

**RECORDING REQUESTED**

**BY CITY OF SAN JOSE:**

**When Recorded, Return To:**

**City of San José**

**200 East Santa Clara Street**

**San José, CA 95113**

**Attn: City Clerk, 2nd Floor West Wing**

**Final Tract No. 10430**

**AMENDED AND RESTATED  
PARKLAND AGREEMENT  
FOR  
TENTATIVE MAP NO. PT16-035  
BETWEEN  
THE CITY OF SAN JOSE  
AND PULTE HOME COMPANY LLC,  
A MICHIGAN LIMITED LIABILITY COMPANY  
AND  
RESTRICTIONS AND COVENANTS RELATING TO  
PRIVATE RECREATIONAL IMPROVEMENTS**

This **Amended and Restated Turnkey Parkland Agreement** ("**Agreement**") is made and entered into by and between the **CITY OF SAN JOSE**, a municipal corporation of the State of California ("**City**"), and **PULTE HOME COMPANY LLC, A Michigan Limited Liability Company** ("**Developer**") as of the date of City's execution ("**Effective Date**"). Each of City and Developer are sometimes hereinafter referred to as a "**Party**" and collectively as the "**Parties**."

#### RECITALS

- A. Developer desires to construct a mixed-use project, including a residential subdivision ("**Development**") on certain real property located at the southwest corner at Capitol Avenue and Gimelli Way (641 North Capitol Ave.) in the City of San José, County of Santa Clara, State of California. Developer has obtained an approved Tentative Map under File No. PT16-035, adopted by Council on 1/10/17 under Resolution No. 78054 (the "**Tentative Map**") for the subdivision of the real property and has obtained Planned Development Permit No. PD16-025 ("**PD Permit**") for the Development under Resolution No. 78055 adopted by Council on 1/10/17.
- B. Under the provisions of Chapter 19.38 of the San José Municipal Code ("**Parkland Dedication Ordinance**"), developers of residential subdivisions are required to dedicate property for neighborhood and community parks, construct park or recreational improvements and/or pay in-lieu fees ("**Parkland Dedication Obligation**").
- C. The Developer's **Parkland Dedication Obligation** is to provide 1.59 acres of land which will be satisfied through the negotiated terms stated within this Amended and Restated Turnkey Parkland Agreement.
- D. On October 29, 2018, the City and Developer entered an Interim Parkland Agreement to satisfy the Developer's Parkland Dedication Obligation for the development of residential units allowed by the Tentative Map. The Parkland Dedication Obligation was fulfilled through an Irrevocable Offer of Dedication for 0.58 acres of land to the City for park purposes (0.04 acres of land is already encumbered and does not count for credit); Interim Private Recreation Area Credits for the future construction of private recreation improvements (to be modified under this **Amended and Restated Turnkey Parkland Agreement** ("**Turnkey Agreement**"); and the payment of remaining parkland dedication fees in the amount of \$ 835,140.17. The Interim Parkland Agreement also requires that the parties enter this Turnkey Agreement within six months of the executed Interim Parkland Agreement to return a portion of the parkland dedication in-lieu fees paid to fund the Developer's construction of turnkey park improvements ("**Park Improvements**") for the dedicated Park Site.
- E. On September 5, 2018, Developer paid the City a total amount of \$835,140.17 of remaining park impact in lieu fees to complete full satisfaction of its Parkland Dedication Obligation pursuant to the Interim Parkland Agreement.

#### SECTION 1.

**NOW, THEREFORE**, in that the Developer and City desire to enter this Turnkey Agreement, superseding and replacing the Interim Turnkey Parkland Agreement to satisfy the Developer's Parkland

Dedication Obligation for the residential units identified on the Tentative Map, pursuant to which the Developer shall satisfy Developer's Parkland Dedication Obligation as follows:

1. Developer will provide the City with an Irrevocable Offer of Dedication for 0.58 acres as indicated in **Exhibit A. (Irrevocable Offer of Dedication)**: 0.04 acres of this dedication is already encumbered and shall not be counted for credit ("**Park Site**"); and,
2. Developer will construct turnkey park improvements on the 0.58 acre dedicated **Park Site** as depicted in **Exhibit D. Park Improvement Site Plan ("Park Master Plan")** and, as set forth further in this Agreement;
3. City will reimburse Developer the amount of \$489,142.09 from the Park Trust Fund to fund the park improvements in accordance to **Exhibit D. Park Master Plan** and Exhibit G. Cost Estimate included in this agreement.
4. The Development is eligible to receive credit for certain private recreation improvements pursuant to the **Parkland Dedication Ordinance**. The description of the private recreation improvements to be included in the Development by Developer that will receive credit pursuant to Chapter 19.38 is set forth in **Exhibit B** and **Exhibit E**.
5. Developer will construct certain private recreation improvements as depicted in **Exhibit B. Private Recreational Improvement Plan ("Private Recreational Improvements")** within the Development in conjunction with the construction of the Development in accordance with the requirements of the approved Planned Development Zoning (as amended), Planned Development Permit (as amended), the Tentative Map (as amended) and this Agreement; and,
6. Developer will reserve certain designated **Private Recreational Improvements** as shown on **Exhibit B** and for future construction of private recreation improvements; and,
7. Developer shall also install certain private recreation improvements as described in **Exhibit B. Private Recreational Improvements** within the Development in conjunction with the construction of the Development in accordance with the requirements of the approved Planned Development Permit (as amended) and for which Developer is also eligible to receive credit against its **Parkland Dedication Obligation** as set forth in the **Parkland Dedication Ordinance** and this **Turnkey Agreement**.
8. Developer will ensure that the privately owned and maintained publicly accessible **Private Recreational Improvements** are built and provided as shown on **Exhibit B** such as but not limited to: plazas; private garden plots; orchard seating areas; garden walkways; "Plaza Art Garden;" and the "Link Garden Walk;" will be provided as shown and accessible to the public at least 360 days a year as required to receive **Parkland Dedication Obligation** credit per City Resolution No. 73587. If ownership changes, Developer will ensure the future owner and or property management will not reduce or restrict public access to these amenities; and,

9. Developer will apply any additional parkland dedication in-lieu fees that have not been paid to the City as depicted in **Exhibit C. Fees and Credits (“Fees and Credits Summary”)** that are generated as a result of amended Private Recreational Improvements shown in **Exhibit B** toward funding additional improvements in the park. Any of these monies that are not spent installing turnkey park improvements on the park site shall be paid to the City within 30 calendar days of completion of the park and deposited in the City Park Trust Fund.
10. **City’s Director of Parks, Recreation and Neighborhood Services (“City’s Director”)** is charged with the administration of this Agreement in conjunction with the **Director of Public Works (“Public Works”)**. All park improvements shall be completed to the satisfaction of the **Director of Public Works** and **City Director** prior to City acceptance of the park improvements. The **Director of Public Works** is responsible for the review, inspection, approval, and acceptance of the Park Improvements.

## **SECTION 2. REPRESENTATIONS AND WARRANTIES OF DEVELOPER.**

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

- A. Developer represents and warrants to City that the following facts are true and correct:
  - a. The statements and certificates made on the Tentative Map and documents filed in conjunction with the Tentative Map remain true and correct.
  - b. Any and all documents provided to City pursuant to the terms of this Agreement, or in connection with the execution of this Agreement, are now in full force and effect and contain no known 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 inaccuracies, misstatements or have become obsolete, Developer shall notify City and provide City with the information required to render the documents accurate, complete, and current.
  - c. Developer has the legal ability to enter this Agreement and Developer's signatory(ies) to this Agreement is (are) duly authorized to sign this Agreement on its behalf. In the event the Developer is not the legal owner of the real property identified on the Tentative Map, the legal owner shall also be required to execute this Agreement and shall be subject to all terms, conditions, and obligations of this Agreement.

## **SECTION 3. OFFER OF DEDICATION; DESIGN AND DEVELOPMENT OF PARK IMPROVEMENTS; CREDIT FOR PRIVATE RECREATIONAL IMPROVEMENTS.**

1. Developer affirms its irrevocable offer to dedicate to City approximately 0.58 acres of real property located on Lot 2 ("Park Site") as identified on the Tentative Map File No. **PT16-035** for the Development and as shown in the conceptual plan for the **Park Improvements** depicted on the **Master Plan** as shown on **Exhibit D**. Developer shall be responsible for all costs incurred in the conveyance of the Park Site to City in accordance with the requirements and specifications set forth in this Agreement.
2. 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 **Park Improvement Site Plan/Master Plan, (Exhibit D)** and as more particularly described in this Agreement. Developer shall develop plans and specifications for the Park Improvements ("**Project Specifications**") for the review and approval of the **Director of Public Works**, as more particularly described in the attached **Exhibit D (Park Improvement Site Plan)**. Subject to **Exhibit E, Design and Construction Requirements**, of this Agreement, Developer shall construct the **Park Improvements** in conformance with the Project Specifications and all applicable standards and specifications in effect on the Effective Date of this Agreement.
  - a. The Parties acknowledge that the exact size, dimensions, and other particular characteristics of the **Park Improvements** have not been determined as of the Effective Date of this Agreement. The Parties, however, agree that the **Park Improvements** shall include, at a minimum but not be limited to, providing the following: Lawn/Turf Area, Seating Areas, Children's Playground, Picnic and Plaza Seating Areas, Park Signage, Shade Elements, Landscaping and Trees, Benches, Trash Containers, Decorative Features such as but not limited to art pieces, trellis, etc., a Drinking Fountain, On Site Lighting Systems, Bicycle Parking Racks and Travel Paths, Flexible Multi-use Surfaces, A.D.A. accessibility, and a minimum 10' wide vehicle maintenance path that meets H-20 loading standards and accessible turning radii.
  - b. The City is not responsible for the operation or maintenance of the storm drainage facilities that convey Park Site stormwater through the private Development site.
3. 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 and inspection*. 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 to the satisfaction of the **City's Director (Parks, Recreation and Neighborhood Services)** and the **Director of Public Works** and in accordance to all applicable federal, State, and local laws and regulations.
4. The Park Improvements to be installed on the Park Site shall be completed on or before **November 30, 2020**. Upon Substantial Completion of the Park Improvements, the City shall send written notice of such to the Developer, which shall serve as a "Notice of Completion."

"Substantial Completion", "Substantially Complete" or "Substantially Completed" (or any derivation thereof)" shall mean that the **Park Improvements** have been installed in accordance and substantial conformance with **Exhibit D** (as applicable) except for punch list items that have been issued for the **Park Improvements** or for the **Private Recreational Improvements** (as applicable). The **Park Improvements** shall be deemed accepted by City upon completion of all punch list items, warranty periods, and the operation and maintenance period. The operation and maintenance period shall be (90) ninety calendar days or until acceptance of all items of work upon which the City will record the Notice of Acceptance by **Director of Public Works** as outlined in the **Design and Construction Requirements, Exhibit E** of this Agreement. The **City's Director** may, at the **City Director's** discretion, grant extensions of the completion requirement specified in this subsection.

5. With respect to any credited **Private Recreation Improvements** which have not been completed prior to issuance of the last Certificate of Occupancy (including temporary certificate of occupancy, or equivalent, the credits for the incomplete improvements shall be disallowed and Developer shall be required to pay any increase in Parkland Fees, together with additional charges, as set forth in the **Parkland Dedication Ordinance**.
6. Developer acknowledges and agrees that use of the **Private Recreation Improvements** shall be restricted for recreation purposes by this recorded covenant which runs with the land in favor of the future owners of the residential units located within the Development and which expressly cannot be defeated or eliminated without the written consent of the City as described in the **Parkland Dedication Ordinance**.
7. Developer acknowledges and agrees that Developer shall not receive any credit for eligible **Private Recreation Improvements** pursuant to the **Parkland Dedication Ordinance** except those **Private Recreation Improvements** that are set forth in **Exhibit B** and the Fees and **Credit Summary, Exhibit C** and constructed in full compliance with this Turnkey Agreement, or as otherwise creditable to the satisfaction of the **City's Director (Director of Parks, Recreation, and Neighborhood Services)**. Where moderate adjustments to **Design and Construction Requirements, Exhibit E** remain fully creditable pursuant to City Municipal Code Chapters 14.25 and 19.38, and have been accepted by the **City's Director (Director of Parks, Recreation, and Neighborhood Services)**, the Developer shall provide an updated 'as built' exhibit within 60 days of request by the City.
8. Developer acknowledges that pursuant to the covenants set forth in this Turnkey Agreement, the Developer or Owner shall henceforth be required to maintain all such private recreation improvements in safe working order and provide access for regular inspections at the City's request. After any such inspection and pursuant to written request by the City, the Developer, or Owner, shall promptly provide for any remedial actions, replacement, and/or repair work as may be necessary to ensure that the improvements remain in safe working order for recreational use.

9. The project contains privately owned and maintained **Private Recreational Improvement** publicly accessible areas designated for credit as designated in this agreement as **Exhibit B**, or associated exhibits as “publicly accessible,” the Developer agrees to maintain perpetual public access to these amenities for a minimum of 360 days per year and record a public access easement over the publicly accessible areas prior to the recordation of a Final Map. The Developer or Property Owner may however, post reasonable Rules and Regulations for respectful use and maintenance of the site as well as conduct and occasional closures, subject to approval by the **City’s Director (Director of Parks, Recreation, and Neighborhood Services)**. This Section shall apply in addition to any Easements or Restrictions which may be in place providing for public access and/or appurtenant uses.

