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

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of San José
Department of Public Works
Development Services Division
200 East Santa Clara St., 3rd Floor Tower
San José, CA 95113-1905

PARKLAND AGREEMENT
FOR
PERMIT NO. XXXXXX
BETWEEN
CITY OF SAN JOSE
AND
APPLICANT NAME

(Chapter 14.25 of SJMC)

This 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 **APPLICANT NAME** ("Developer") as of 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 has filed a Development Permit No. **XXXXXX** (the "Development Permit") with the City's Planning Department for the residential development of real property located at the **PROJECT ADDRESS** ("Project") in the City of San Jose.

B. In accordance with the provisions of Chapter 14.25 of the San Jose Municipal Code ("Code"), the Development Permit contains a condition requiring the payment of fees and/or the dedication of land for park purposes ("Parkland Impact Obligation").

C. In order for Developer to satisfy Developer's Parkland Impact Obligation for the units included in the Project, Developer and City desire to enter into this Agreement.

D. City's Director of Public Works ("City's Director") is charged with the administration of this Agreement.

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

SECTION 1. DEVELOPER'S REPRESENTATIONS.

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

1. Developer has the legal ability to enter into 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(ies) identified on the Development Permit, the legal owner shall also be required to execute this Agreement and shall be subject to all terms, conditions, and obligations of this Agreement.

2. The Development Permit was filed on **DATE** and approved on **DATE**.

3. The statements and certificates made on the Development Permit and documents filed in conjunction with the Development Permit remain true and correct.

4. 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 inaccuracies or misstatements of fact. If any of these documents contain inaccuracies, misstatements or have become obsolete, Developer shall notify City in writing and provide City with the information required to render the documents accurate, complete and current.

5. In the event that any of the above information in this Section 1 is incorrect and there would be an increase in Developer's Parkland Impact Obligation when determined with the correct information by the City, Developer shall pay the difference in Parkland Fees, together with additional charges as provided by Chapter 14.25 of the Code.

SECTION 2. COMPLIANCE WITH PARKLAND IMPACT OBLIGATION.

A. Developer's performance of this Agreement shall satisfy Developer's obligations under City's Parkland Impact Ordinance. 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 in the Development Permit.

B. Developer's total Parkland Impact Obligation for the Project based on the number and type of net new, dwelling units shown on the Development Permit, is set forth in **Exhibit A**.

C. Developer shall satisfy its Parkland Impact Obligation for the Project by paying to the City the total Parkland Fees specified in **Exhibit A** according to Section 5 of this Agreement.

D. City will owe no refund to Developer in the event Developer does not build the number or type of units shown on the Development Permit.

SECTION 3. CREDIT FOR PRIVATE RECREATIONAL IMPROVEMENTS.

A. In the event that the Project is eligible to receive credit for private recreation improvements pursuant to Chapter 14.25, the Parkland Impact Obligation shall be reduced as set forth in **Exhibit A**. The description of the private recreation improvements to be included in the Project by Developer that will receive credit pursuant to Chapter 14.25 is set forth in **Exhibit A** and **Exhibit B**. Developer shall complete the installation of the private recreation improvement described in **Exhibit A** and **Exhibit B**, if any, within eighteen (18) months from the Effective Date.

B. With respect to any credited private recreation improvements which have not been completed within eighteen (18) months from the Effective Date, 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 Chapter 14.25.

C. 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 ("Owner") of the residential units located within the Project and which expressly cannot be defeated or eliminated without the consent of the City as described in Chapter 14.25.

D. The location of the private recreation improvements for this Project, if any, is depicted in the attached **Exhibit B**. If the private recreation improvements are not constructed and maintained as depicted in **Exhibit B**, credit for the private recreation improvements shall be disallowed as provided for in Section 3.B of this Agreement.

E. Developer acknowledges and agrees that Developer shall not receive any credit for eligible private recreation improvements pursuant to Chapter 14.25 unless those private recreation improvements are set forth in **Exhibit A** and **Exhibit B** and constructed in full compliance with this Agreement or as otherwise creditable to the satisfaction of the Director of Parks, Recreation, and Neighborhood Services ("PRNS Director"). Where moderate adjustments to **Exhibit B** remain fully creditable pursuant to Chapter 14.25, and have been accepted by the PRNS Director, the Developer shall provide an updated 'as built' **Exhibit B** within 60 days of request by the City.

F. Developer acknowledges that pursuant to the covenants set forth in Section 3.C above, 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 Subdivider 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.

