Agreement shall not be suspended or excused for a Force Majeure Event pertaining to the Work if such event is not defined as a Force Majeure Event under the applicable contract for the Work.
 - ii. Negligence or failure of a Developer to perform its obligations under a contract for the Work (other than for a Force Majeure Event as defined under the applicable contract) shall not constitute a Force Majeure Event.
 - iii. The inability of Developer for any reason to have access to funds necessary to carry out its obligations under this Agreement or the termination of any contract for the prosecution of the Work for such reason or for Developer’s default under such contract shall not constitute a Force Majeure Event.

18. BOOKS AND RECORDS

- A. Developer shall be solely responsible to implement internal controls and record keeping procedures in order to comply with this Agreement and all applicable laws. 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 Park Improvements, for a minimum period of three (3) years, or for any longer period required by law, from the date of termination of this Agreement or the date of the City’s acceptance of the Park Improvements, whichever is longer. Notwithstanding this previous sentence, Developer shall retain such records beyond three (3) years so long as any litigation, audit, dispute, or claim is pending.

- B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Developer's address indicated for receipt of notices in this Agreement.
- C. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Developer's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Developer, Developer's representatives, or Developer's successor-in-interest.
- D. Developer's obligations under this Section shall be in addition to Developer's obligations specified in **Exhibit E**.

19. MISCELLANEOUS PROVISIONS

- A. Captions. Captions and Sections of this Agreement are for convenience only and shall not be considered in resolving any questions of interpretation or construction.
- B. Incorporation of Recitals. The Recitals contained in this Agreement are hereby incorporated into the terms of this Agreement.
- C. Plurality. As used in this Agreement and when required by the context, each number (singular and plural) shall include all numbers.
- D. Nondiscrimination. Developer, its employees, agents, representatives, contractors, and subcontractors shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or any other recognized or protected class in connection with or related to the performance of this Agreement. Developer shall expressly require compliance with the provisions of this Section 20(D) in all agreements with contractors and subcontractors for the performance of the improvements hereunder.
- E. Developer has read each and every part of this Agreement, including without limitation, its exhibits, and Developer freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such Party may have drafted this Agreement or any of its provisions.
- F. Whenever in this Agreement words of obligation or duty are used (signified by the words "shall" or "must"), such words shall have the force and effect of covenants.

Any obligation imposed by either Party shall include the imposition on such Party of the obligation to pay all costs and expenses necessary to perform such obligation.

- G. This Agreement is entered into pursuant to 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 Unemployment. Developer shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.
- 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.
- N. Estoppel Certificates. Either Party (the "requesting Party") may, at any time, and from time to time, deliver written notice to the other Party (the "certifying Party") requesting the certifying Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and is a binding obligation of the Parties, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, (iii) the

requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe the nature of any defaults and (iv) such other reasonable items as may be requested. The certifying Party receiving a request under this Section shall execute and return its certificate within thirty (30) days following receipt of the request. The Director shall be authorized to execute any certificate requested by Developer. Developer and City acknowledge that a certificate hereunder may be relied upon by any transferees, title companies, and lenders. Developer shall pay the City's reasonable costs involved in providing such estoppel certificate.

20. AMENDMENTS

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

21. 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.

22. COUNTERPARTS

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

[Remainder of Page Intentionally Blank; Signatures Follow]

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

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

GLEN R. GOOGINS
City Attorney

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

“CITY”

CRE-GS FREEDOM CIRCLE PHASE I OWNER, LLC,
a Delaware limited liability company

Dated: _____
By (Signature): _____
Name: _____
Title: _____
Principal Place of
Business Address: _____
Email Address: _____
Telephone: () _____
Fax: () _____

“DEVELOPER”

* All signatures must be accompanied by an attached notary acknowledgement.

* Proof of authorization for signatures is required to be submitted concurrently with this Agreement.

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.

(Signature of Notary) (Seal)

**EXHIBIT A
DEVELOPMENT PROJECT SITE**

[Placeholder for initial review purposes]



EXHIBIT B
LEGAL DESCRIPTION OF PARK SITE

[insert legal description for Parcel 4 from recorded Parcel Map before recording]

