

APPROVED

OCT 19 2023

BOARD OF RECREATION AND PARK COMMISSIONERS

BOARD REPORT

NO. 23-183

DATE October 19, 2023

C.D. ALL

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: PARK FEE RECREATION CREDIT POLICY – ADOPTION OF NEW POLICY AND STANDARD COVENANT AND AGREEMENTS AS WELL AS OPERATION AND MAINTENANCE AGREEMENTS FOR DEVELOPMENTS SEEKING RECREATION CREDIT UNDER LOS ANGELES MUNICIPAL CODE SECTION 12.33.H.2

B. Aguirre M. Rudnick
B. Jones for C. Santo Domingo DF
B. Jackson N. Williams

[Signature]
General Manager

Approved X Disapproved Withdrawn

RECOMMENDATIONS

- 1. Approve and adopt the proposed "Park Fee Recreation Credit Policy" (Policy) for residential developments subject to the requirements of Los Angeles Municipal Code (LAMC) Section 12.33, as shown in Attachment 1, and summarized in this Report;
2. Approve and adopt the standard Covenant and Agreement for Publicly Accessible Areas, as shown in Attachment 2;
3. Approve and adopt the standard Operation and Maintenance Agreement for Publicly Accessible Areas, as shown in Attachment 3;
4. Approve and adopt the standard Covenant and Agreement for Non-Public (Privately Accessible) Areas, as Shown in attachment 4;
5. Approve and adopt the standard Operation and Maintenance Agreement for Non-Public (Privately Accessible) Areas, as shown in Attachment 5;
6. Authorize RAP staff to implement the approved "Park Fee Recreation Credit Policy";
7. Authorize RAP staff to make technical corrections as necessary to carry out the intent of this Report.

SUMMARY

On September 7, 2016, the Los Angeles City Council approved the new Park Dedication and Fee Update Ordinance, Ordinance No. 184,505, with an effective date of January 11, 2017. The Park Fee Ordinance implemented a new development impact fee that requires all new residential dwelling units to dedicate land, or pay a fee in-lieu, or provide a combination of land dedication

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and fee payment. New residential dwelling units increase demand on existing Recreation and Parks facilities, and therefore Park Fees are collected to fund capital improvements projects at new and existing locations. The Department of Recreation and Parks (RAP) is responsible for the administration of the Park Fee Impact Program, and thus the collected Park Fees are under the control of the Board of Recreation and Parks Commissioners (Board).

Los Angeles Municipal Code (LAMC) Section 12.33.H permits applicants to seek recreational credit that will be applied towards the required park fees. There are four (4) types of recreation credit that an applicant can apply for:

1. Public Land Dedication (LAMC Section 12.33.H.1.a): Land may be dedicated to RAP for park and recreational purposes per the land dedication formula described in the LAMC in-lieu of paying the required fees.
2. Improvement to Dedicated Land (LAMC Section 12.33.H.1.b): The City may permit applicants to make improvements to dedicated parkland in-lieu of paying the required fee. The total amount of credit shall not exceed 100 percent of the calculated requirement for the park fee and/or land dedication. Credit is granted, dollar for dollar, as determined by RAP, using estimates provided by RSMeans Building Construction Cost Data.
3. Privately Owned, Privately Accessible Park and Recreational Facilities (LAMC Section 12.33.H.2.a): Developers may opt to provide privately owned recreational amenities that reduce impact on the existing recreation and parks systems and must be accessible to all the residents of the development. The total amount of credit shall not exceed 35 percent of the calculated requirement for the park fee and/or land dedication. Credits may be awarded for on-site or off-site recreational facilities. Credit is granted, dollar for dollar, as determined by RAP, using estimates provided by RSMeans Building Construction Cost Data.
4. Publicly Accessible, Privately Maintained Park and Recreational Facilities (LAMC Section 12.33.H.2.b): Developers may opt to provide privately owned recreational amenities that reduce impact on the existing recreation and parks systems and must be accessible to the public without discrimination between residents and non-residents during hours that are comparable to RAP facilities. The amount of credit shall not exceed 100 percent of the calculated requirement for the park fee/land dedication. Credits may be awarded for on-site or off-site recreational facilities. Credit is granted, dollar for dollar, as determined by RAP, using estimates provided by RSMeans Building Construction Cost Data.

Per LAMC Section 12.33.H.2.f, “(1) The private ownership and maintenance of the facilities shall be adequately provided for by written agreements; and (2) The use of the private facilities, whether publicly or non-publicly accessible, is restricted for park and recreational purposes by recorded covenants acceptable to the Department of Recreation and Parks which run with the land and which cannot be defeated or eliminated without the consent of the City Council.” Thus, applicants are required to secure these recreational areas with a covenant and agreement as well as an operation and maintenance agreement.