#### **SECTION 4. COMPLIANCE WITH THE PARKLAND DEDICATION ORDINANCE.**

1. City acknowledges and agrees that Developer’s performance of this Agreement via a recorded Notice of Completion shall satisfy Developer’s obligations under the City’s **Parkland Dedication Ordinance** for the residential units identified on the Tentative Map for the Development provided that Developer is not in material default hereunder, and provided further that Developer satisfies all other terms, conditions, and requirements associated with the Development, City shall issue all building permits necessary for the residential units identified on the Tentative Map.
2. The Parties acknowledge and agree that the calculation of the Developer’s Parkland Dedication Obligation is set forth in **Fees and Credit Summary, Exhibit C**, including the calculation of **Parkland Fees** and credits for **Private Recreational Improvements**, if applicable. If applicable, Developer shall pay **Parkland Fees** to the City in the specified in accordance with the payment instructions set forth in this Turnkey Agreement.
3. *City will owe no refund to Developer in the event Developer does not build the number or type of residential units identified on the Tentative Map.*
4. 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 **City’s Director** and to pay such additional **Parkland Fees** as are required by the **Parkland Dedication Ordinance**, to the extent not otherwise satisfied by the construction of the **Park Improvements**.
5. Developer acknowledges that the costs and expenses for the design, development, construction, and supervision related to the **Park Improvements**, and dedication of parkland, may exceed the **Parkland Fees** that the Developer would be obligated to pay under the **Parkland Dedication Ordinance**. Because of the benefit to the Development that will result from the Park Improvements and land dedication, Developer agrees to design, develop, and construct the **Park**

**Improvements on the Park Site** and dedicate the **Park Site** as specified in this Agreement, without any obligation on the part of City.

#### **SECTION 5. REVIEW FEES AND CHARGES RELATED TO PARK IMPROVEMENTS.**

1. 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 the Developer's cost estimate for the Park Improvements, as approved by the **City's Director**, and shall be calculated based on the fees and charges established for City's review and inspection of like improvements then in effect at the time Developer execute this Agreement. The Review Fee is 17.5% of the **Total Public Park Cost Estimate** as shown on **Exhibit G. Cost Estimate** of this agreement. The total Review Fee shall be retained by the City as specified in **Exhibit G, Cost Estimate of Park Improvements** prior to, or concurrently with, the execution of this Agreement.
2. In the event that the **City's Director** grants an extension of the term of this Turnkey Agreement pursuant to the provisions of this Turnkey Agreement or if the **Review Fee** paid pursuant to Section 5.1 (above) is insufficient for City's review and inspection as set forth herein, then the **Director of Public Works**, at the **Director of Public Work's** sole discretion, shall have the right to escalate the total estimated cost of the **Park Improvements**, and/or the corresponding **Review Fee**. The escalation of the total estimated cost of the **Park Improvements** shall be based on the Engineering News Record Construction Cost Index, or in the event that the Engineering News Record discontinues publication during the term of this Agreement, an index of similar repute and reliability as determined and selected by Director of Public Works at the rate set forth in the City's then-current fee schedule.
3. **Injury to Park Improvements, Public Property or Public Utility Facilities.** *Until recordation of the Notice 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 Notice 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 of **Public Works**.*
4. Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss, or damage, regardless of cause, occurring to the work or **Park Improvements** prior to recordation of the Notice of Acceptance of the work or improvements.

#### **SECTION 6. BONDS AND SECURITY.**



Developer shall furnish to City the following security prior to the execution of this Agreement and for the purposes, in the amounts, and under the conditions that follow:

**Type and Amounts.**

1. **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
2. **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
3. **Warranty Security.** To warranty the Developer's work for a period of one (1) year following recordation of the Notice 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
4. **Landscaping Security.** To secure Developer's installation and maintenance of landscaping as may be required by the Project Specifications, at such time when the drought restrictions have been rescinded as further described in Section F(3) of Exhibit F (hereinafter "Landscaping Security").

**Conditions.**

1. 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 5 shall be in the forms attached hereto as Exhibit F (Bond Forms), as may be amended by City from time to time.
2. 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 5(A) of the Agreement for One Hundred Percent (100%) of the total estimated cost of the **Park Improvements** as changed.
3. Notwithstanding above, Developer's security shall compensate City for the actual cost of completing the required **Park Improvements** in the Event of Default, as defined 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.

4. 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.
5. As a condition of granting any extension for the commencement or completion of the work under this Agreement, **Director of Public Works** 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 of Public Works**.
6. 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 of Public Works**; and **(3)** upon its written acceptance by **Director of Public Works**, be deemed to be a part of this Agreement. Upon **Director of Public Work's** acceptance of a replacement security, the former security may be released by City.

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

1. **Performance Security.** City shall release the Performance Security upon recordation of the Notice of Acceptance or as may otherwise be authorized in accordance with California Government Code Sections 66499.7(a)-(g).
2. **Payment Security.** City shall release the Payment Security in accordance with California Government Code Section 66499.7(h).
3. **Warranty Security.** City shall release the Warranty Security upon expiration of the warranty period and settlement of any claims filed during the warranty period.
4. City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees.

**SECTION 7. DEFAULT.**

Developer shall be in default hereunder upon the occurrence of any one or more of the following events ("**Event of Default**"):

1. Developer's failure to commence construction of Park Improvements under this Agreement by **November 30, 2020**.
2. Developer's failure to perform substantial construction work for a period of twenty (20) calendar days after commencement of the work;
3. 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;

4. Developer assigns this Agreement in violation of Section 9;
5. Developer fails to perform or satisfy any other term, condition, or obligation under this Agreement.
6. If an Event of Default occurs and the Event of Default is not cured by Developer in accordance with Section 6(C) below, City in its sole discretion shall be entitled to terminate Developer's control over the work described herein and hold Developer and its surety liable for all damages (other than consequential, special, or punitive 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 at law or in equity to City. The Parties acknowledge and agree that the estimated costs and security amounts may not reflect the actual cost of construction of the Park Improvements, and therefore, City's damages in the Event of Default by Developer shall be measured by the actual cost of completing the required Park Improvements to the satisfaction of City. City may use the sums provided by the securities for the completion of the Park Improvements in accordance with the Project Specifications.
7. 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.
8. Unless the City's Director reasonably determines that the circumstances warrant immediate enforcement of the provisions of this Section 6 in order to preserve the public health, safety, and welfare, arising from an Event of Default, the City's Director shall give sixty (60) working days' prior written notice of termination to Developer ("Notice Period"), which notice shall state in reasonable detail the nature of Developer's Event of Default and the manner in which Developer can cure the Event of Default. During the Notice Period, Developer shall have the right to cure any such Event of Default; provided, however, if an Event of Default is of a nature which cannot reasonably be cured within the Notice Period, Developer shall be deemed to have timely cured such Event of Default for purposes of this section if Developer commences to cure the Event of Default within the Notice Period, and prosecutes the same to completion within a reasonable time thereafter.
9. If an Event of Default occurs, Developer agrees to pay any and all costs and expenses incurred by City in securing performance of such terms, conditions, or obligations giving rise to the Event of Default, including but not limited to, fees and charges of architects, engineers, contractors, attorneys, and other professionals, and court costs.

10. City's rights and remedies specified in this Section 6 shall be deemed cumulative and in addition to any rights or remedies City may have at law or in equity.

**SECTION 8. INDEMNITY/hold harmless.**

City, or any officer, employee, or agent thereof shall not be liable for any loss or injury to persons or property occasioned by reason of the acts or omissions of Developer, its agents, employees, contractors, or subcontractors in the performance of this Agreement. Developer further acknowledges and agrees to protect, indemnify, defend and hold City, its officers, agents and employees harmless from and against any and all liability, loss, cost and obligations on account of or arising out of or resulting from any injury or loss caused directly or indirectly by any cause whatsoever in connection with or incidental to the activities performed by Developer under this Agreement, except to the extent such injury or harm is caused by the sole active negligence or willful misconduct of City, its officers, agents, or employees. This Section 7 shall survive the recordation of the Notice 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 Notice 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 8.

Developer shall reimburse City for all costs and expenses, including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs, incurred by City in enforcing this Section 8.

**SECTION 9. NOTICES.**

Any required payment, notice required or permitted to be given under this Agreement shall be in writing and personally served or sent by U.S. mail, postage prepaid, addressed as follows:

To City's Director:

**City of San José**  
**Department of Parks, Recreation and Neighborhood Services**  
**Attn: PRNS Capital Improvement Project Planning Team**  
**200 East Santa Clara Street, Tower-9th Floor**  
**San José, CA 95113**

**To Director of Public Works:**            **City of San José**  
**Department of Public Works**  
**City Facilities and Architectural Services**  
**Attn: Public Works Division Manager**  
**200 East Santa Clara Street, Tower-6th Floor**  
**San José, CA 95113**

**To Developer:**                                **Pulte Home Company LLC**  
**Attn: Vice President of Land Planning & Entitlements (Scott Hilk)**  
**4511 Willow Road, Suite 8**  
**Pleasanton, CA 94588**

Notice shall be deemed given upon receipt. The Parties shall notify each other of changes in either their respective addresses or their representatives subject to notification in accordance with the provisions of this section.

**SECTION 10. ASSIGNMENT.**

1. Developer and/or Owner may sell, transfer or assign all of the Property or the portion of Property that contains the Project, together with any or all rights, title, interests and obligations of Developer and/or Owner arising hereunder (each, a "Transfer"), provided, that Developer and/or Owner shall provide written notice to City of any such Transfer and any transferee shall take such Property, and any such rights, title and interests, subject to this Agreement and shall be deemed to have assumed the obligations of Developer and/or Owner under this Agreement. Upon any such Transfer, transferring Developer and/or Owner shall have no further obligations hereunder.

#### **SECTION 11. BINDING UPON SUCCESSORS.**

1. This Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors, assignees, transferees, and legal representatives.

#### **SECTION 12. GOVERNING LAW.**

1. This Agreement shall be governed by and construed in accordance with California law.

#### **SECTION 13. ENTIRE AGREEMENT.**

1. This Agreement, including the exhibits, attachments and appendices, contains the entire agreement of the Parties with respect to the satisfaction of the requirements of the **Parkland Dedication Ordinance** for the Tentative Map for the Development and supersedes all prior understandings or representations of the Parties, whether written or oral. Any subsequent modification of this Agreement must be made in writing and signed by all Parties hereto.

#### **SECTION 14. TIME OF ESSENCE.**

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

#### **SECTION 15. FORCE MAJEURE.**

1. "Force Majeure Event" shall be defined as any matter or condition beyond the reasonable control of a Party, including war, public emergency or calamity, fire, earthquake, extraordinary inclement weather, Acts of God, strikes, labor disturbances or actions, civil disturbances or riots, litigation brought by third parties against either the City or Developer or both, or any governmental order or law which causes an interruption in the construction of the Park

- Improvements or Private Recreation Improvements (the "Work" for purposes of this section) or prevents timely delivery of materials or supplies.
2. 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.
  3. Notwithstanding the foregoing, the following shall not excuse or suspend performance under this Agreement:
    - a. 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.
    - b. Negligence or failure of 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.
    - c. 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.

#### SECTION 14. BOOKS AND RECORDS

1. 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, bids, 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.
2. 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.

3. 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.
4. Developer's obligations under this Section shall be in addition to Developer's obligations specified in this agreement's exhibits.

#### **SECTION 15. MISCELLANEOUS PROVISIONS.**

1. **Captions.** Captions and Sections of this Agreement are for convenience only and shall not be considered in resolving any questions of interpretation or construction.
2. **Incorporation of Recitals.** The Recitals in this Agreement are hereby incorporated into the terms of this Agreement.
3. **Jurisdiction.** In the event that suit shall be brought by any of the Parties, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.
4. **Waiver.** Developer agrees that waiver by City of any breach or violation or any term, condition, or obligation of this Agreement shall not be deemed to be a waiver of any other term, condition, or obligation contained herein or a waiver of any subsequent breach or violation of the same term, condition, or obligation.
5. **Plurality.** As used in this Agreement and when required by the context, each number (singular and plural) shall include all numbers.
6. **Compliance with Laws.** Developer, its employees, agents, representatives, contractors, and subcontractors shall comply with all local, state and federal laws in the performance of this Agreement.
7. **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 16(G) in all agreements with contractors and subcontractors for the performance of the improvements hereunder.

8. 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.
9. Whenever in this Agreement words of obligation or duty are used, such words shall have the *force and effect of covenants*. Any obligation imposed by either Party shall include the imposition on such Party of the obligation to pay all costs and expenses necessary to perform such obligation.
10. **Severability.** If any provisions or portions of this Agreement are held to be invalid by a court of competent jurisdiction, the remaining provisions or portions of this Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the Parties.
11. This Agreement is entered into pursuant to and shall be governed by the Parkland Dedication Ordinance. If not otherwise defined in this Agreement, capitalized terms shall have the meanings set forth in Chapter 19.38 of the San José Municipal Code.