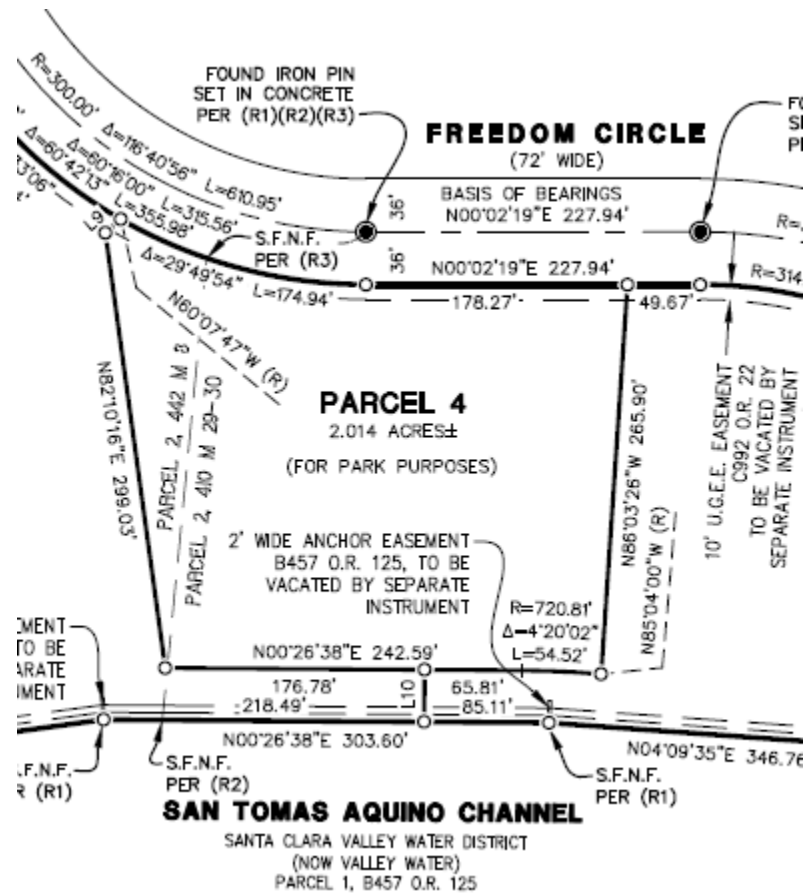


EXHIBIT C
PUBLIC PARK AND IMPROVEMENTS SITE PLAN DESIGN AND PHASING PLAN



[Placeholder for Phasing for review purposes]

PARK PHASING OVERVIEW



PHASE 1



PHASE 2

PARK SUMMARY				
SUMMARY	AREA	RECOMMENDED	PROPOSED	COMMENTS
PHASE 1				
TURFED PLAY FIELD		21,780 SF (0.5 ACRE)	24,079 SF (0.55 ACRE)	CONTIGUOUS & UNOBSTRUCTED
LANDSCAPED & FURNISHED PARK-LIKE QUIET AREA			3513 SF (0.08 ACRE)	1 FURNISHED PARK-LIKE QUIET AREA
PLAYGROUND	SEE PLAYGROUND PLANS		7,770 SF (0.18 ACRE)	
SPORTS AREA			7,088 SF (0.16 ACRE)	BASKET BALL, PICKLEBALL
PICNIC AREA			2,400 SF (0.05 ACRE)	
PHASE 1 COMBINED AREA OF ELEMENTS		32,670 SF (0.75 ACRE)	44,850 SF (1.03 ACRES)	
PHASE 1 TOTAL PARK AREA		43560 SF (1 ACRE)	59,980 SF (1.38 ACRES)	
PHASE 2				
LANDSCAPED & FURNISHED PARK-LIKE QUIET AREA			13,712 SF (0.31 ACRE)	3 FURNISHED PARK-LIKE QUIET AREAS
SPORTS AREA			1,170 SF (0.03 ACRE)	BOCCE BALL
OFF-LEASH DOG AREA			3,705 SF (0.08)	SMALL DOG AREA = 1,175 SF (0.2 ACRE) LARGE DOG AREA = 2,530 SF (0.06 ACRE)
PHASE 2 COMBINED AREA OF ELEMENTS			18,587 SF (0.42 ACRE)	
PHASE 2 TOTAL PARK AREA			27,533 SF (0.63 ACRE)	
PHASE 1 & 2 TOTAL PARK AREA		87,120 SF (2 ACRES)	87,728 SF (2.01 ACRES)	

EXHIBIT D PRIVATE RECREATIONAL AMENITY SITE PLAN DESIGN

ALL BUILDINGS - OPEN SPACE AMENITY AREA MATRIX



BUILDING A	AREA	SQUARE FOOTAGE INCLUDING SETBACK	SQUARE FOOTAGE EXCLUDING SETBACK
	POOL COURTYARD	13,337 SF	12,064 SF
	COURTYARD A	10,054 SF	7,877 SF
	COURTYARD B	5,334 SF	3,999 SF
	TOTAL	28,725 SF	23,940 SF

BUILDING B	AREA	SQUARE FOOTAGE INCLUDING SETBACK	SQUARE FOOTAGE EXCLUDING SETBACK
	POOL COURTYARD	15,073 SF	13,161 SF
	COURTYARD A	14,190 SF	11,666 SF
	COURTYARD B	5,034 SF	3,934 SF
	TOTAL	34,306 SF	28,761 SF

BUILDING C	AREA	SQUARE FOOTAGE INCLUDING SETBACK	SQUARE FOOTAGE EXCLUDING SETBACK
	POOL COURTYARD	10,767 SF	9,298 SF
	COURTYARD A	9,270 SF	7,911 SF
	TOTAL	20,037 SF	17,209 SF