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Recreation Credit Policy (Policy)

RAP staff is recommending the adoption of a Recreation Credit Policy in order to establish guidelines and requirements for areas applying for Recreation Credits under LAMC Section 12.33.H.2 against the required Park Fees as well as make clear what open space areas are insufficient for Recreation Credit. In order to be considered for Recreation Credit, these open space areas must closely resemble green, neighborhood parks.

RAP currently does not have a policy regarding Recreation Credit and has previously deferred to the LAMC for guidance and implementation. Since the revised Park Fee Ordinance became effective, RAP staff has processed two (2) Recreation Credit requests. Although the areas that were granted credit were deemed code compliant, the areas were ultimately underwhelming and likely do not significantly reduce the impact on the existing park system.

Based on the questions RAP receives from applicants and previous experience processing Recreation Credit applications, staff has drafted a Policy that will help developers create recreational areas that resemble well-maintained Recreation and Parks facilities and act as an adequate supplement to the park system that are eligible for credit.

The new Policy details specific requirements that residential housing projects must include if they want to be considered for Recreation Credit. These include a minimum of one (1) active amenity and two (2) passive amenities for outdoor Recreation Credit areas, and one (1) active amenity and one (1) passive amenity for indoor Recreation Credit Areas. A detailed list of all potential active and passive amenities are included in the Policy for the applicant to reference. The new Policy also includes other requirements for the proposed areas such as minimum square footage, unencumbered open space, that permanent amenities that cannot be removed, and adequate amounts of grass, shade, and landscaping. It should be noted that any common open space or private open space required by the City's Municipal Code, specific plan(s), or any other planning document cannot also be used as open space that receives Recreation Credit (LAMC Section 12.33 H.2.f.1).

RAP has also drafted standard Covenant and Agreements (C&A) and Operation and Maintenance (O&M) Agreement for the Publicly Accessible Areas and the Non-Public (Privately Accessible) Areas in order to expedite the negotiation process between RAP staff and the applicant, which will be incorporated as part of the Policy. It should be noted that the only section of the O&M Agreement that may vary from this adopted standard agreement is Section 2 which details the maintenance standards and guidelines. This section will be revised on a case-by-case basis based on the recreational amenities being provided. Although the maintenance standards and guidelines for all the recreational amenities are detailed in the standard version of the O&M agreement, any proposed maintenance language will be consistent with RAP maintenance standards.

The granting of Recreation Credit is subject to the approval of the Board. When an application for Recreation Credit has been deemed complete by RAP staff, a board report detailing the area exhibits, credit calculation, O&M Agreement, and C&A will be presented for consideration. City Council and City Attorney approval is required for the O&M Agreement, and C&A. Once all these approvals are adequately met, RAP and the applicant will execute and record the O&M Agreement and C&A, and the applicant will be issued a Park Fee Calculation, which includes the approved Recreation Credit.

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The Recreation Credit Policy and related agreements were presented to the RAP Facility Repair and Maintenance Task Force on September 7, 2023.

Any proposed revisions and exceptions to this Policy and the required agreements are subject to Board approval.

ENVIRONMENTAL IMPACT

The proposed Policy supplements the provisions of LAMC 12.33.H by establishing comprehensive guidelines and requirements for a development seeking Recreation Credit to be applied towards the development's required Park Fees. This Policy is a continuing administrative activity which – pursuant to Article 20, Section 15378(b)(2) of the State California Environmental Quality Act (CEQA) Guidelines – is not a project subject to the CEQA.

The impact of the developments opting for building and operating parks rather than paying park fees will be evaluated when the individual projects are submitted to the City for approval.

Based on these considerations, staff recommends that the Board take no CEQA action.

FISCAL IMPACT

The approval of Report will have no impact on RAP's General Fund.

This Report was prepared by Meghan Luera, Senior Management Analyst, Planning, Maintenance and Construction Branch.