#### **SECTION 16. AGREEMENT'S ATTACHMENTS.**

This Agreement includes the following attachments:

- |           |  |
|-----------|--|
| Exhibit A | Irrevocable Offer of Dedication                  |
| Exhibit B | Private Recreational Improvement Plan            |
| Exhibit C | Fees and Credits Summary                         |
| Exhibit D | Park Improvement Site Plan/Master Plan           |
| Exhibit E | Design and Construction Requirements             |
| Exhibit F | Bond Forms                                       |
| Exhibit G | Cost Estimate of Park Improvements               |
| Exhibit H | Environmental Disclosures / Permitted Exceptions |
| Exhibit I | Public Park Preliminary Project Schedule         |

WITNESS THE EXECUTION HEREOF the day and year hereinafter written by City.

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

\_\_\_\_\_

JON A. CALEGARI

Deputy City Attorney

By: \_\_\_\_\_

TONI J. TABER, CMC

Acting City Clerk

Date: \_\_\_\_\_

DEVELOPER

Pulte Home Company LLC, A Michigan Limited Liability Company

By:  \_\_\_\_\_

Name: Scott Hilk

Title: Vice President Entitlement and Planning

\*All Developer/Owner's signatures must be accompanied by an attached notary acknowledgement.  
\*Proof of authorization for Developer's/Owner's signatures is required to be submitted concurrently with this Agreement.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

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

State of California )  
County of Alameda )

On May 2, 2019 before me, Jennifer Mostajo Fernandez, notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Scott Hilk  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Jennifer Mostajo Fernandez  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Amended and restated Parkland Agreement

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.**

EXHIBIT A  
IRREVOCABLE OFFER OF DEDICATION

23904098

RECORDED WITHOUT FEE UNDER  
SECTION 6103 GOVERNMENT CODE  
OF THE STATE OF CALIFORNIA

4/5/18

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:  
AND MAIL TAX STATEMENT TO:

City of San Jose – Public Works  
200 East Santa Clara Street, 3<sup>rd</sup> Floor  
San Jose, CA 95113-1905

Deed No:  
3 Dash No: 3-18939  
APN: 254-06-042

Space above this line for Recorder's use

The Undersigned Grantee(s) Declare(s): DOCUMENTARY TRANSFER TAX \$0; CITY TRANSFER TAX \$0; Recorded for the benefit of the City of San Jose and is exempt from fee per Government Code Sections 27383 and 6103.

- computed on the consideration or full value of property conveyed, OR  
 computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,  
 unincorporated area;  City of San Jose, and

\_\_\_\_\_  
Signature of Declarant

IRREVOCABLE OFFER OF DEDICATION

PULTE HOME COMPANY, LLC, A Michigan Limited Liability Company, hereinafter ("GRANTOR"), does hereby IRREVOCABLY OFFER TO DEDICATE to the CITY OF SAN JOSE, a municipal corporation of the State of California, ("CITY") or its successor agencies, assigns, and transferees, real property as described in the attached Exhibit A and Exhibit B for park purposes (the "Park Property"). Such dedication of the Park Property shall be accepted by CITY upon recordation of a Grant Deed in the Santa Clara County, Office of the County-Recorder. The Grant Deed for the Park Property will be recorded by CITY in the Santa Clara County, Office of the County-Recorder, only upon the following event:

1. GRANTOR performs and satisfies any and all terms, conditions, and obligations set forth in the Parkland Agreement between GRANTOR and CITY entitled "PARKLAND AGREEMENT TENTATIVE MAP NO. PT16-035 (Chapter 19.38 of SJMC)", executed simultaneously with this Irrevocable Offer of Dedication.

Until such Grant Deed is recorded, CITY shall not be responsible for and shall incur no liability with respect to the Park Property. GRANTOR, with respect to such offer of dedication, retains

the right to control the Park Property until this offer of dedication is accepted and the Grant Deed is recorded as outlined herein.


The provisions hereof shall inure to the benefit and be binding upon the heirs, successors, assigns and personal representatives of the respective parties hereto.

Such real property is described as follows:

See Exhibit "A" and Exhibit "B" attached hereto and made a part hereof.

Dated March 27, 2018

PULTE HOME COMPANY, LLC  
A Michigan Limited Liability Company

By:   
Daniel J. Carroll  
Vice President of Land Acquisition  
and Development

Pulte Home Company LLC  
4511 Willow Road, Suite # 8  
Pleasanton, CA 94588

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

\*All Subdivider's signatures must be accompanied by an attached notary acknowledgement.

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

STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

On March 27, 2018, before me, Jeanne Miller, Notary Public  
(here insert name and title of the officer)

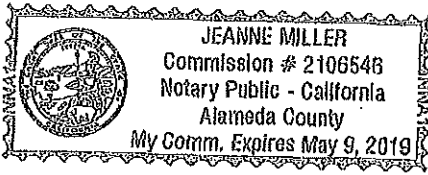
Personally appeared Daniel J. Carroll

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity; and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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.

Jeanne Miller  
Signature



(Seal)



EXHIBIT "A"  
PARK DEDICATION

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being a portion of Parcel 2 as shown on that certain Parcel Map filed for record on June 23, 2017, in Book 904 of Maps, page 49, Santa Clara County Records, described as follows:

COMMENCING at the northerly corner of said Parcel 2, being on the southeasterly line of Gimelli Way;

Thence along said southeasterly line, South 51°25'48" West, 126.37 feet, to the southwesterly line of Beachnut Drive (formerly Fruit Ranch Road), being the TRUE POINT OF BEGINNING;

Thence continuing along said southeasterly line, South 51°25'48" West, 136.32 feet;

Thence South 38°34'12" East, 36.48 feet;

Thence South 51°25'48" West, 4.92 feet;

Thence southeasterly, along a non-tangent curve to the right, having a radius of 602.00 feet, whose center bears South 40°42'56" West, through a central angle of 12°14'31" for an arc length of 128.62 feet;

Thence southeasterly, along a non-tangent curve to the right, having a radius of 158.00 feet, whose center bears South 52°12'37" West, through a central angle of 06°16'31" for an arc length of 17.31 feet;

Thence North 51°32'46" East, 103.59 feet;

Thence southeasterly, along a non-tangent curve to the left, having a radius of 151.50 feet, whose center bears North 43°44'11" East, through a central angle of 15°17'51" for an arc length of 40.45 feet;

Thence North 51°25'48" East, 17.88 feet, to said southwesterly line of Beachnut Drive (formerly Fruit Ranch Road);

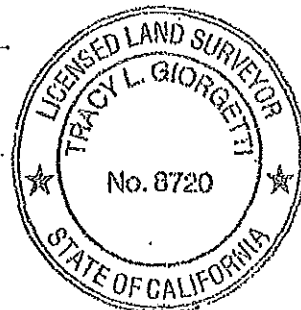
Thence along said southwesterly line and its northwesterly prolongation, North 38°34'12" West, 220.80 feet, to the TRUE POINT OF BEGINNING.

Containing 0.58 acres, more or less.

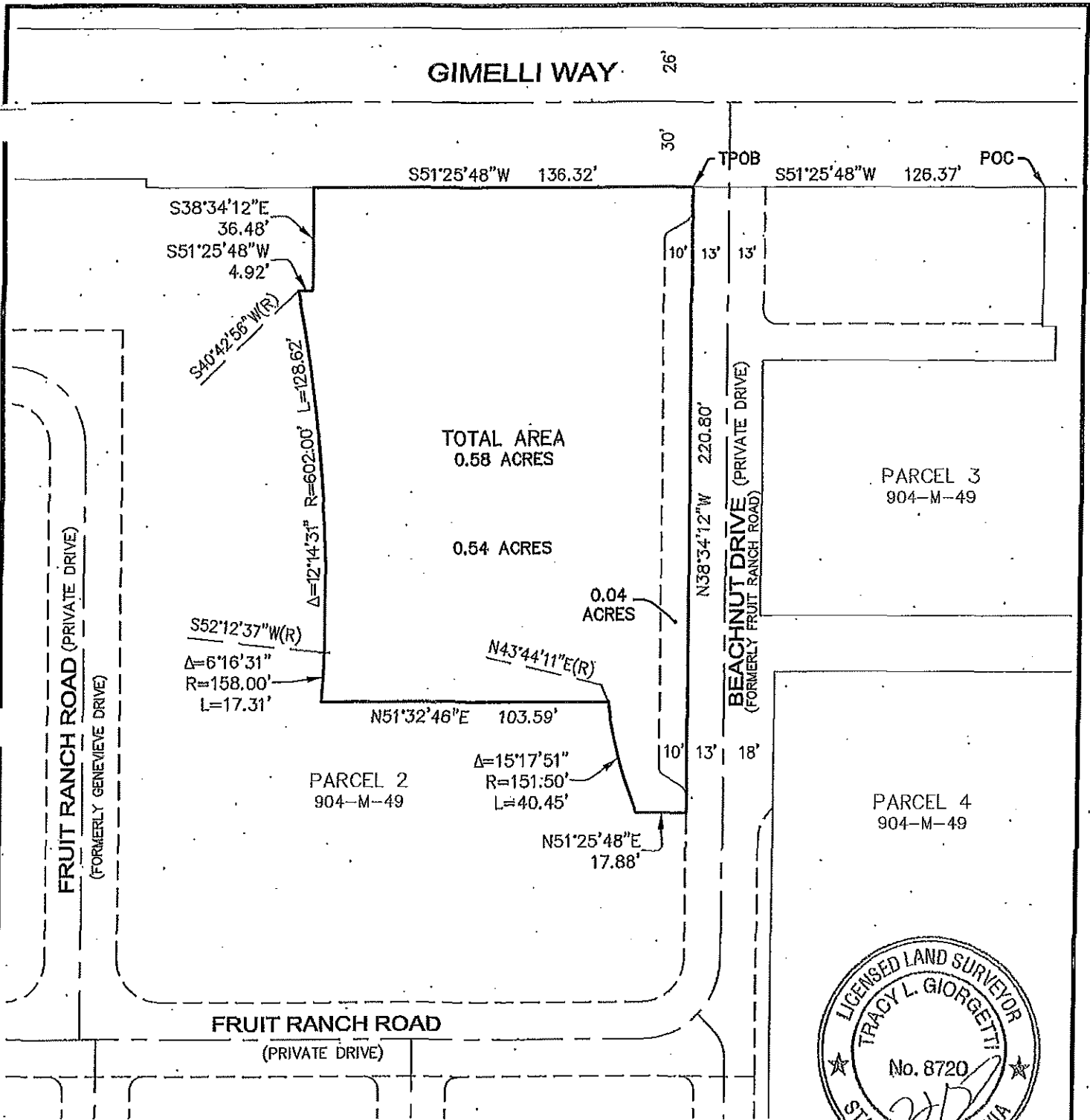
This legal description was prepared by me or under my direction in accordance with the Professional Land Surveyors Act.

Date: 2-20-2018

  
Tracy L. Giorgetti, LS 8720



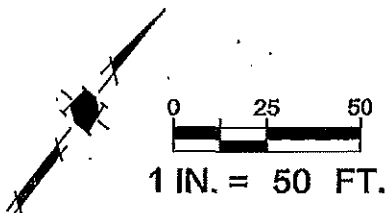
GIMELLI WAY



LEGEND

- (R) RADIAL BEARING
- POC POINT OF COMMENCEMENT
- TPOB TRUE POINT OF BEGINNING

NOTE: THE PRIVATE DRIVES SHOWN HEREON CONTAIN EMERGENCY ACCESS, PUBLIC SERVICE, PRIVATE INGRESS & EGRESS, PRIVATE STORM DRAIN, PRIVATE SEWER AND PRIVATE STORM DRAIN RELEASE EASEMENTS.



Date:	2018-02-20
Designed:	RH
Drawn:	RF
Checked:	T
Proj. Eng.:	R
	522200P



EXHIBIT "B"

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.




Consent to Irrevocable Offer  
APN: 254-06-042

**CONSENT TO IRREVOCABLE OFFER**

This is to certify that the Irrevocable Offer of Dedication to which this Consent is attached, from Pulte Home Company, LLC, a Michigan Limited Liability Company, dated March 27, 2018, to the City of San Jose, a municipal corporation of the State of California, is hereby consented to by the undersigned officer of said City pursuant to authority conferred by the Council of the City of San Jose, Section 4.04.020B of Chapter 4 of the San Jose Municipal Code and City Manager's Delegation of Authority memorandum dated January 10, 2008.