TOTAL		SQUARE FOOTAGE INCLUDING SETBACK	SQUARE FOOTAGE EXCLUDING SETBACK
		83,068 SF	69,910 SF

10

BLDG A OPEN SPACE AMENITY AREA MATRIX

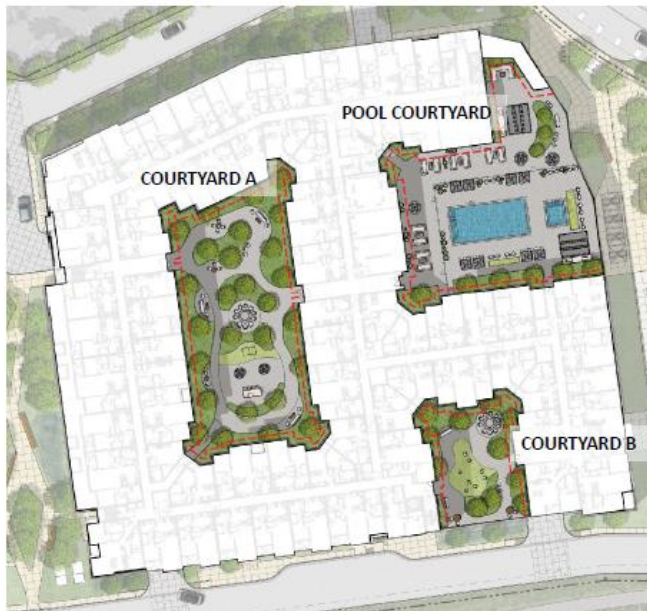


AREA	SQUARE FOOTAGE INCLUDING SETBACK	SQUARE FOOTAGE EXCLUDING SETBACK
POOL COURTYARD	13,337 SF	12,064 SF
COURTYARD A	10,054 SF	7,877 SF
COURTYARD B	5,334 SF	3,999 SF
TOTAL	28,725 SF	23,940 SF

--- 4' SETBACK FROM BUILDING

7

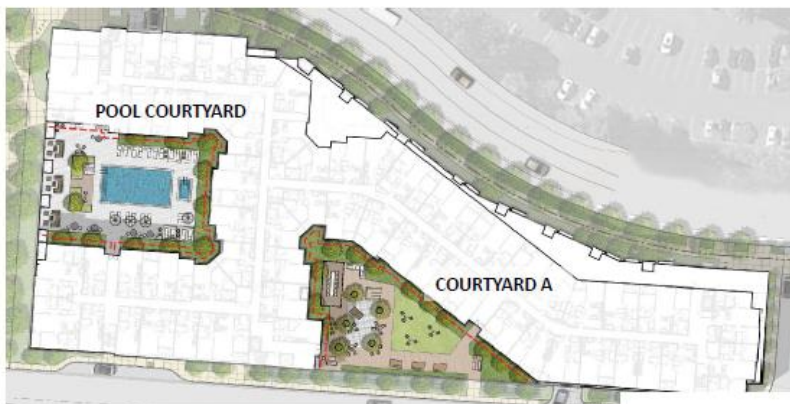
BLDG B OPEN SPACE AMENITY AREA MATRIX



AREA	SQUARE FOOTAGE INCLUDING SETBACK	SQUARE FOOTAGE EXCLUDING SETBACK
POOL COURTYARD	15,073 SF	13,161 SF
COURTYARD A	14,190 SF	11,666 SF
COURTYARD B	5,034 SF	3,934 SF
TOTAL	34,306 SF	28,761 SF

--- 4' SETBACK FROM BUILDING

BLDG C OPEN SPACE AMENITY AREA MATRIX



AREA	SQUARE FOOTAGE INCLUDING SETBACK	SQUARE FOOTAGE EXCLUDING SETBACK
POOL COURTYARD	10,767 SF	9,298 SF
COURTYARD A	9,270 SF	7,911 SF
TOTAL	20,037 SF	17,209 SF

--- 4' SETBACK FROM BUILDING

EXHIBIT E DESIGN AND CONSTRUCTION REQUIREMENTS

SECTION 1. DESIGN AND CONSTRUCTION REQUIREMENTS.

1. Plans and Specifications.

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

1. City's Standard Specifications for Public Works Construction, on file with City's Department of Public Works. (input areas from the Public Works' document that we know would not apply; request PW input & review when drafting a new agreement) References in the Standard Specifications to "Bidder" shall be deemed to mean "Developer."
2. City's Public Park Amenity and Design Standards ("Park Standards"), dated January 2019 ("Park Standards") and on file with City's Parks & Recreation Department. In the event that Developer does not submit the ninety percent (90%) Project Plans and Specifications for City's review and approval within eighteen (18) months of the Effective Date of this Agreement and the Park Standards are then revised, Developer shall design and construct the Park Improvements in accordance with the revised Park Standards at no cost to the City.

2. Application of Plans and Specifications.

1. City's Specifications, Park Standards and the Project Specifications shall be collectively referred to as the "Plans." The Park Improvements shall be constructed in accordance with the Plans.
2. In the event of a conflict between the Park Standards and the City's Specifications, the Park Standards shall prevail.
3. The provisions of this Agreement supersede anything to the contrary in either the City's Specifications or the Park Standards.

3. Project Specification Approval Process.

1. The Project Plans and Specifications shall be submitted to the City in a timely manner in order to ensure that the Developer completes the Park Improvements on or before the completion date specified in this Agreement. Developer shall not construct any Park Improvements unless and until the Director approves the Project Specifications in writing. The approval process for the Project Specifications is more particularly set forth in the Park Standards.

2. City's approval of the Plans shall not release Developer of the responsibility for the correction of mistakes, errors, or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved. If, during the course of construction of the Park Improvements, the Director determines in the Director's reasonable discretion that public safety or improved park operation in compliance with applicable Code requires modification of, or the departure from, the Plans, the Director shall have the authority to require such modification or departure and to specify the manner in which the same may be made. The Parties acknowledge that the Plans, once approved by the Director, shall be final and that, except as expressly provided in this subsection, no revisions to the Plans shall be permitted for any reason whatsoever.