ATTACHMENTS

- 1) Attachment 1 – Park Fee Recreation Credit Policy for the Implementation of LAMC Section 12.23.H.2
- 2) Attachment 2 – Standard C&A for Publicly Accessible Areas
- 3) Attachment 3 – Standard O&M Agreement for Publicly Accessible Areas
- 4) Attachment 4 – Standard C&A for Non-Public (Privately Accessible) Areas
- 5) Attachment 5 – Standard O&M Agreement for Non-Public (Privately Accessible) Areas

Park Fee Recreation Credit Policy
For the Implementation of LAMC 12.33.H.2

I. Background and Purpose of the Policy

Pursuant to Los Angeles Municipal Code (LAMC) Section 12.33.C, “All new residential dwelling units and joint living and work quarters shall be required to dedicate land, pay a fee or provide a combination of land dedication and fee payment for the purpose of acquiring, expanding and improving park and recreational facilities for new residents.” Per LAMC 12.33.H.2, residential developments may provide privately owned publicly accessible or privately owned private accessible recreational facilities and the City of Los Angeles Department of Recreation and Parks (RAP) may provide a credit against the required dedication of land or payment of a Park Fee provided certain standards are met to the satisfaction of RAP

RAP supports the inclusion of privately owned, privately and publicly accessible open space located in residential developments to reduce the impact on existing park and recreational facilities.

The purpose of this Policy is to provide a summary of pertinent sections of the LAMC as well as to establish the guidelines and requirements of RAP for areas applying for Recreation Credits against the required Park Fees as well as make clear what open space areas are insufficient for Recreation Credit. In order to be considered for Recreation Credit, these open space areas must closely resemble green, neighborhood parks. ***Recreation Credit will only be given towards areas that would be considered reminiscent of, and an adequate supplement to well-maintained RAP facilities.***

It should be noted that this Policy does not apply the Recreation Credit options discussed in LAMC 12.33.H.1.

II. Definitions

Recreation Credit: Credit for privately owned, publicly accessible or privately accessible amenities that can be applied against a required land dedication or payment of a Park Fee and reduce the impact on the existing park system per LAMC 12.33.H.2. May be abbreviated as “Credit(s)”.

Amenity: Refers to active or passive amenities (as detailed below) eligible for Recreation Credit.

Area: A single, continuous area with multiple amenities applying for Recreation Credit. Note: that a single Recreation Credit request for a residential development project may contain multiple Areas.

Applicant: The owner, developer, authorized representative or entity submitting the Application to initiate the review process.

Application: Refer to RAP's Park Fee Calculation Application, Recreation Credit Application or other documents as specified at <https://www.laparks.org/planning/park-fees> in order to initiate the review process.

Exhibits: The Recreation Credit documents submitted by the applicant that delineate each Area and show the amenities requesting Recreation Credit. Instructions for the preparation of the Exhibits can be found at: <https://www.laparks.org/planning/park-fees>

Cost Estimates: The estimated value of the Recreation Credit using RSMeans Building Construction Cost Data or similar. Instructions for the preparation of the Cost Estimates can be found at: <https://www.laparks.org/planning/park-fees>

Written Agreements: Refer to the Covenant and Agreement and Operation and Maintenance Agreements that must be executed and recorded as part of the Recreation Credit procedure.

III. Summary of Pertinent Los Angeles Municipal Code Requirements

For all Recreation Credit Areas:

- 1) Where facilities for park and recreational purposes are provided in a proposed residential development and such facilities will be privately owned and maintained by the future owners of the development, the areas occupied by such facilities shall be partially credited against the requirement of dedication of land for park and recreational purposes of the payment of a park fee thereof, provided that the following standards are met to the satisfaction of the Department of Recreation and Parks: (1) that each facility is available for use by all the residents of the residential development; and (2) that the area and the facilities satisfy the recreation and park needs of the residential development so as to reduce the need for public recreation and park facilities to serve the project residents. (LAMC 12.23.H.2)

For all Recreation Credit Areas:

- 1) Credit shall not be given for the following:
 - a) Yards, court areas, setbacks and other open space areas required to be maintained by the City's Municipal Code, specific plan, or any other planning document
 - b) Common open space and/or private open space required by the City's Municipal Code, specific plan(s), or any other planning document, such as those included in Section 12.21 (LAMC 12.33.H.2.e)
- 2) The private ownership and maintenance of the facilities shall be adequately provided for by written agreements (LAMC 12.33 H.2.f.1)
- 3) The use of the private facilities, whether publicly or non-publicly accessible, is restricted for park and recreational purposes by recorded covenants acceptable to the Department

of Recreation and Parks which run with the land and which cannot be defeated or eliminated without the consent of the City Council (LAMC 12.33 H.2.f.2)

- 4) Private park and recreational facilities shall include a variety of active and passive amenities, as determined by the Department of Recreation and Parks (LAMC 12.33 H.2.c)
- 5) The proposed facilities are reasonably adaptable for use for park and recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location of the private open space land. (LAMC 12.33 H.2.f.3)
- 6) Credit shall be granted, dollar to dollar, for any recreational and park impact fees required to be paid for the property pursuant to LAMC 12.33, as determined by the Department of Recreation and Parks. The cost and subsequent credit should bear a reasonable relationship to an independent assessment of the construction cost for the facility, such as the estimates provided by RSMeans Building Construction Cost Data or similar. (LAMC 12.33.H.2.d)