CITY OF SAN JOSE, A Municipal Corporation  
of the State of California

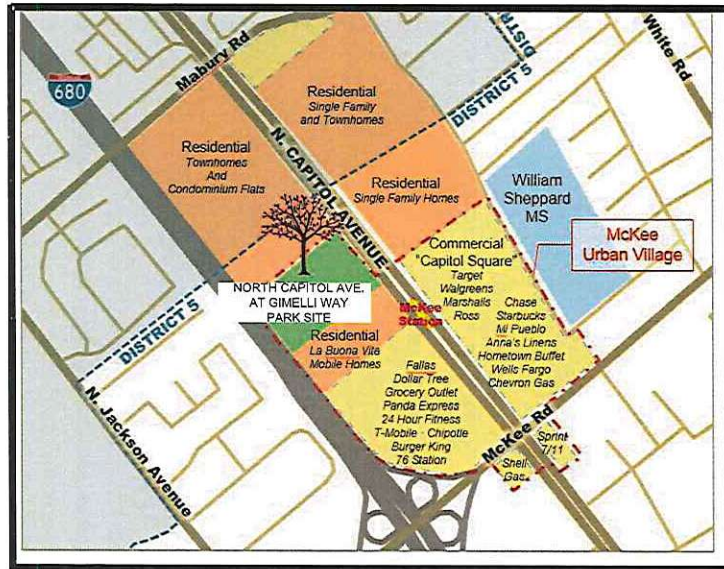
04/05/18  
\_\_\_\_\_  
Dated

  
MICHAEL LIN FOR  
\_\_\_\_\_  
JON CICIRELLI  
Acting Director of Public Works



# EXHIBIT B

## THE ORCHARD/MERLINO VILLAGE PROJECT PRIVATE RECREATION CREDIT AMENITIES



**NOTE:**  
ALL ON SITE PRIVATE RECREATIONAL AMENITIES SHALL BE OWNED,  
AND MAINTAINED BY THE PROPERTY OWNER OR THE PROPERTY MANAGEMENT COMPANY  
AND/OR THE HOMEOWNERS ASSOCIATION

**RESIDENTIAL UNITS:**

QTY.	TYPE	NO. OF STORIES
93	"HAVEN" SINGLE FAMILY ATTACHED	3-STORY
95	"RETREAT" MULTIFAMILY (5 OR MORE UNITS)	3-STORY

**SHEET INDEX**

1	COVER SHEET
2	PRIVATE RECREATION SITE PLAN
3	PICNIC AREAS & PRIVATE GARDEN PLOTS
4	PRIVATE GARDEN
5	PRIVATE PET AMENITY

**APPROVED PROJECT FILE NOS:**

PDC16-002  
PD16-025  
PT16-035  
PA 3-18939, TRACT 10430  
PDC19-012  
PD19-010

**PARKLAND AGREEMENT:**

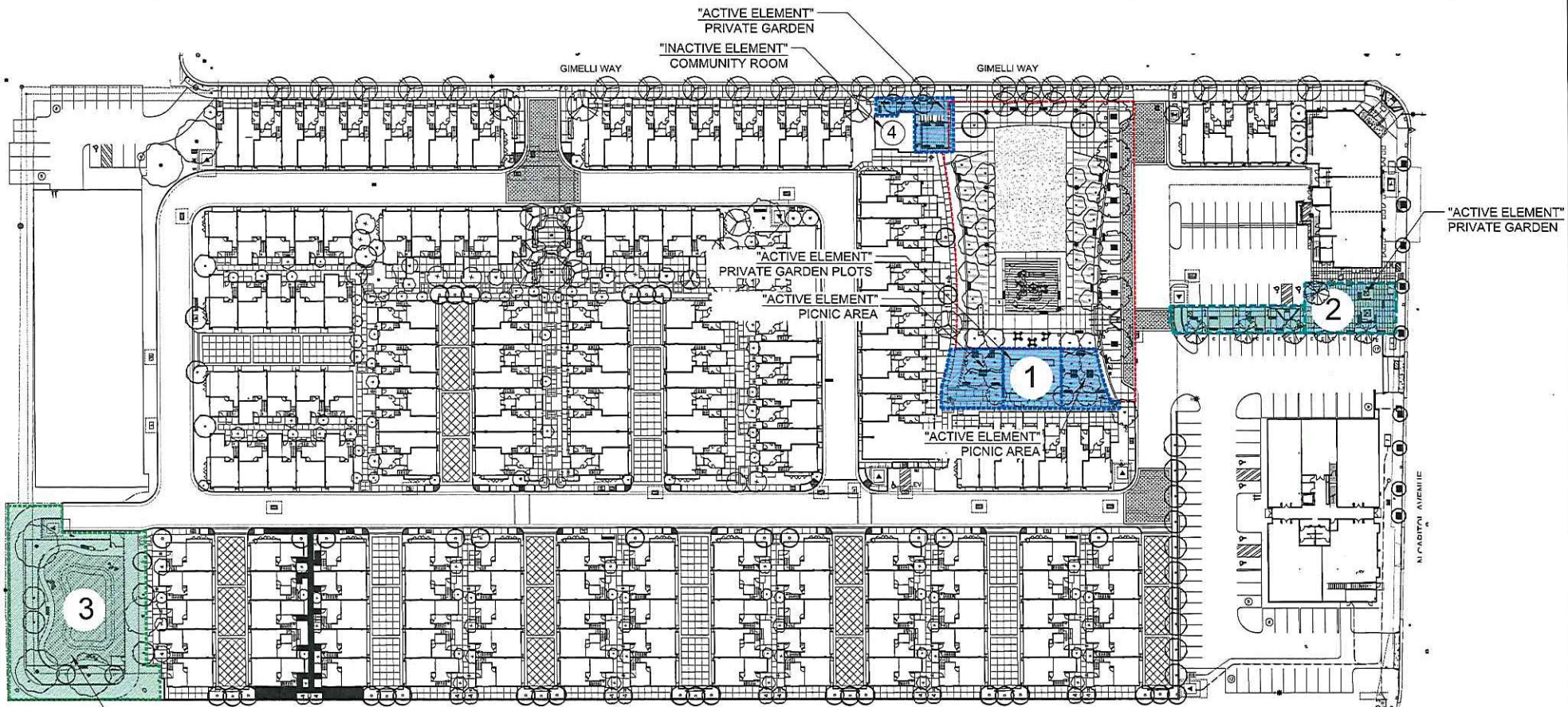
PA- 3-18939

**VAN DORN ABED**  
LANDSCAPE ARCHITECTS, INC.  
81 14TH STREET, SAN FRANCISCO, CA  
27 9403 PH 415 864-9200 FAX 415 864-0796

PULTE HOMES  
THE ORCHARD/MERLINO VILLAGE  
SAN JOSE CALIFORNIA

PRIVATELY OWNED & MAINTAINED ONSITE  
RECREATION IMPROVEMENTS  
DATE: 04/12/19





PRIVATE PET AMENITY AREA  
DOG PARK

**NOTES:**

1. Private Recreation Credit items, "Private Gardens" are to be accessible to the public to be eligible to receive credit. Private recreation components identified as "The Bike Shop/Community Room, Private Garden Plots, Picnic Areas and Private Pet Amenity Area- Dog Park" are for private use of the residents and may be made accessible to the public at the sole discretion of the Owner.
2. The Private Gardens shall be open to the public a minimum of 360 days a year.

**PRIVATE RECREATION COMPONENTS TO QUALIFY FOR PARK OBLIGATION CREDIT:**

**PRIVATE RECREATION QUALIFYING AREAS & SQUARE FOOTAGE**

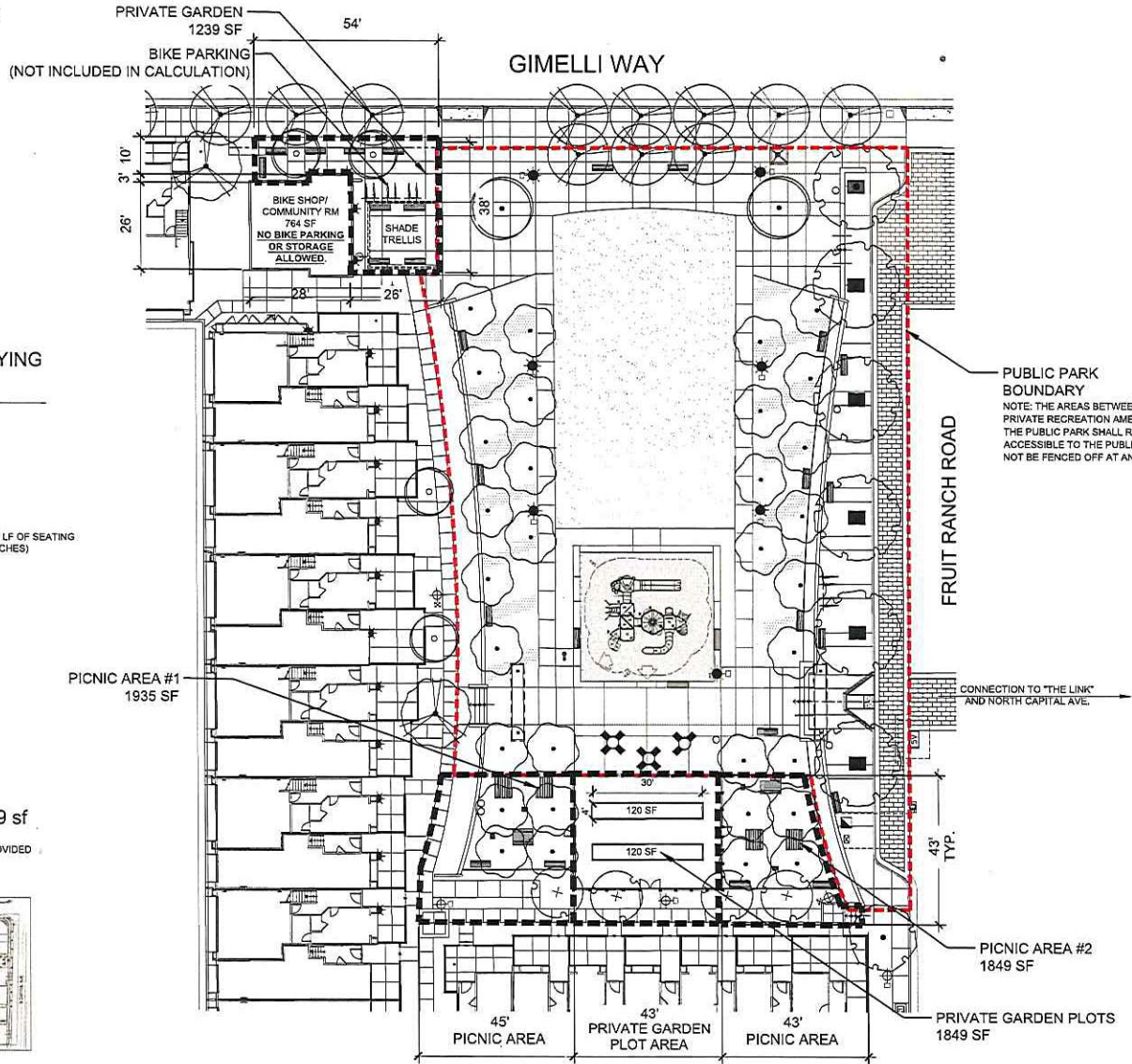
	"INACTIVE ELEMENT"	"ACTIVE ELEMENT"
1	PICNIC AREAS PRIVATE GARDEN PLOTS	3784 SF 1849 SF
2	PRIVATE GARDEN	4224 SF
3	PRIVATE PET AMENITY AREA	7738 SF
4	BIKE SHOP/COMMUNITY ROOM PRIVATE GARDEN	764 SF 1239 SF

TOTAL SF: 19,598 SF





COMMUNITY ROOM FLOOR PLAN



PRIVATE RECREATION QUALIFYING AREAS & SQUARE FOOTAGE

COMMUNITY ROOM- 764 sf

- BIKE SHOP/COMMUNITY ROOM

PRIVATE GARDEN- 1239 sf

- PRIVATE GARDEN PERIMETER 185 LF x 30% = 55.5 LF OF SEATING
- 60 LF BENCHES PROVIDED (QTY. 10 - 6' LONG BENCHES)
- SHADE TRELLIS
- SHADE TREES

PICNIC AREAS- 3784 sf

PICNIC AREA #1: 1935 SF

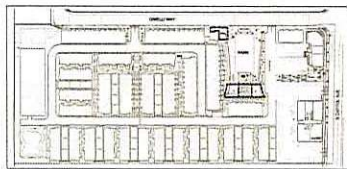
- 3 PICNIC TABLES (MIN. 5% ACCESSIBLE)
- 2 BENCHES
- 2 BARBEQUE GRILLS
- 1 TRASH/1 RECYCLE BIN

PICNIC AREA #2: 1849 SF

- 3 PICNIC TABLES (MIN. 5% ACCESSIBLE)
- 2 BENCHES
- 2 BARBEQUE GRILLS
- 1 TRASH/1 RECYCLE BIN

PRIVATE GARDEN PLOTS - 1849 sf

- PLANTER BOXES (ACCESSIBLE) 120 SF EACH PROVIDED
- PATHWAYS
- WATER HOSE BIBS



KEY MAP

LEGEND

- PRIVATE RECREATION QUALIFYING AREAS
- DECOMPOSED GRANITE PAVING
- SCORED CONCRETE PAVING
- PICNIC TABLES
- BBOS
- BENCHES
- TRASH/RECYCLING BIN
- BIKE RACKS (NOT INCLUDED IN CALCULATIONS)
- LOW GARDEN FENCE
- GARDEN PLOTS
- BLDG. & SITE LIGHTING
- TREES

PUBLIC PARK BOUNDARY  
NOTE: THE AREAS BETWEEN THE PRIVATE RECREATION AMENITIES AND THE PUBLIC PARK SHALL REMAIN ACCESSIBLE TO THE PUBLIC AND WILL NOT BE FENCED OFF AT ANY TIME.