SECTION 2. PARTICULAR CONSTRUCTION REQUIREMENTS.

1. Developer Selection.

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

2. Prevailing Wage Requirement.

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

Developer shall not be required to indemnify and hold harmless the City Indemnitees for liability attributable to the gross negligence or intentional misconduct of the City Indemnitees.

3. Contractors and Subcontractors: To the extent required by law, Developer shall expressly require compliance with the Prevailing Wage Requirement in all agreements it enters into with contractors and subcontractors for construction work on the Park Improvements. Developer acknowledges and agrees that it is responsible for compliance by its contractors and subcontractors of the Prevailing Wage Requirement.
4. Reporting Obligations: Developer shall provide to City, at no cost to City, a copy of any and all such records within ten (10) working days of City's request for such records. In responding to a request by the City, Developer agrees that it is responsible for submitting the records of any and all of its contractors and subcontractors.

3. **Remedies for Developer's Breach Of Prevailing Wage Requirements.**

1. General: Developer acknowledges City has determined that the Prevailing Wage Law promotes each of the following (collectively "Goals"):
 - i. It protects City job opportunities and stimulates City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
 - ii. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to City by fostering high turnover and instability in the workplace.
 - iii. Pay workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of Santa Clara because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in Santa Clara.
 - iv. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.
2. Remedies: City and Developer recognize that Developer's breach of the Prevailing Wage Law set forth above will cause damage to the City by undermining City's goals in assuring timely payment of prevailing wages, and will cause City additional expenses in obtaining compliance and conducting audits, and that such damage would not be remedied by Developer's payment of restitution to the worker paid less than the prevailing wage. Developer and City agree that such damage would increase the greater the number of employees not paid the applicable

prevailing wage and the longer the amount of time over which such wages were not paid. City and Developer further recognize the delays, expense and difficulty involved in proving City's actual losses in a legal proceeding, and mutually agree that making a precise determination of the amount of City's damages as a result of Developer's breach of the Wage Provision would be impracticable and/or extremely difficult. Accordingly, City and Developer agree that:

- i. For each day after ten (10) working days that Developer fails to completely respond to a request by City to provide records as required by this Agreement, Developer shall pay to City as liquidated damages the sum of TWO HUNDRED FIFTY DOLLARS (\$250.00); and
 - ii. For each instance where City has determined that the Prevailing Wage Requirements were not met, Developer shall pay to City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the prevailing wages which should have been paid.
3. Audit Rights: All records or documents required to be kept pursuant to this Agreement to verify compliance with the Prevailing Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Developer's address indicated for receipt of notices in this Agreement.
4. Remedies Cumulative: The remedies set forth in this provision of the Agreement are cumulative and in addition to any other remedies set forth in the Prevailing Wage Requirements or otherwise permitted by law.

4. Conduct of Work.

1. Site Preparation & Condition. Any debris or compaction from previous use must be addressed as part of site preparation, cleaning and grading. Work must be verified by inspection by the City.
2. Appearance. Developer shall maintain a neat and clean work site. Broken concrete and debris developed during clearing and grubbing shall be disposed of concurrently with its removal. If stockpiling of disposable material is necessary, the material shall be retained in an area not readily visible to the public in a manner meeting the reasonable satisfaction of the Director.
3. Condition. Developer shall maintain the Site in a neat, clean, good, and safe condition prior to City's acceptance of the Park Improvements. Developer shall not dispose or cause the disposal of any Hazardous Substances on any of the Site. Additionally, Developer shall take reasonable precautions to prevent the disposal

of Hazardous Substances by third parties on any of the Site. The term “Hazardous Substances” is defined in Section 3 (A)(2) of this Exhibit.

4. Emergencies. In an emergency affecting the safety of persons or property, Developer shall act reasonably to prevent threatened damage, injury, or loss. Developer shall immediately notify the City by telephone at the telephone number as directed by Director and in writing of such actions.

5. Access for Inspection.

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

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

6. Acceptance of Park Improvements.

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

1. City agrees to inspect and prepare a punch list for the Park Improvements within ten (10) business days of notification by Developer that the Developer considers the construction of the Park Improvements to be complete. City further agrees to perform its final inspection within ten (10) business days of notification by Developer that all punch list work has been completed.
2. City will process acceptance documentation in a form substantially similar to Exhibit J (Certificate of Acceptance- **Exhibit J**) within ten (10) business days of the date of City's final inspection or the date upon which the Developer returns to City the appropriate signed acceptance documentation, whichever is later, provided that:
 - i. City finds that all punch list work has been satisfactorily completed; and
 - ii. Developer has performed and satisfied any and all terms, conditions, and obligations required under this Agreement prior to acceptance of the Park Improvements, including but not limited to, the requirements for dedication of the Park Sites as outlined in Section 2(G) of this Exhibit below; and
 - iii. Developer has provided the Director with a full as-built plan set and a corresponding Computer- Aided Design (CAD) file ("record plans") corresponding copies of any and all warranties, and the like (such warranties shall be in the name of the City), and corresponding copies of any and all operating manuals for equipment installed as part of the Park Improvements.
3. The Parties acknowledge that City's restrictions on the installation of landscaping because of future drought conditions may delay Developer's installation of the landscaping contemplated by this Agreement. If, due to drought restrictions, Developer is unable to install the landscaping in time to be inspected by the Director for the purposes of accepting the completed Park Improvements, Developer shall post a bond or other form of security as set forth in Section 9 of this Agreement.
 - i. Should a drought emergency be declared that affects the ability to complete the park landscaping, Developer shall consult with City Water & Sewer Department and Parks & Recreation Department to obtain guidance and/or direction on a plan to complete Park.