G. In the event that the project contains Private Recreational areas designated for credit as 'Private Plaza', 'Private Garden', or other such spaces designated in this agreement or associated exhibits as 'publicly accessible,' the Developer or Owner agrees to maintain perpetual public access to these amenities for a minimum of 360 days per year. The Developer or Owner may however, post reasonable Rules and Regulations for respectful use and maintenance of the site as well as conduct occasional extended closures, subject to approval by the PRNS Director. 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. ADJUSTMENT OF PARKLAND FEES.

In the event there is a subsequent increase in the number of units to be built or a change in the dwelling unit type, Developer agrees to immediately notify City's Director and to pay such additional Parkland Fees as are required by Chapter 14.25 of the Code.

SECTION 5. TIME OF PAYMENT.

The park impact in-lieu fees will be paid to the City on ***whichever date occurs first of the following three events***:

- The date of final inspection, ***or***
- By the date of issuance of the certificate of occupancy (including any temporary certificate of occupancy), ***or***
- Five years after issuance of the building permit if construction has not yet begun.

In addition to any other remedies provided by law and/or this Agreement, the late payment of fees shall result in the imposition of additional charges as provided by Chapter 14.25.

SECTION 6. TRANSFER OF PROPERTY.

Developer's transfer of any property described in the Development Permit shall not release Developer of its obligations hereunder. Upon any transfer, Developer shall give a copy of this Agreement to the transferee. Developer and its successors, assigns and transferees shall be jointly and severally liable to City for payment of the Parkland Fees under this Agreement.

SECTION 7. AMENDMENT.

This Agreement may only be modified by a written amendment executed by the Parties.

SECTION 8. PARKLAND IMPACT ORDINANCE.

This Agreement is entered into pursuant to and shall be governed by the Parkland Impact Ordinance, Chapter 14.25 of the Code.

If not otherwise defined in this Agreement, capitalized terms shall have the meanings set forth in Chapter 14.25 of the Code.

SECTION 9. NOTICES.

Any communication or notice which either Party is required to send to the other or which either Party desires to send to the other, shall be in writing and shall be either personally delivered or mailed in the United States mail, postage prepaid, to the City and to Developer as set forth below their respective signature blocks. Notice shall be deemed given upon receipt. The Parties shall notify each other in writing of changes to either their respective addresses or their representatives subject to notification in accordance with the provisions of the section.

SECTION 10. DEFAULT.

A. 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 timely pay the Parkland Fees under this Agreement;
2. Developer's failure to timely complete construction of the private recreational improvements under this Agreement;
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 6;
5. Developer fails to perform or satisfy any other term, condition, or obligation under this Agreement.

SECTION 11. MISCELLANEOUS.

A. The headings of the sections and subsections of this Agreement are inserted for convenience only. They do not constitute a part of this Agreement and shall not be used in its construction or interpretation.

B. 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 Jose, California.

C. Developer acknowledges and agrees that waiver by City of any terms, conditions or obligations of this Agreement shall not be deemed a waiver of any other terms, conditions or obligations contained herein, a continuing waiver of any terms, conditions or obligations, or a waiver of any subsequent breach of that or any other provision of this Agreement.

D. As used in this Agreement and when required by context, each number (singular and plural) shall include all numbers.

E. Any and all exhibits which are referred to in this Agreement are incorporated herein by reference and are deemed a part of this Agreement.

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

G. If a court of competent jurisdiction adjudges any provision of this Agreement as void or unenforceable, the remaining provisions shall not be affected hereby and shall remain in full force and effect.

H. Where this Agreement refers to City and no officer of the City is named, City's Manager shall have the authority to act on City's behalf.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]

WITNESS THE EXECUTION HEREOF the day and year hereinafter written.

APPROVED AS TO FORM:

NAME
Deputy City Attorney

CITY OF SAN JOSE, a municipal corporation

NAME
Director of Public Works

_____
Date

200 East Santa Clara Street
San Jose, CA 95113

"DEVELOPER"

APPLICANT NAME

By: _____

Address: _____

_____

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

* All Developer's signatures must be accompanied by an attached notary public acknowledgement.

EXHIBIT A

(REPLACE WITH SPREADSHEET OF PARK FEES)

EXHIBIT B

(IF APPLICABLE, REPLACE WITH PLAN SHOWING LOCATION AND EXTENT OF PRIVATE RECREATION FACILITIES FOR WHICH THE DEVELOPER IS RECEIVING PARK FEE CREDITS)