FRUIT RANCH ROAD

CONNECTION TO "THE LINK" AND NORTH CAPITAL AVE.











43' TYP.

PICNIC AREA #2 1849 SF

PRIVATE GARDEN PLOTS 1849 SF

45' PICNIC AREA 43' PRIVATE GARDEN PLOT AREA 43' PICNIC AREA

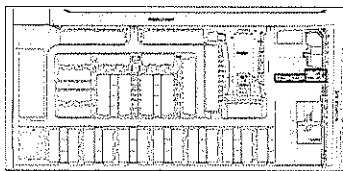
**LEGEND**

-  PRIVATE RECREATION QUALIFYING AREAS
-  SCORED CONCRETE PAVING
-  BENCHES
-  BIKE RACKS (NOT INCLUDED IN CALCULATIONS)
-  GARDEN OBELISKS
-  TRELLISES
-  LANDSCAPE ACCENT WALL
-  BLDG. LIGHTING
-  TREES
-  SHRUB/GROUNDCOVER

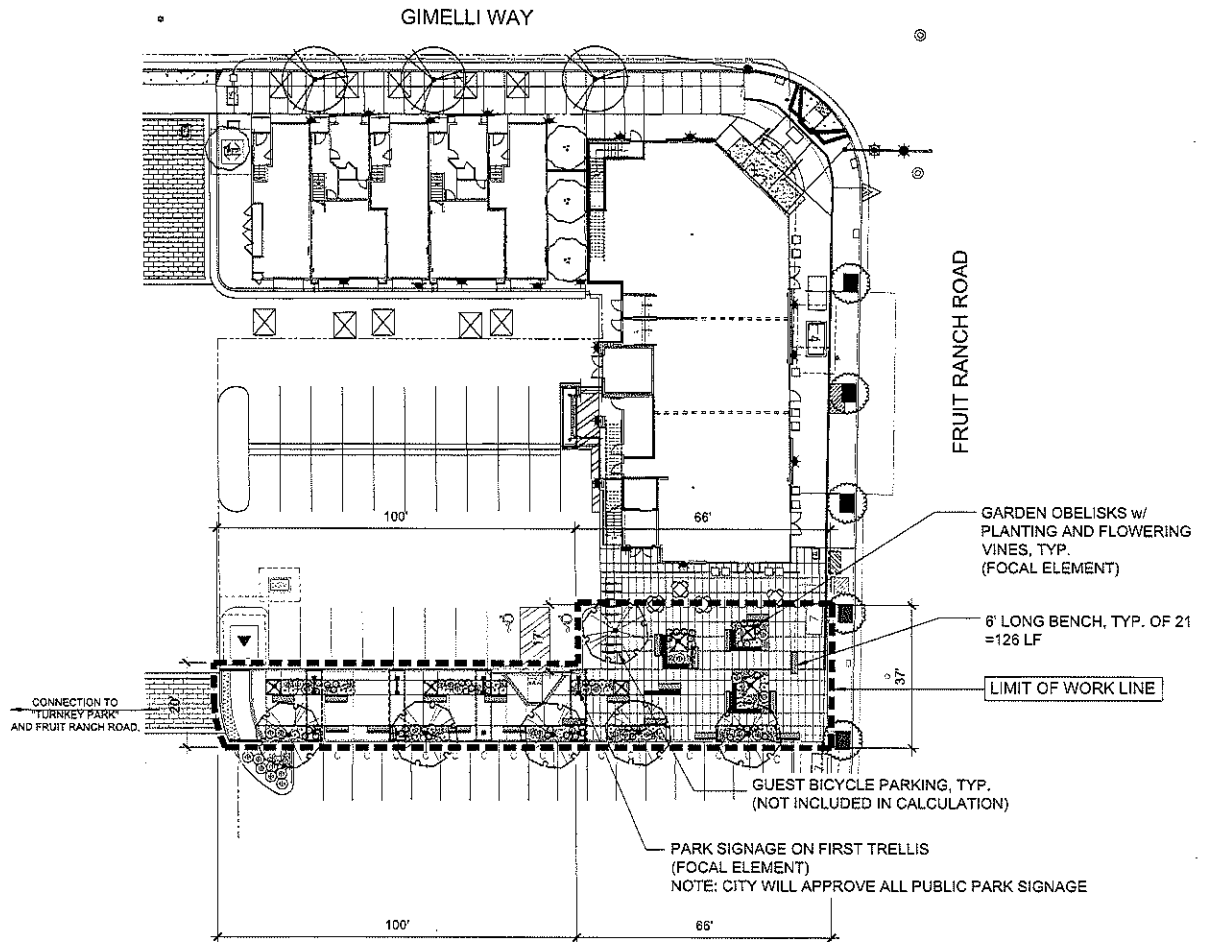
**PRIVATE RECREATION QUALIFYING AREAS & SQUARE FOOTAGE**

**PRIVATE GARDEN - 4,224 sf**

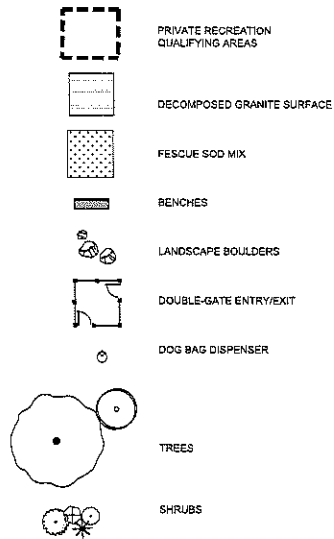
- PRIVATE GARDEN PERIMETER = 406 LF
- BENCHES/ SEATING (30% of PERIMETER) = 121.8 LF OF SEATING REQ'D. 128 LF PROVIDED (QTY. 21 - 6' BENCHES)
- FOCAL ELEMENTS - GARDEN OBELISKS WITH PLANTING & FLOWERING VINES
- FOCAL ELEMENTS - THREE-POST TRELLISES & PARK SIGNAGE
- PAVING
- LIGHTING
- SHADE TREES
- LOW WATER USE & ORNAMENTAL SHRUBS/GROUNDCOVER PLANTING AREAS



KEY MAP



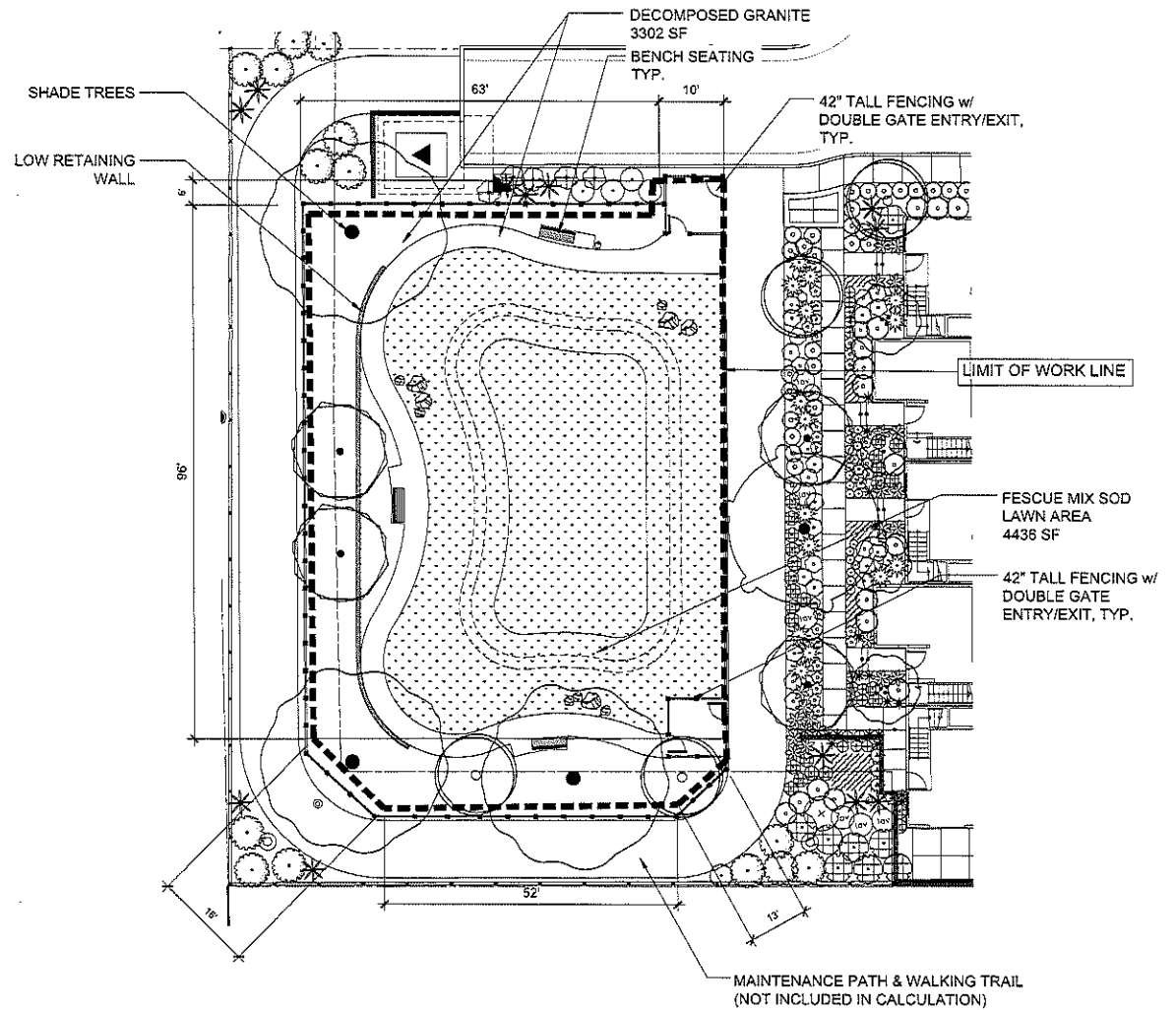
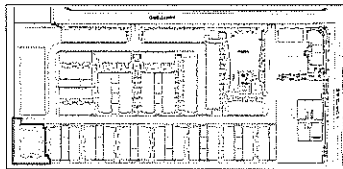
**LEGEND**



**PRIVATE RECREATION QUALIFYING AREAS & SQUARE FOOTAGE**

**PRIVATE PET AMENITY AREA - 7,738 sf**

- DECOMPOSED GRANITE = 3,302 SF
- FESCUE MIX SOD LAWN AREA = 4,436 SF
- SEATING
- SHADE TREES
- FENCING/DOUBLE GATED ENTRY/EXIT
- DRAINAGE



**EXHIBIT C- Fees and Credits**  
**Parkland Dedication Obligation, Applied Credits and In-Lieu Fees**  
**Merlino Village / The Orchard Turnkey Parkland Agreement**  
**Tentative Map File No. PT16-035, Tract 10430**

<b>Parkland Dedication Requirements</b>					
Type of Dwelling	Number of Units	Persons Per Household	Total Population	Dedication requirement per Person (acres)	Total Parkland Dedication Required (acres)
Single Family Detached	0	3.31	0.00	0.003	0.000
Single Family Attached	93	3.31	307.83	0.003	0.923
Multi-Family 2-4	0	2.96	0.00	0.003	0.000
Multi-Family 5 or more units	95	2.34	222.30	0.003	0.667
High Rise Units (12+ Stories)	0	1.51	0.00	0.003	0.000
SRO Units	0	1.00	0.00	0.003	0.000
				<b>Total Dedication Req'd (acres)</b>	<b>1.590</b>

<b>Calculation of Private Recreation Credits</b>					
Eligible Private Rec. Acreage			Category A Features		
Total Category A		0.432 Acres			
Total Category B (unadjusted)	0.018	0.972369146			
Category B (Upper limit)					
Total Category A	0.432	Acres			
Total Parkland Dedicated	0.540	Acres	0.972		
More than 5 Stories or Land being Dedicated?		Yes / No			
Category B (Upper limit)	0.972	Acres			
Total Category B (adjusted)		0.018 Acres			
Total Category A		0.432 Acres			
Total Category B (adjusted)		0.018 Acres			
Subtotal Priv. Rec. Acreage		0.450 Acres			
Total Dedication Required	1.590	Acres			
Max Private Rec. Acreage*		0.795 Acres			
Eligible Priv. Rec. Acreage		0.450 Acres			

Category A Features			Category A	
	Sq. Ft	Acreage		
Tot Lot	0	0.000		
Sports Courts	0	0.000		
Turf Playing Field	0	0.000		
Picnic Area	3784	0.087		
Public Plazas	0	0.000		
Private Garden	5463	0.125		
Private Pet Amenity Area	7738	0.178		
Private Garden Plots	1849	0.042		
Sub Total	18834	0.432		