7. **Park Site.**

1. Developer shall provide each of the following to the Director, subject to the approval of the Director, prior to City's acceptance of the Park Site and Park Improvements:
 - i. A preliminary report for the Park Site by a reputable title company and a responsive escrow and title officer. Developer shall coordinate with City and provide a preliminary title report at least ninety (90) days prior to execution of this Agreement and an updated title report at least ninety (90) days prior to the anticipated completion of the Park Improvements.
 - ii. A Grant Deed for the Park Site containing the legal description of the Park Site, as approved by City Surveyor or City designee, properly executed and acknowledged, subject only to the exceptions to title, if any, approved by City Manager pursuant to which a fee simple estate in Park Site shall be conveyed to City. Title to the Park Site shall be vested in City free and clear of all title defects, liens, encumbrances, conditions, covenants, restrictions, and other adverse interests of record or known to Developer, subject only to those exceptions affecting the Park Site approved by City Manager, in writing, or listed in this Exhibit ("Permitted Exceptions"). The Grant Deed, subject to approval of City, for the Park Site shall be delivered to the City Manager or designee at least ninety (90) days prior to the anticipated completion of the Park Improvements.
 - iii. Developer shall also cause to be provided to City, concurrently with the conveyance of the Park Site to City, a A.L.T.A. standard owner's form policy of title insurance issued by a reputable title company with City named as the insured, in the amount of [fill in amount: *equal to the current land value plus actual costs to improve the park*] Thousand Dollars (\$XXXXXX) insuring the title of City to the Park Site is subject to only the Permitted Exceptions.
 - iv. Any and all reports related to the condition of the Park Site and the lands adjacent to the Park Site caused to be performed by the Developer or in the Developer's possession or control. Developer shall also provide to City, at the Developer's sole cost, a report, prepared or updated no earlier than twelve (12) months before the proposed acceptance of the Park Improvements by a qualified consultant analyzing the condition of the Park Site with respect to the presence of hazardous materials and other known deleterious conditions on or adjacent to the Park Site ("Hazardous Materials Report"). The definition of Hazardous Materials for purposes of this Agreement is set forth in Section 3 (A)(2) of this Exhibit. The scope of the Hazardous Materials Report shall, at minimum, contain the elements set forth below in Section 4.

- v. In the event that the Hazardous Materials Report(s) disclose(s) the presence of Hazardous Materials on any of the Park Site in excess of generally accepted environmental screening limits for park land uses, (e.g. Environmental Screening Limits and California Human Health Screening Limits) and/or in violation of any hazardous materials/waste laws, the Director shall have the right to require Developer, as a condition of acceptance, to remediate the condition, including without limitation, removal of the Hazardous Materials. The type of remediation required for the Park Site shall be at no cost to the City and be subject to the review and approval of the Director.
 - vi. The Environmental Warranty specified in Section 3 of this Exhibit.
 - vii. Documents evidencing the authority of the signatory(ies) to execute any agreement or other legal binding documents on behalf of Developer.
2. Upon the Director acceptance of the Park Site and Park Improvements, Developer shall have no further obligations in connection with the Park Site except for the terms, conditions, or obligations of this Agreement that explicitly survives acceptance or termination.

8. Compliance With Laws/Permits.

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

to require Developer to alter, repair, or replace any improvements or perform any other action to the satisfaction of the Director as reasonably required to correct any non-compliance of the Park Improvements with legal requirements or this Agreement and at no cost to City. Developer's failure to effect the cure as required by the Director shall constitute an Event of Default in accordance with Section 7 of this Agreement.

SECTION 3. ENVIRONMENTAL WARRANTY.

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

6. Subject to Section 2(G)(1)(b) of this Exhibit, neither the Park Site nor Park Improvements located on the Park Site shall be subject to any burden, easements, covenants or restrictions recorded against any part of the Park Improvements or Park Site.
2. Developer shall give prompt written notice to City of:
 1. Any proceeding or investigation by any federal, state or local governmental authority with respect to the presence of any Hazardous Substance on the Park Site or the migration thereof from or to any other property adjacent to, or in the vicinity of, the Park Site; and
 2. Any claims made or threatened by any third party against Developer, City or the Park Site relating to any loss or injury resulting from any Hazardous Substance; and
 3. Developer's discovery of any occurrence or condition on any property adjoining or in the vicinity of the Park Site that could cause the Park Site or any part thereof to be subject to any restrictions on its ownership, occupancy, use for the purpose for which it is intended, transferability or suit under any environmental law.

SECTION 4. HAZARDOUS MATERIALS REPORT.

1. Scope of Hazardous Materials Report.

The Hazardous Materials Report shall be in two phases, Phase I Environmental Site Assessment ("ESA") and, if necessary, Phase II ESA. The Phase I ESA shall be conducted utilizing standards of All Appropriate Inquiry (EPA) and ASTM 1527-05 which, in general, provide the information identified below regarding the condition of the Park Site with respect to the presence or likely presence of any Hazardous Materials on, under, above, or about the Park Site, including the past, current, or possible release of any Hazardous Materials on, under, above, or about the Park Site.