For privately (non-public) accessible, privately owned Recreation Credit Areas:

- 1) The amount of credits for non-publicly accessible park and recreational facilities shall not exceed 35 percent of the calculated requirement for park and recreation impact fee or land dedication. Credits may be awarded for on-site or off-site private facilities. (LAMC 12.33 H.2.a)
- 2) The proposed non-public facilities are available for use by all the residents of the proposed development. (LAMC 12.33 H.2.f.4)

For publicly accessible, privately owned Recreation Credit Areas:

- 1) The amount of credits for publicly accessible, privately maintained park and recreational facilities shall not exceed 100 percent of the calculated requirement for park and recreation impact fee or land dedication. Credits may be awarded for on-site or off-site private facilities. (LAMC 12.33 H.2.b)
- 2) Any proposed publicly-accessible, privately-maintained park and recreational facilities are accessible for use by the general public with no discrimination between residents and non-residents, are open at hours comparable to those of City parks and facilities, and have appropriate signage indicating that the space is public. (LAMC 12.33 H.2.f.5)

IV. Department of Recreation and Parks Recreation Credit Guidelines and Criteria

Overall Requirements:

- 1) Accessories for Recreation Credit areas that are a part of those Recreational Credits will not be considered separate categories (Active versus Passive Recreational Amenity). For instance, if a swimming pool includes a bolted-down cabana, the cabana would be counted as part of an active amenity, not as a passive one.
- 2) Amenities should be permanent fixtures of the property and run for the lifespan of the residential development. Amenities for Recreational Credits should not be able to be

moved out of the property. Exceptions to this would include replacing worn or damaged amenities with the same amenity that was previously approved. If the Amenity is no longer available, written approval from RAP is required.

- 3) All amenities listed below should be compliant with the Americans with Disabilities Act (ADA).
- 4) All amenities and areas requesting Recreation Credit must serve a recreational purpose or value. RAP staff may ask an Applicant to explain, demonstrate or prove the recreational purpose or value of each amenity or area requesting credit.

Requirements for exterior/outdoor Recreation Credit Areas:

- 1) Each privately accessible (non-public) Area shall have a minimum size of 3000 square feet
- 2) Each publicly accessible Area shall have a minimum size of 7500 square feet
- 3) Publicly accessible Areas shall not be entirely fenced or have gates or barriers installed at the entrances
- 4) The outdoor Area should not be encumbered by walls or solid barriers higher than 5 feet on more than 2 sides and should be open to the sky
- 5) Fencing on all sides of an Amenity is only permitted for items such as tennis courts, basketball courts or swimming pools and said fencing shall be chain link or transparent
- 6) There shall be permanent, fixed shade structures or sails or canopies over any Children's Play Area, picnic tables, or seating areas
- 7) There shall be useable and accessible grass, synthetic turf and/or permeable surfacing at ground level
- 8) Raised planters or inaccessible landscaping not meant for recreational use shall not be more than 25% of the Area
- 9) There shall be climate appropriate landscaping and foliage that is designed to create a welcoming green space
- 10) Each Area shall include at least one (1) active and at least two (2) passive amenities, as described in the list below

Requirements for interior/indoor Recreation Credit areas:

- 1) Each indoor Area shall have a minimum size of 150 square feet
- 2) Each Area shall include at least one (1) active amenity and one (1) passive amenity

List of Active and Passive Amenities and Requirements:

Active Amenities:

Recreational Amenity Types	Notes
Baseball Field	<ul style="list-style-type: none"> • Can be baseball, softball, or tee ball field – perimeter of outfield shall be 200 or more ft away from home plate