Category B Features			Category B	
	Sq. Ft	Acreage		
Community Room	764	0.018		
Swimming Pool	0	0.000		
Recreation Bldg.	0	0.000		
Sub Total	764	0.018		

\*Private recreation credit cannot exceed 50% of total parkland dedication required

<b>Calculation of In-Lieu Fees</b>			<b>Fee Schedule (100% of 2013 - 2014 Land Values)</b>		
Total Dedication Required (acres)		1.590	MLS Zone #	SFD	SFA
Total Public Parkland being dedicated (acres)		0.540	1,2,12	\$14,700	\$14,700
Eligible Private Recreation Credits (acres)		0.450	3	\$18,600	\$18,600
			4,11	\$13,000	\$13,000
			5,6	\$19,500	\$19,500
			(Alviso) 7A	\$11,200	\$11,200
			(North SJ) 7B	\$58,800	\$58,800
			8 / 14, 16	\$16,000 / \$15,100	\$16,000 / \$15,100
			9	\$32,000	\$32,000
			10	\$29,400	\$29,400
			13	\$17,300	\$17,300
			15,17,18	\$27,300	\$27,300
			<b>Multi Family</b>		
			2-4	5+	High Rise
			1,2,12	\$13,200	\$10,400
			3	\$16,600	\$13,100
			4,11	\$11,600	\$9,200
			5,6	\$17,400	\$13,800
			(Alviso) 7A	\$10,100	\$8,000
			(North SJ) 7B	\$52,600	\$41,600
			8 / 14, 16	\$14,300 / \$13,500	\$11,300 / \$10,700
			9	\$28,600	\$22,600
			10	\$26,300	\$20,800
			13	\$16,500	\$12,200
			15,17,18	\$24,400	\$19,300

Total Credits	0.990				
Percentage of Dedication Requirement Met (Total Credits divided by Total Dedication Required)		62.2431085%			
Percentage of Dedication Requirement Remaining		37.7568915%			
Public Park Cost Estimate		\$ 833,716.00			
17.5% City's Administrative and Design and Review Fee		\$ 145,900.30			
Total Cost of Public Park Construction		\$ 979,616.30			

<b>Net In Lieu Fees</b>					
	Total Number of Units	MLS Zone	Low Income Units*	Fee Per Unit (From chart B)	Total Fee Before Credit
Single Family Detached	0	5		\$19,500.00	\$0.00
Single Family Attached	93	5		\$19,500.00	\$1,813,500.00
Multi-Family 2-4	0	5		\$17,400.00	\$0.00
Multi-Family 5 or more units	95	5		\$13,800.00	\$1,311,000.00
High Rise (12+ Stories)	0	5		\$0.00	\$0.00
SRO Units	0	5		\$5,900.00	\$0.00
				5	Total Fees: \$3,124,500.00
<b>Total Fees After Credits:</b>					<b>\$1,179,714.08</b>

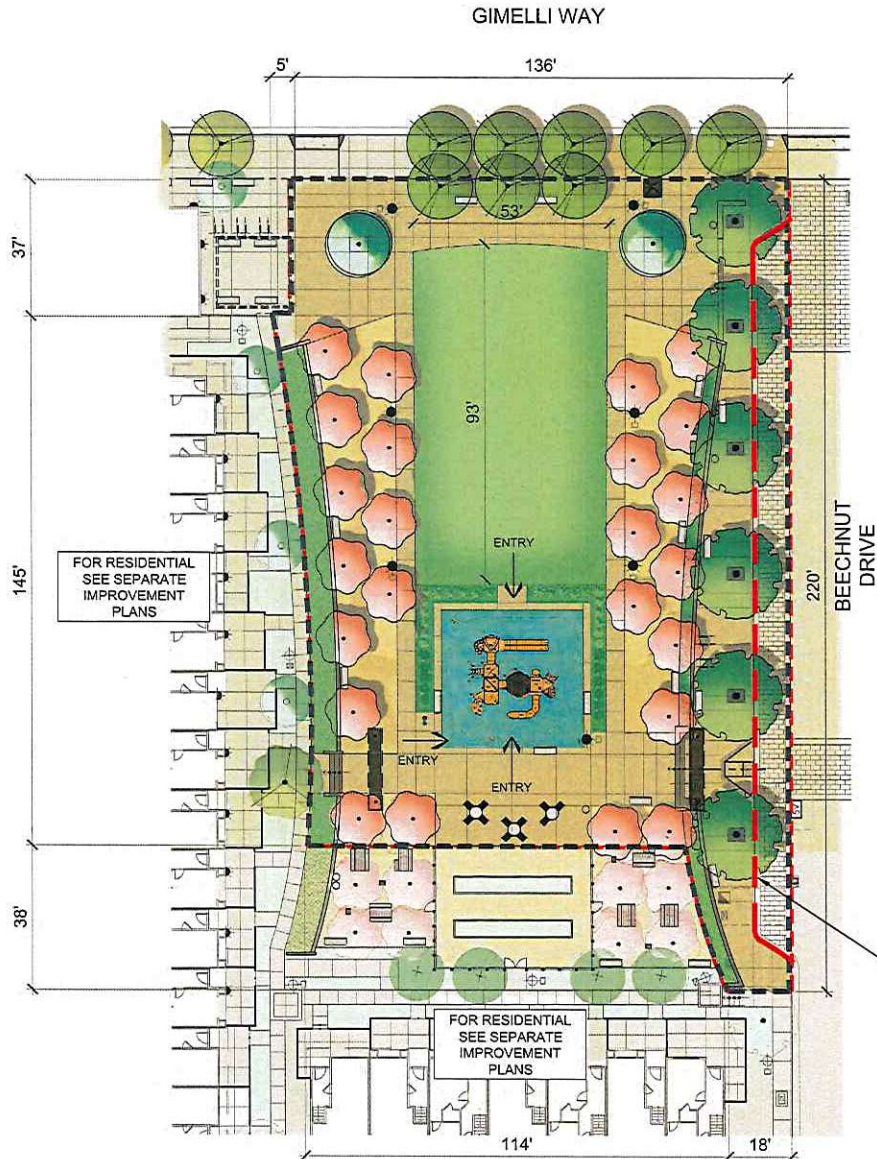
Total Fees:	\$3,124,500.00
Percent of Parkland Dedication Met:	62.2431085%
Total Credits:	\$1,944,785.92

Minus Credit provided for Park Construction Cost	\$ 979,616.30
Total Amount of Remaining Parkland Obligation	\$ 200,097.78
Credit applied for Park In-Lieu Fees paid with Interim Agreement	\$ 835,140.17
Amount of Money Available for Park Construction	\$ 635,042.39
Minus money to be applied to the City's Design and Review Fees	\$145,900.30
Money to be Returned to the Developer to fund Park Construction	\$489,142.09



EXHIBIT D - PARK IMPROVEMENT/SITE PLAN MASTER PLAN

EXHIBIT D



LEGEND

- POLE LIGHT
- OBELISK W/ PARK SIGNAGE (CITY WILL APPROVE ALL PUBLIC PARK SIGNAGE)
- BIKE RACK
- PLAY EQUIPMENT
- RESILIENT SAFETY SURFACE
- 2-POST TRELLIS, S4S REDWOOD
- TABLE & CHAIRS
- BENCH - PER CITY
- DRINKING FOUNTAIN
- TRASH BIN - PER CITY
- NO MOW FESCUE
- SPORTING LAWN
- DECOMPOSED GRANITE PAVING
- FLOWERING ORCHARD TREES
- LIMIT OF PARK IMPROVEMENTS

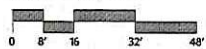
PARK IMPROVEMENTS: 23,431 SF±  
.54 ACRE ±

NOTE: ALL IMPROVEMENTS, PARK SIGNAGE WILL MEET CITY STANDARD PER PARKLAND AGREEMENT

0.04 ACRE; 10' WIDE EMERGENCY ACCESS EASEMENT, PRIVATE INGRESS & EGRESS EASEMENT, PUBLIC SERVICE EASEMENT, PRIVATE STORM DRAIN EASEMENT, PRIVATE SURFACE DRAINAGE RELEASE EASEMENT, & PRIVATE SANITARY SEWER EASEMENT

NOTE: MASTER SCHEMATIC PLAN ONLY. FINAL PARK DESIGN TO BE DETERMINED THROUGH CONSTRUCTION DRAWINGS AND APPROVED BY THE CITY OF SAN JOSE.

SCALE 1/16"=1'-0"



VAN DORN ABED  
LANDSCAPE ARCHITECTS, INC.  
MATT CANO  
DIRECTOR OF PUBLIC WORKS

PROJECT TITLE  
  
NORTH CAPITOL AVENUE AT GIMELLI WAY PARK SITE

REV	DATE	DESCRIPTION
Δ	10/09/2017	CITY REQUESTED REVISION
Δ	01/12/2018	CITY REQUESTED REVISION
Δ	06/14/2018	CITY REQUESTED REVISION
Δ	08/21/2018	CITY REQUESTED REVISION
Δ	09/04/2018	CITY REQUESTED REVISION
Δ	01/13/2019	CITY REQUESTED REVISION
Δ	04/02/2019	CITY REQUESTED REVISION
Δ	04/11/19	CITY REQUESTED REVISION

SCALE: 1/16" = 1'-0"  
DATE: 04/11/19  
DRAWN BY: MW  
CHECKED BY: ZA

SHEET TITLE  
PARK MASTER PLAN

SHEET NUMBER  
EXHIBIT D

**EXHIBIT E**  
**DESIGN AND CONSTRUCTION REQUIREMENTS**

**Section 1. Plans And Specifications.**

1. The design for the **Park Improvements** must be substantially consistent with the conceptual design for the **Park Improvements/Master Plan** as depicted in **Exhibit D**. Acknowledging the uniqueness of the proposed **Park Site** within San Jose's public park system, City Standards will apply with alternate materials, elements and associated procedures and specifications allowed per the approval of the **Director of Public Works** and the **City's Director (Parks, Recreation and Neighborhood Services)** during the construction permitting phase. Subject to the foregoing, Developer shall design and construct the **Park Improvements** in accordance with the following:
2. **City's Standard Specifications and Standard Details, dated July 1992 ("City's Specifications")**, as may be amended from time to time, and on file with City's Department of Public Works, Architectural Division. Section 1 and the Technical Provisions of City's Standard Specifications (Section 10 through and including Section 1501) shall be applicable to this Agreement. References in the Standard Specifications to "Developer" shall be deemed to mean "Developer."
3. City's Turnkey Park Standards for Park Design & Construction, dated 2001 ("Turnkey Standards"), as may be amended from time to time, and on file with City's Department of Public Works, Architectural Division. In the event that Developer does not submit the ninety percent (90%) Project Specifications (as specified in the Turnkey Standards) for City's review and approval within eighteen (18) months of the Effective Date of this Agreement and the Turnkey Standards are then revised, Developer shall design and construct the **Park Improvements** in accordance with the revised Turnkey Standards.
4. Public Works Standard Specifications- Section 329100 Planting Preparation. Soil specifications, survey requirements, and resulting soil amendment procedures prescribed in the above guidelines, shall be applicable to this agreement. Prior to construction of the park, this document will be made available to the Developer through Public Works.
5. City shall review the Project Specifications, including materials, infrastructure, and design elements, for consistency with the conceptual design of Turnkey **Park Improvements** as contained in **Exhibit D. Park Improvement Site Plan** and the specifications and guidelines outlined above and throughout this Agreement. Pursuant to this design review process and with reasonable consideration of the cost estimates contained or referenced herein, the Plans shall be refined to the satisfaction of the **Director of Parks, Recreation, and Neighborhood Services** and the **Director of Public Works** pursuant to all terms in this Agreement. Prior to finalizing the Project Specifications, with the **City Director's (Parks, Recreation, and Neighborhood Services)** approval, which shall not be unreasonably withheld, Developer may modify the final design to reflect the fees and credits identified in Exhibit B prior to approval of the final Project Specifications in accordance with Section 1.C of this Exhibit.

## Section 2. Application Of Plans And Specifications.

1. City's Specifications, Turnkey 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 Turnkey Standards and the City's Specifications, the Turnkey Standards shall prevail.
3. The provisions of this Agreement supersede anything to the contrary in either the City's Specifications or the Turnkey Standards.

## Section 3. Project Specification Approval Process.

1. The Project Specifications shall be submitted in a timely manner in order to insure that the Developer completes the **Park Improvements** on or before the completion date specified in this Agreement. Developer shall not construct any **Park Improvements** unless and until the **City's Director of Public Works** has approved the Project Specifications in writing. The approval process for the Project Specifications is more particularly set forth in the Turnkey Standards.
2. Prior to acceptance of the Project Specifications and/or construction of the Park, the Developer shall provide the City with original copies of all soil surveys along with recommended soil amendments. The City, may at its sole discretion, require inspection of the Park Site for construction debris before construction may commence.
3. *City's approval of the Project Specifications 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 of Public Works** determines in the **Director of Public Work's** reasonable discretion that the public safety requires modification of, or the departure from, the Plans, the **Director of Public Works** 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 of Public Works**, shall be final and that, except as expressly provided in this subsection, no revisions to the Plans shall be permitted for any reason whatsoever, unless approved in writing by the **Director of Public Works**.*
4. For reference and public information purposes, Developer will provide the City with a tentative schedule of construction prior to the commencement of development for any of the Turnkey Park Improvements. Such schedule may be amended at the Developer's discretion provided that *all Improvements are completed by the completion dates specified in this Agreement.* At the City's request the Developer shall provide the City with an updated schedule that reflects amended milestones and anticipated completion dates.