1. The historical usage of the Park Site and adjacent parcels dating back to the Park Site's first developed use (including any agricultural use) or 1940, whichever is earlier.
2. Results of the site visits pertaining to the current condition of the Park Site, including without limitation, any observed storage, handling, or release of any Hazardous Materials on, under, above, or about the Park Site, or evidence indicating possible past or current storage, handling, or release of any Hazardous Materials on, under, above, or about the Park Site.
3. Results of the review of all reasonably available historical documents and records of regulatory agencies concerning the storage, handling, or release of any Hazardous Materials and/or contamination of any or all of the Park Site.

4. Based on the findings of items 1 - 3 above, additional investigation including, without limitation, soil and/or groundwater sampling and chemical analysis could be required by City. The sampling and analysis plan, which includes, the number and depths of soil borings that might be required shall be subject to the review and approval of City.
5. A written report shall be prepared by a licensed environmental professional presenting results of the Phase I ESA. The report shall include any chemical analysis which may have been completed during the survey along with chain of custody documentation, soil boring logs if required and recommendations for any further investigation and remediation/source control necessary on the Park Site.

2. Phase II ESA (if necessary).

A definitive scope of services for the Phase II ESA cannot be determined until completion of the Phase I ESA, as the extent and type of further investigation will be determined by the Phase I ESA findings. The following tasks serve only as preliminary guidelines for potential Phase II investigation and are subject to revision upon City's review and approval of the Phase I ESA (Hazardous Materials Report). It is possible that no Phase II investigation will be necessary.

1. Soil and Groundwater Sampling and Analysis.

Depending on the results of the Phase I ESA, it may be necessary to sample and analyze the soil and/or groundwater on-site. If such analysis is necessary, a sampling and analysis plan shall be prepared and approved by City that shall define a sufficient number of samples to be collected and analyzed to allow for an adequate characterization of the environmental condition of the Site. Soil and/or groundwater samples shall be analyzed for petroleum hydrocarbons, selected metals, volatile organic compounds, or any other potential contaminant of concern as identified in the Phase I ESA.

Soil and/or groundwater sample shall be collected utilizing typical professional protocols and submitted to an EPA certified laboratory for analysis.

2. Report Preparation.

A written report shall be prepared presenting the results of the Phase II investigation. The report shall include results from any chemical analysis completed during the investigation, along with chain-of-custody documentation, boring logs of sampling locations or from any monitoring wells completed, and recommendations for any further investigation and remediation/source control necessary on the site.

3. Report on any Remediation Work.

A written report shall be prepared presenting the results of any remediation work resulting from a Phase II investigation. The report shall include results from any

chemical analysis completed during the survey, along with chain-of-custody documentation, boring logs of sampling locations or from any monitoring wells completed, and that any recommendations for any further investigation and remediation/source control necessary on the Park Site have been completed.

EXHIBIT F PARKLAND REQUIREMENTS, FEES AND CREDIT SUMMARY

The Greystar Project will develop 1,079 dwelling unit generating an estimated 2,590 new residents (1,079 multi-family units at 2.4 persons/unit density is 2,590 persons). Based on the City's Mitigation Fee Act (MFA) standard of 2.6 acres of public neighborhood and community parkland per 1,000 residents, the Project is required to dedicate 6.733 acres of public parkland, pay an equivalent fee due in lieu of the total parkland dedication in the amount of \$33,360,522, or a combination of both. In lieu fees are published in the Municipal Fee Schedule.

The developer has proposed to meet the required 6.7609 acres of parkland dedication through a combination of a public park totaling approximately 2.014 acres, private recreational amenities totaling 1.922 acres (eligible for 50% credit), and a mitigation fee payment of \$21,356,582 for the remaining obligation.

In summary, the calculations above are:

\$33,360,522	Fee Due In Lieu of Parkland Dedication
\$ 8,126,320	Value of Dedicated Parkland
<u>\$ 3,877,620</u>	Credit for Private Recreational Amenities
\$21,356,582	Mitigation Fee Payment for Remaining Obligation

Table 1. Computation of Parkland Dedication	
Project Unit Type: Multi-Family Dwelling	Mitigation Fee Act
Persons/Dwelling Type	2.4
Multi-Family Project Units	1079
Residents	2590
Parkland Dedication Required(acres): R/1000x2.53	6.733
Fee In Lieu of Parkland Dedication	\$33,360,522

Table 2. Public Parkland Dedications Proposed, Service Level			
Parkland Proposed	Square Feet	Acres	Type of dedication
Neighborhood Park	87,728	2.014	Fee Title
<i>Total to be dedicated</i>	<i>87,728</i>	2.014	
Total Proposed Dedicated Public Parkland Value: \$8,027,229 (87,728 sq. ft. -1,071 sq. ft. portion of the sidewalk included in the park parcel that should be deducted from credit = 86,657 sq. ft.)			

Table 3. Credit for proposed Private On-site Park & Rec "Active Rec Uses"			
	Sq. Ft.	Acres	
Building A			
Podium Small Courtyard: family picnic area landscaped and furnished, park-like quiet area fitness area	3,967	0.0911	
Podium Large Courtyard: family picnic area landscaped and furnished, park-like quiet area games/sport court/bocce court	7,954	0.1826	
Podium Outside of Pool Enclosure: family picnic area fitness area	3,809	0.0874	
Podium: accessible swimming pool family picnic area	8,323	0.1911	
Podium Fitness Room: gym equipment, workout space	2,000	0.0459	
Podium Club Room: gathering/activity area, kitchen, game room, media center	2,100	0.0482	
Podium Small Fitness Room: yoga space, spin cycles	750	0.0172	
Building B			
Podium Small Courtyard: family picnic area landscaped and furnished, park-like quiet area	4,072	0.0935	
Podium Large Courtyard: family picnic area landscaped and furnished, park-like quiet area	11,892	0.2730	
Podium Courtyard Outside of Pool Enclosure: family picnic area fitness area	7,249	0.1664	
Podium: accessible swimming pool family picnic area	6,110	0.1403	
Podium Fitness Room: gym equipment/workout space	1,985	0.0456	
Podium Club Room: gathering/activity area, kitchen, game room, media center	2,200	0.0505	
Building C			
Podium Large Courtyard: family picnic area landscaped and furnished, park-like quiet area fitness area	7,577	0.1739	
Podium: accessible swimming pool family picnic area fitness area	9,284	0.2131	
Level 2 Fitness Room: gym equipment, workout space	2,050	0.0471	
Podium Club Room: gathering/activity area, kitchen, game room, media center	2,400	0.0551	
Total	83,722	1.9220	

Credit 50% for private Active Recreation & Value	0.9610	\$ 3,877,620
Parkland Value Deficit after Credit		\$ 21,455,673

Building	A	B	C
MFA Units	364	399	316
Gross Park Fee*	\$11,254,152	\$12,336,282	\$9,770,088
(Park Dedication Credit -100% at completion of Phase 1 and 2)		³ (\$8,106,404**)	
(50% of Park Dedication at completion of Phase 1; remaining 50% at completion of Phase 2)		^{4**}) This should be the value of the lily pad, not 50% of the park.	^{7**}) This should include the other 50% of the lily pad plus the balance of the park acreage not included in the lily pad.
(Private Recreation Credit – 50% of private amenities)	¹ (\$1,338,655) These elements do not meet the min req. of ¾ acre for credit. If this is the last bldg. to be constructed, full credit will be applied. If it is the second bldg. constructed, the credit will be carried forward & combined with the credit for the next bldg. constructed.	⁵ (\$1,551,937) Add the value of 50% of the lily pad acreage to this number.	⁸ (\$987,028) These elements do not meet the min req. of ¾ acre for credit. If this is the last bldg. to be constructed, full credit will be applied. If it is the second bldg. constructed, the credit will be carried forward & combined with the credit for the next bldg. constructed.
Net Park In Lieu Fee Due at Final Inspection on a Pro Rata Basis***	² \$11,254,152 if not eligible for credit until a later phase. If this is the last bldg. constructed: \$11,254,152-	⁶ \$12,336,282 minus \$1,551,937 minus the value of 50% of the lily pad acreage	⁹ \$ If this bldg. is constructed after Bldg. B: \$9,770,088 minus value of 50% of

	¹ \$1,338,655- ⁸ \$987,028 = \$8,928,469	equals the Balance Due	the lily pad minus the value of balance of the park acreage equals the Balance Due. The remaining credit for private amenities would be carried over to the calculations for bldg. A.
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*Per Santa Clara City Code Section 17.35 Resolution No. ____ (FY 2020/2021).

**Pursuant to Section 4(F) of this Agreement, the first of Building B or Building C will install Phase 1 of the Park and received 50% park credit as a private recreation credit and the second will complete Phase 2 and receive the remaining 50% credit.

***Pursuant to Mitigation Fee Act, Government Code Section 66007(a), as amended and expanded by SB 937, all park in lieu fees are due at final inspection for each Building.

EXHIBIT G
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 [2580] residents (2.4 persons/household x 1075 units). Based on the MFA standard of 2.6 acres/1000 residents, the amount of public parkland required for this Project to mitigate the impact of the new resident demand is approximately 6.7 acres. The equivalent fee due in lieu of parkland dedication is therefore \$33,236,850.
- PR2. In lieu fees imposed under Chapter 17.35 shall be due and payable to the City prior to issuance of a building permit for each dwelling unit.
- PR3. Application for Credit. This project includes 83,722sf, or 1.961 acres, after deducting 4-foot set-back, of private active recreational amenities and will receive credit at 50%, or 41,861sf, or 0.961 acres. See Table 3.
- PR4. The balance of fees due in lieu of parkland dedication is \$21,232,910.
- PR5. The public park must be programmed and constructed to the "Park Amenity & Design Standards" and City standards.
- PR6. Park plans as submitted are considered a "conceptual design" and developer will present public park schematic design plans to the Parks & Recreation Commission for their review and recommendation to City Council.
- PR7. Developer to enter into a Park Improvement Agreement and a Park Maintenance Agreement which will be submitted to Council for approval before park construction begins.
- PR8. 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).
- PR9. Developer to submit park construction plans to the City for review and approval after review by the Parks and Recreation Commission and prior to starting park construction.
- PR10. Developer will maintain Public Park in perpetuity at sole cost to Developer.
- PR11. Provide soil reports to City for proposed public park area.
- PR12. Developer will provide City with GIS/Enterprise Asset Management System (EAMS) data for the public park facilities. The base map and design elements/assets should meet the City data dictionary definitions for each asset.
- PR13. 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 170 studio units, 597 one-bedroom units and 308 two-bedroom units for a total DUT of \$17,665.
- PR14. A drinking fountain/dog bowl/bottle filler combination is required in the park. The drinking fountain shall have an ADA and standard height options.
- PR15. Utilities in the park parcel shall only service the park parcel and all other utilities shall be removed from the park parcel.
- PR16. The fire hydrant shall be removed from the park parcel.