#### Section 4. 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.**
  - a. **General Requirement:** For all construction work on the **Park Improvements**, Developer agrees to comply with the prevailing wage requirements set forth in Sections 7-1.01A(2) through 7-1.01A(3) of the City of San Jose, **Department of Public Works**, Standard Specifications, dated July 1992 (“Prevailing Wage Requirement”), as may be amended from time to time. The Prevailing Wage Requirement is incorporated into this Agreement by reference as though set forth herein in its entirety. Developer acknowledges that it has reviewed the Prevailing Wage Requirement and is familiar with its requirements.
  
  - b. **Contractors and Subcontractors:** Developer shall expressly require compliance with the Prevailing Wage Requirement in all agreements it enters into with contractors and subcontractors for construction work on the **Park Improvements**. Developer acknowledges and agrees that it is responsible for compliance by its contractors and subcontractors of the Prevailing Wage Requirement.
  
  - c. **Reporting Obligations:** Notwithstanding anything to the contrary contained herein, Developer is not obligated to submit to City copies of payroll records, or any other records required to be maintained pursuant to the Prevailing Wage Requirement, until City requests such records. 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 Office of Equality Assurance request for such records. In responding to a request by the Office of Equality Assurance, Developer agrees that it is responsible for submitting the records of any and all of its contractors and subcontractors.
  
  - d. **Indemnity:** Developer shall indemnify the City for any claims, reasonable costs or reasonable expenses which City incurs as a result of Developer’s failure to pay, or cause to be paid, prevailing wages.
  
  - e. **Remedies For Developer’s Breach Of Prevailing Wage Requirements.**
    - i. **General:** Developer acknowledges City has determined that the Prevailing Wage Requirement promotes each of the following (collectively “Goals”):
  
    - ii. 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.
  
    - iii. 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.

- iv. Pay workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose 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 San Jose.
  - v. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.
  - vi. **Remedies:** City and Developer recognize that Developer's breach of the Prevailing Wage Requirement 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.
  - vii. 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:
  - viii. For each day after ten (10) working days that Developer fails to completely respond to a request by City to provide records as required under Section 2(b), of Exhibit C of this Agreement, Developer shall pay to City as liquidated damages the sum of TWO HUNDRED FIFTY DOLLARS (\$250.00); and
  - ix. 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.
- f. **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.



- g. **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.

i. **Developer Initial:** \_\_\_\_\_ **City Initial:** SJC

### 3. Conduct Of Work.

- i. **Appearance.** Developer shall maintain a neat and clean appearance to the work at the **Park Site**. When practicable, broken concrete and debris developed during clearing and grubbing shall be disposed of concurrently with its removal. If stockpiling of disposable material is necessary, the material shall be retained, if practical given site topography, in an area not readily visible to the public in a manner meeting SWPPP requirements or the reasonable satisfaction of the **Director of Public Works**,
- ii. **Condition.** Developer shall maintain the **Park Site** in a neat, clean, and good condition prior to City's acceptance of the **Park Improvements**. Developer shall not dispose or cause the disposal of any Hazardous Substances on any of the **Park Site** (other than as incident to moving pre-existing soils within the Development site) except in compliance with applicable law. Prior to the beginning of construction of the Improvements, the Developer shall leave the **Park Site** free of staging debris, remove footing foundations if necessary, and provide a level site to minimize additional off haul not previously accounted for. Additionally, Developer shall take reasonable precautions to prevent the disposal of Hazardous Substances by third parties on any of the Site except in compliance with applicable law. The term "Hazardous Substances" is defined in Section 5 (3) of this Exhibit.
- iii. **Emergencies.** In an emergency affecting the safety of persons or property, Developer shall act reasonably to prevent threatened damage, injury, or loss. Developer shall immediately notify the City by telephone at the telephone number as directed by City's Director of PW and in writing of such actions.

### 4. Access For Inspection.

1. **Access.** The **Director of Public Works** and the **Director of Public Work'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 (subject to (a) reasonable advance notice to Developer, except in cases of emergency, and (b) customary site rules) to such improvements for inspection purposes. If during such inspection the **Director of Public Works** determines that all or any portion of the work done on the **Park Improvements** is not in compliance with the Plans, the **Director of Public Works** shall notify

Developer of the same and Developer shall promptly cure such defect to the **Director of Public Work's** reasonable satisfaction. Such notifications shall be made to the Developer and his on-site representatives to not unduly interfere with ongoing construction work.

**b. 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 of Public Works** shall be made for any emergency work which may be required. In addition, Developer shall provide **Director of Public Works** 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 of Public Works** shall also designate one or more authorized representative who shall have the authority to represent the **Director of Public Works**. Developer's authorized representative shall be present at the site of the work at such reasonable times as designated by the **Director of Public Works**. 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 of Public Works** 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 of Public Works** will on request of the Developer be given or confirmed by the **Director of Public Works** 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.

**5. Acceptance of Park Improvements.**

- i. The **Park Improvements** shall be completed in accordance with the provisions of this Agreement to the satisfaction of the **Director of Public Works**.
- ii. City agrees to inspect and prepare a punchlist 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 punchlist work has been completed.

- iii. City will process acceptance documentation (Notice of Acceptance) 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:
- iv. City finds that all punchlist work has been satisfactorily completed; and
- v. 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 Site** as outlined in **Exhibit A. Irrevocable Offer of Dedication** and **Exhibit H. Environmental Disclosures/Permitted Exceptions**; and
- vi. Developer has provided the **Director of Public Works** with three (3) sets of the Plans ("record plans"), corresponding copies of any and all warranties, and the like (such warranties shall be in the name of the City), and corresponding copies of any and all operating manuals for equipment installed as part of the **Park Improvements** within ten (10) business days of the signed Notice of Acceptance. The aforementioned documents shall also be provided by Developer in an appropriate electronic format (.dwg, .pdf, etc.) as requested by the **Director of Public Works** or **City's Director (Parks, Recreation, and Neighborhood Services)**.
- vii. 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 some or all of the landscaping in time to be inspected by the **Director of Public Works** for the purposes of accepting the completed **Park Improvements**, Developer shall post a bond or other form of security as set forth in Section 6 of this Agreement.
- viii. At the discretion of the **Director of Public Works**, City may accept a designated portion of the **Park Improvements**. Acceptance of a designated portion will be as provided by Section 7-1.166 of the City's Specifications.

#### 6. **Park Site.**

- i. Developer shall provide each of the following to the **Director of Public Works**, subject to the approval of the **Director of Public Works**, prior to City's acceptance of the **Park Site and Park Improvements**:
  - ii. A preliminary report for the **Park Site** by a reputable title company currently doing business for City's Real Estate Division. Developer shall coordinate with **City's Real Estate Division** 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**.

- iii. A quitclaim deed for the Park Site containing the legal description of the Park Site, as approved by City Surveyor, properly executed and acknowledged, subject only to the Permitted Exceptions (as defined below), 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 (i) those environmental covenants or restrictions relating to environmental conditions present on the **Park Site** prior to date of conveyance to Developer or as listed in **Exhibit A. Irrevocable Offer of Dedication**, and ) exceptions affecting the **Park Site** approved by City's Manager or the Manager's designee in writing or listed in **Exhibit H** (collectively, "**Permitted Exceptions**"). The quitclaim deed, subject to approval of City, for the **Park Site** shall be delivered to the **City's Real Estate Division** at least ninety (90) days prior to the anticipated completion of the **Park Improvements**.
- iv. Developer shall also cause to be provided to City, concurrently with the conveyance of the **Park Site** to City, a C.L.T.A. owner's form policy of title insurance issued by a reputable title company currently doing business with City, with City named as the insured, in the amount of \$1,058,508. insuring the title of City to the **Park Site** is subject to only the Permitted Exceptions.
- v. The Environmental Warranty specified in Section 3 of this Exhibit.
- vi. Documents evidencing the authority of the signatory(ies) to execute any agreement or other legal binding documents on behalf of Developer.
- vii. Upon the **Director of Public Works's** 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.

#### **7. Compliance With Laws/Permits.**

- i. Developer, until the date of transfer, shall keep fully informed of all applicable local, state, and federal laws and county and municipal ordinances and regulations which in any manner affect the work performed on the **Park Improvements** by 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, until the date of transfer, observe and comply with, and shall cause all Developer's employees, agents, representatives, contractors and subcontractors to observe and comply with all such applicable 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.

- ii. 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. Until the date of transfer, 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 6 of this Agreement; provided that Developer shall have no obligation or responsibility to City following the date of transfer, except as otherwise provided herein this Agreement.

#### **Section 5. ENVIRONMENTAL WARRANTY.**

1. By executing this Agreement, Developer warrants and agrees that with respect to the **Park Improvements** and **Park Site**, prior to the City's acceptance of the **Park Improvements** and dedication of the **Park Site**:
2. Except as disclosed in the Environmental Reports listed in **Exhibit H**, 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**.
3. 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 due to chemical composition, 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.

4. 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**, except as may be disclosed in the Hazardous Material Report, SMP, No Further Action Letter or similar document.
5. 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**, 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, except as may be required by regulatory oversight agencies to protect human health and the environment from residual Hazardous Materials existing on the **Park Site** prior to the City’s conveyance of the **Park Site** to Developer or as may be required by law.
6. Neither the **Park Site** nor **Park Improvements** located on the **Park Site** shall be subject to any burden, easements, covenants or land use restrictions recorded against any part of the **Park Improvements** or **Park Site** other than the Permitted Exceptions shown on **Exhibit. A. Irrevocable Offer of Dedication (0.04 acre easement) and Exhibit D .**
7. Developer shall, upon receipt by Developer of notice thereof and until conveyance to the City, give prompt written notice to City of San Jose:
  - a. 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
  - b. Any claims made or threatened in writing by any third party against Developer, City or the **Park Site** relating to any loss or injury resulting from any Hazardous Substance; and
  - c. 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 6. HAZARDOUS MATERIALS REPORT.

1. **Existing Conditions and Environmental Remediation.** The City acknowledges receipt of the documents listed in **Exhibit H** as disclosure of existing conditions, remediation completed by the City, and planned remediation activities.
2. Upon written request by the City, the Developer shall provide the City any updated reports or documentation of environmental conditions related to Hazardous Substances as may be generated to satisfy permitting and/or closure requirements under all applicable laws and regulations in effect for the **Park Site**, if applicable.

## Section 7. INSURANCE REQUIREMENTS.

1. Developer and/or its contractors and consultants shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the Development hereunder by the Developer, its agents, representative employees, contractors, or subcontractors.
2. **Minimum Scope of Insurance.**
  - a. Coverage shall be at least as broad as:
  - b. The coverage provided by Commercial General Liability coverage ("occurrence") Form Number; and
  - c. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall also be included for all owned, non-owned and hired autos; and
  - d. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
  - e. Professional Liability Errors and Omissions insurance for all professional services, to the extent performed by Developer. If performed by Developer's consultants, coverage may be provided by consultants; and
  - f. Builder's Risk insurance providing coverage for "all risks" of loss; and
  - g. Pollution Liability insurance, including to the extent commercially available coverage for all operations, completed operations and professional services (without exclusion for asbestos or lead).
  - h. There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager in writing.
3. **Minimum Limits of Insurance.**
  - a. Developer shall maintain limits no less than:
  - b. **Commercial General Liability:** Five Million Dollars (\$5,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Coverage may be provided through a combination of a primary CGL policy and umbrella liability policies; and
  - c. **Automobile Liability:** Two Million Dollars (\$2,000,000) combined single limit per accident for bodily injury and property damage; and

- d. **Workers' Compensation and Employers' Liability:** Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of One Million Dollars (\$1,000,000) per accident; coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officers, employees, agents, and contractors; and
- e. **Professional Liability Errors and Omissions:** One Million Dollars (\$1,000,000) per claim/One Million Dollars (\$1,000,000) aggregate limit to the extent that Developer provides Professional Services. If Developer retains consultants to perform such services, coverage may be provided by consultants; and
- f. **Builders' Risk:** Completed value of the Project's public improvements, identified in EXHIBIT G of this Agreement; and
- g. **Pollution Liability:** Two Million Dollars (\$2,000,000) per occurrence/Two Million Dollars (\$2,000,000) aggregate limit.
- h. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager in writing. At the option of City, either, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officials, employees, agents, and contractors, or Developer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by City.
- i. **Provisions Of Policies.** The insurance policies are to contain, or be endorsed to contain, the following provisions:
  - i. Regarding Commercial General Liability, Automobile Liability and Pollution Liability Coverages.
  - ii. City, its officials, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of, the Developer; products and completed operations of the Developer; premises owned, leased or used by the Developer; or automobiles owned, leased, hired or borrowed by Developer. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors; and
  - iii. The Developer's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officials, employees, agents and contractors shall be excess of the Developer's insurance and shall not contribute with it; and
- j. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City and the City, its officials, employees, agents and contractors; and
- k. Coverage shall state that Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; and
- l. Coverage shall contain a waiver of subrogation in favor of City, its officials, employees, agents and contractors.

- m. Workers' Compensation and Employers Liability Coverages shall contain a waiver of subrogation in favor of City, its officials, employees, agents, and contractors.
- n. Builders' Risk policies shall be endorsed to the following provisions:
- o. City shall be named as loss payee.
- p. Coverage shall contain a waiver of subrogation in favor of City, its officials, employees, agents and contractors.
- q. **All Coverages.** Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City's Risk Manager, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.
- r. **Duration.** Commercial General Liability (including, without limitation, products and completed operations coverage), Professional Liability and Pollution Liability coverages shall be maintained continuously for a minimum of five (5) years after recordation of Notice of Acceptance under this Agreement.
  - i. If any of such coverages are written on a claims-made basis, the following requirements apply:
  - ii. The policy retroactive date must precede the date the work commenced under this Agreement.
  - iii. If the policy is cancelled or non-renewed and coverage cannot be procured with the original retroactive date, Developer must purchase an extended reporting period equal to or greater than five (5) years after recordation of Notice of Acceptance under this Agreement.
- s. **Acceptability of Insurers.** Insurance is to be placed with insurers acceptable to the City's Risk Manager.
- t. **Verification of Coverages.** Developer shall furnish City (in the manner provided below) with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- u. Proof of insurance shall be either emailed in pdf format to: [Riskmgt@sanjoseca.gov](mailto:Riskmgt@sanjoseca.gov), or mailed to the following postal address or any subsequent email or postal address as may be directed in writing by the:

**City's Risk Manager:  
The City of San Jose – Finance Department  
Risk Management  
200 East Santa Clara Street, 14th Floor Tower  
San Jose, CA 95113-1905**

- v. **Subcontractors and Subconsultants.** Developer or its contractors shall include all subcontractors and/or subconsultants as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor or subconsultant.



**EXHIBIT F**

**BOND FORMS**

Bond No. \_\_\_\_\_

Premium \_\_\_\_\_

**FAITHFUL PERFORMANCE BOND**

**WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and PULTE HOME COMPANY LLC,**

A MICHIGAN LIMITED LIABILITY COMPANY as principal ("Principal") have entered into an agreement entitled PARKLAND AGREEMENT FOR TENTATIVE MAP NO. PT16-035, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

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

**NOW, THEREFORE,** we the Principal and insert full name of Surety, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of **\$832,460**, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

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

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

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder



or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

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

PRINCIPAL:

SURETY:

\_\_\_\_\_  
(Principal name) (Seal)

\_\_\_\_\_  
(Surety name) (Seal)

BY: \_\_\_\_\_  
(Signature)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print name and title)

\_\_\_\_\_  
(Print name and title)

Principal address and telephone:

Surety address and telephone:

*Affix Corporate Seals*  
*Attach Notary Acknowledgments for All Signatures*  
*Attach Power-of-Attorney if executed by Attorney-in-Fact*

Bond No. \_\_\_\_\_

Premium \_\_\_\_\_

### **PAYMENT (LABOR AND MATERIALS) BOND**

**WHEREAS**, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and **PULTE HOME COMPANY LLC**,

**A MICHIGAN LIMITED LIABILITY COMPANY** as principal ("Principal") have entered into an agreement entitled PARKLAND AGREEMENT FOR TENTATIVE MAP NO. PT16-035 incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

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

**NOW, THEREFORE**, we the Principal and **[insert full name of Surety]**, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City, and unto all contractors, subcontractors, suppliers, laborers, materialmen and other persons employed in the performance of the Contract and referred to in the aforesaid Civil Code, as obligees, in the sum of **\$832,460**, on the condition that if Principal shall fail to pay for any materials or equipment furnished or used or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses, and fees, including attorney's fees, reasonably incurred by any obligee in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in the judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect, and shall bind Principal, Surety, their heirs, executors, administrators, successors, and assigns, jointly and severally.

**IT IS HEREBY EXPRESSLY STIPULATED AND AGREED** that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions, and State agencies entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

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

PRINCIPAL:

SURETY:

\_\_\_\_\_  
Principal name)

(Seal)

\_\_\_\_\_  
(Surety name)

(Seal)

BY: \_\_\_\_\_

(Signature)

BY: \_\_\_\_\_

(Signature)

\_\_\_\_\_  
Print name and title)

Principal address and telephone:

\_\_\_\_\_  
Print name and title)

Surety address and telephone:

*Affix Corporate Seals*

*Attach Notary Acknowledgments for All Signatures*

*Attach Power-of-Attorney if executed by Attorney-in-Fact*

Bond No. \_\_\_\_\_

Premium \_\_\_\_\_

## WARRANTY BOND

**WHEREAS**, the City of San Jose, a municipal corporation of the State of California (“City”) and **PULTE HOME COMPANY LLC**,

**A MICHIGAN LIMITED LIABILITY COMPANY as principal (“Principal”) have entered into an agreement entitled PARKLAND AGREEMENT FOR TENTATIVE MAP NO. PT16-035, incorporated herein by reference and referred to as the “Contract,” which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,**

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

**NOW, THEREFORE**, we the Principal and *[insert full name of Surety]*, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California (“Surety”), are held firmly bound unto the City in the sum of **\$208,115 (25% of Faithful Performance Bond)**, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

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

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder



or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition.

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

PRINCIPAL:

SURETY:

\_\_\_\_\_  
(Principal name) (Seal)

\_\_\_\_\_  
(Surety name) (Seal)

BY: \_\_\_\_\_  
(Signature)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print name and title)

\_\_\_\_\_  
(Print name and title)

Principal address and telephone:

Surety address and telephone:

*Affix Corporate Seals*  
*Attach Notary Acknowledgments for All Signatures*  
*Attach Power-of-Attorney if executed by Attorney-in-Fact*

## EXHIBIT G

### COST ESTIMATE OF PARK IMPROVEMENTS

#### Capital- Turnkey Public Park -Improvements

San Jose, Ca.

April 18, 2019

#### **OPINION OF PROBABLE COST**

ITEMS:		QUANTITY		COST	TOTAL
<b>A. START UP</b>					
1.	MOBILIZATION	1	LS	15,000.00	15,000
2.	TRAFFIC CONTROL	1	LS	15,000.00	10,000
3.	SURVEY STAKING	1	LS	15,000.00	15,000
4.	EROSION CONTROL	1	LS	3,500.00	3,500
5.	DESIGN FEE ALLOWANCE	1	LS	38,075.00	38,075
				<b>SUBTOTAL</b>	<b>\$81,575</b>
<b>B. GRADING</b>					
1.	FINE GRADING	23,430	SF	1.82	42,643
2.	TEMPORARY CONSTRUCTION FENCE (6 MONTHS)	700	LF	3.00	2,100
				<b>SUBTOTAL</b>	<b>\$44,743</b>
<b>C. STORM DRAIN</b>					
1.	6" STORM DRAIN LINE SDR-26	465	LF	68.00	31,620
2.	6" AREA DRAIN-NDS 639	14	EA	35.00	490
				<b>SUBTOTAL</b>	<b>\$32,110</b>
<b>D. SANITARY SEWER</b>					
1.	4" PVC SANITARY SEWER LINE PVC-SDR-26	120	LF	90.00	10,800
2.	SANITARY CLEAN OUT	1	EA	500.00	500
				<b>SUBTOTAL</b>	<b>\$11,300</b>
<b>E. WATER</b>					
1.	3/4" General Metered Service - SJ Water Co.	1	EA	6,256.00	6,256
2.	1" Reduced Pressure Backflow Assembly	2	EA	2,385.00	4,770
3.	Federal & State Taxes	1	LS	1.00	1,226
				<b>SUBTOTAL</b>	<b>\$12,252</b>
<b>F. HARDSCAPE</b>					
1.	PEDESTRIAN CONC PAVING	8,666	SF	10.00	86,660
2.	TOT TURF RUBBERIZE SAFETY SURFACE	1,444	SF	20.00	28,880
3.	CONC STEPS	80	LF	40.00	3,200
5.	HANDRAILS	40	LF	70.00	2,800
				<b>SUBTOTAL</b>	<b>\$121,540</b>
<b>G. CURBS/WALLS</b>					
1.	18" TALL LANDSCAPE WALLS	290	LF	150.00	43,500
2.	6" CONC HEADER CURB	106	LF	24.00	2,544
				<b>SUBTOTAL</b>	<b>\$46,044</b>
<b>H. SITE FURNISHINGS</b>					
1.	OBELISK - 12' TALL w/ PARK ENTRY SIGN	1	EA	13,000.00	13,000
3.	DRINKING FOUNTAIN	1	EA	5,000.00	5,000
4.	2-POST TRELIS	2	EA	14,000.00	28,000
5.	TABLES AND CHAIRS (DUMOR)	3	EA	4,500.00	13,500
6.	BENCH	17	EA	1,900.00	32,300
7.	TRASH RECEPTABLE	4	EA	2,300.00	9,200
8.	BIKE RACK	4	EA	2,500.00	10,000

9.	TREE GRATE	6	EA	2,000.00	12,000
10.	PLAY EQUIPMENT- (LANDSCAPE STRUCTURES)	1	LS	130,000.00	130,000
	LANDSCAPE STRCUTURS DESIGN #1130404-02-01 (ADD MORE SHADE)				
11.	PARK RULES SIGN (provided by City)	1	EA	2,500.00	2,500
12.	PARK HISTORY SIGN (provided by City)	1	EA	2,500.00	0
				<b>SUBTOTAL</b>	<b>\$255,500</b>
<b>I.</b>	<b>LIGHTING</b>				
1.	PEDESTRIAN LIGHT POLES	6	EA	6,000.00	36,000
2.	PG&E CONNECTION	1	LS	6,000.00	6,000
				<b>SUBTOTAL</b>	<b>\$42,000</b>
<b>J.</b>	<b>PLANTING</b>				
1.	TURF AREA	4,900	SF	1.75	8,575
2.	NO-MOW FESCUE	450	SF	1.50	675
3.	24" BOX TREE	42	EA	520.00	21,840
4.	36" BOX TREE	6	EA	700.00	4,200
5.	5 GAL SHRUBS	521	SF	40.00	20,840
5.	MULCH	521	SF	0.90	469
6.	SOIL PREPARATION/FINE GRADING	8,666	SF	0.42	3,640
7.	STABILIZED DECOMPOSED GRANITE	5,260	SF	6.00	31,560
8.	ESTABLISHMENT MAINTAINCE PERIOD @ \$4000/month	12,000	LS	1.00	0
				<b>SUBTOTAL</b>	<b>\$91,799</b>
<b>K.</b>	<b>IRRIGATION</b>				
1.	IRRIGATION DRIP/SPRAY/BUBBLERS	8,666	SF	4.38	37,957
2.	IRRIGATION BACKFLOW	1	LS	4,000.00	4,000
3.	IRRIGATION CONTROLLER	1	LS	12,000.00	12,000
				<b>SUBTOTAL</b>	<b>\$53,957</b>
				<b>TOTAL</b>	<b>\$792,819.30</b>
				<b>5% Contingency</b>	<b>\$39,641</b>
				<b>Total Public Park Cost Estimate</b>	<b>\$832,460</b>
				<b>17.5% Plan Check/Review fee</b>	<b>\$145,681</b>
				<b>GRAND TOTAL:</b>	<b>\$978,141</b>
THIS ABOVE OPINION OF COST IS INTENDED AS A BUDGETING TOOL ONLY AND MAY NOT ACCURATELY REFLECT FINAL INSTALLATION COST.					

**EXHIBIT H**

**ENVIROMENTAL DISCLOSURES / PERMITTED EXCEPTIONS**

1. Initial Study and Mitigated Negative Declaration entitled 641 North Capital Avenue Mixed Use Project adopted by City Council on January 10, 2017 (Resolution 78053)
2. Phase I Environmental Site Assessment, Parcel 2-APN 254-06-042, 641 North Capitol Avenue, San Jose, CA 95133, Project No. 185750647; prepared by Stantec Consulting Services Inc. dated July 7, 2017.



**EXHIBIT I**  
**Public Park Preliminary Project Schedule**

Description	Duration	Start Date	End Date
Prepare Plans	37	1/24/2019	3/2/2019
<b>Submittal #1 (35% Plans)</b>			
Agency Review	28	3/2/2019	3/30/2019
Revise Plans	28	3/30/2019	4/29/2019
<b>Submittal #2 (65% Plans)</b>			
Agency Review	28	4/30/2019	5/28/2019
Revise Plans	27	5/29/2019	6/24/2019
<b>Submittal #3 (100% Plans)</b>			
Agency Review	28	6/25/2019	7/22/2019
Revise Plans	14	7/23/2019	8/5/2019
<b>Final Submittal</b>			
Approval	21	8/6/2019	8/26/2019
Bid and Award	35	8/26/2019	9/30/2019
Construction Phase	303	9/30/2019	7/29/2020
Completed - City Acceptance	124	7/29/2020	11/30/2020