PR17. The Underground Electric Easement, Private Ingress/Egress Easement, Emergency Vehicle Access Easement, and power pole anchor easement shall not be in the park parcel.

See details below...

Table 1. Computation of Parkland Dedication

Project Unit Type: Multi Fam Dwelling	Mitigation Fee Act
Persons/Dwelling Type	2.4
Multi Family Project Units	1075
Total New Residents	2580
Parkland Dedication Required (acres): R/1,000 x 2.6	6.7080
Equivalent In Lieu Fee	\$33,236,850
Balance of Fees Due in lieu of Parkland Dedication:	\$21,232,910

Table 2. Public Parkland Dedications Proposed, Service Level

Parkland Proposed	Square Feet	Acres	Type of Dedication
Neighborhood Park	87,728	2.014	Fee Title
Total to be dedicated:	87,728	2.014	
Total Proposed Dedicated Public Parkland Value:	\$8,126,320		

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

	Square Feet	Acres
Building A		
Podium Small Courtyard: family picnic area landscaped and furnished, park-like quiet area fitness area	3,967	0.0911
Podium Large Courtyard: family picnic area landscaped and furnished, park-like quiet area games/sport court/bocce court	7,954	0.1826
Podium Outside of Pool Enclosure: family picnic area fitness area	3,809	0.0874
Podium: accessible swimming pool family picnic area	8,323	0.1911
Podium Fitness Room: gym equipment, workout space	2,000	0.0459
Podium Club Room: gathering/activity area, kitchen, game room, media center	2,100	0.0482

Podium Small Fitness Room: yoga space, spin cycles	750	0.0172
Building B		
Podium Small Courtyard: family picnic area landscaped and furnished, park-like quiet area	4,072	0.0935
Podium Large Courtyard: family picnic area landscaped and furnished, park-like quiet area	11,892	0.2730
Podium Courtyard Outside of Pool Enclosure: family picnic area fitness area	7,249	0.1664
Podium: accessible swimming pool family picnic area	6,110	0.1403
Podium Fitness Room: gym equipment/workout space	1,985	0.0456
Podium Club Room: gathering/activity area, kitchen, game room, media center	2,200	0.0505
Building C		
Podium Large Courtyard: family picnic area landscaped and furnished, park-like quiet area fitness area	7,577	0.1739
Podium: accessible swimming pool family picnic area fitness area	9,284	0.2131
Level 2 Fitness Room: gym equipment, workout space	2,050	0.0471
Podium Club Room: gathering/activity area, kitchen, game room, media center	2,400	0.0551
Total:	83,722	1.9220
Credit at 50% for Private Active Recreation & Equivalent Value:	0.961 acres	\$3,877,620
Balance of Fees Due in lieu of Parkland Dedication:		\$21,232,910

*NOTE: Remove this header when final Agreement completed.

DRAFT
PARKLAND AGREEMENT

EXHIBIT H
BOND FORMS
(developer to provide)

*NOTE: Remove this header when final Agreement completed.

DRAFT
PARKLAND AGREEMENT

EXHIBIT I INSURANCE REQUIREMENTS

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

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 each occurrence
\$1,000,000 general aggregate
\$1,000,000 products/completed operations aggregate
\$1,000,000 personal injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 OJ, with minimum policy limits 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 the following limits: at least one million dollars (\$1,000,000) policy limit Illness/Injury by disease, and one million dollars (\$1,000,000) for each Accident/Bodily Injury.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. 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.

- I. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for 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 procured by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other applicable insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other applicable insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non- payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non- renewal.

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

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

E. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor 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. Contractor 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 Contractor 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 Contractor 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, Contractor, and each and every subcontractor (of every tier) shall, at their respective sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such

insurance coverage shall be maintained with insurers, and under forms of policies, reasonably satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

G. EVIDENCE OF COMPLIANCE

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

EXHIBIT J
SAMPLE CERTIFICATE OF ACCEPTANCE

CERTIFICATE OF ACCEPTANCE

GRANT DEED

Pursuant to California Government Code Section 27281, this is to certify that the interest in real property conveyed by deed or grant dated _____, 202__ from *insert name, a[n] choose one: _____ (enter State name) corporation / limited liability company / partnership / individual to the City of Santa Clara, California, a chartered municipal California corporation (“City”) is hereby accepted by the undersigned officer on behalf of the City Council of the City pursuant to authority conferred by City Council action on *insert date of Council action; and the City as Grantee consents to recordation by its duly authorized officer.

DATED: This _____ day of _____, 202__.

APPROVED AS TO FORM:

GLEN R. GOOGINS
City Attorney

JÖVAN D. GROGAN
City Manager
City of Santa Clara