	<ul style="list-style-type: none"> ● Shall include fixed seating ● Shall include permanent, fixed shade structures or sails or canopies
Basketball Court	<ul style="list-style-type: none"> ● Can be half or full sized ● Shall be 4,700 square feet (94 ft x 50 ft) for full court ● Shall be 2,350 square feet (47ft x 25 ft) for half court
Batting Cage	<ul style="list-style-type: none"> ● Shall be at least 70 ft long x 14 ft wide x 12 ft high
Bocce Ball Court	<ul style="list-style-type: none"> ● Shall be 60 ft x 12 ft ● Should be grass, synthetic turf or sand
Children's Play Area	<ul style="list-style-type: none"> ● Shall be a minimum size of 1,200 sq ft ● Should be multi-level with multiple play elements including, but not limited to, climbers, towers, zip lines, slides, nets, bridges, crawl tubes, ramps, seesaws, balance beams, and swings. ● Should be on an appropriate surfacing ● Shall include permanent, fixed shade structures or sails or canopies ● Shall include seating
Designated Walking /Jogging paths	<ul style="list-style-type: none"> ● Cannot include required paths of travel
Handball Court	<ul style="list-style-type: none"> ● Shall be 20 ft wide, 20 ft high and 40 ft long, with back wall recommended minimum height of 14 feet
Indoor Gym / Fitness Room	<ul style="list-style-type: none"> ● Shall include fixed exercise equipment
Golf / Miniature Golf	<ul style="list-style-type: none"> ● Minimum putting green size of 500 sq ft
Outdoor Fitness Equipment	<ul style="list-style-type: none"> ● Should be weather resistant/durable
Pickleball / Tennis Court	<ul style="list-style-type: none"> ● Tennis court shall be 2,808 square feet (78 ft x 36 ft) - can include pickleball hybrid lines ● Pickleball court shall be 880 square feet (44 ft x 20 ft) ● Should include seating for players
Swimming Pool / Splash Pads	<ul style="list-style-type: none"> ● Shall not include spas or jacuzzis ● The contiguous pool deck will be included as part of the pool amenity - can receive credit for the pool deck up to 20 ft around the pool ● The poolside seating shall not count as a "passive amenity"

Volleyball Court	<ul style="list-style-type: none"> ● Shall be 1,740.5 square feet (59 ft by 29 ft by 6 inches) 29.5 feet.
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Note: Any additional required features that serve an Active Amenity, such as seating or shade, shall not count as a Passive Amenity as well.

Passive Amenities:

Recreational Amenity Types	Notes
BBQ Grills	<ul style="list-style-type: none"> ● Must be fixed and permanent
Dog Park / Run	<ul style="list-style-type: none"> ● Shall be 500 square feet minimum (ideally 50 ft by 10 ft) ● Trash receptacles for waste required
Landscaped Open Space	<ul style="list-style-type: none"> ● Plants, shrubs, bushes, etc. ● Raised planters or inaccessible landscaping not meant for recreation should not exceed 25% of the Area ● Should include grass, synthetic turf and/or permeable surfacing at ground level
Picnic Tables	<ul style="list-style-type: none"> ● Shall be ADA compliant ● Shall include permanent, fixed shade structures or sails or canopies
Seating	<ul style="list-style-type: none"> ● Shall be fixed benches or seating ● Shall include permanent, fixed shade structures or sails or canopies ● Shall be evenly distributed throughout the Area
Shuffleboard	<ul style="list-style-type: none"> ● Shall be 52 ft x 6 ft ● Shall be made of concrete or similar material ● Shuffleboard tables shall not be acceptable

If the Applicant would like to receive credit for an Amenity not listed above, RAP staff, at their sole discretion, may choose which deviations may be included in a set of Exhibits and are subject to RAP Board approval.

Recreation Credit cannot be given for items that are not fixed or permanent.

V. The Recreation Credit Procedure:

See below an outline of the steps in the Recreation Credit process:

- 1) Applicant submits the required Park Fee Calculation Application, Recreation Credit Application, Recreation Credit Exhibits, Cost Estimates and other required documentation, as determined by RAP.

- 2) RAP staff reviews the Application(s) and Recreation Credit Cost Estimates and Exhibits.
- 3) RAP staff and Applicant discuss and revise Recreation Credit Exhibits and Cost Estimates, if necessary.
- 4) Once the Recreation Credit Exhibits and Cost Estimates are finalized by RAP and the Applicant, RAP drafts the Written Agreements.
- 5) Applicant agrees to the terms of the Written Agreements and confirms information in aforementioned agreements is correct.
- 6) City Attorney approves the form of the aforementioned agreements.
- 7) RAP staff prepare a board report to the Board of Recreation and Parks Commissioners (Board) requesting approval of the Recreation Credits and the Written Agreements.
- 8) The board report, Recreation Credits, and agreements are forwarded to the City Council, and any applicable Committee, for approval.
- 9) The Written Agreements are executed and recorded.
- 10) RAP staff issues the Park Fee Calculation.
- 11) The required Park Fee, if any, is paid by the developer.
- 12) RAP clears the applicable condition for the development.

Please note that the above steps have been abbreviated for the purpose of this Policy.

VI. Attachments:

- 1) Attachment 1 – Standard Covenant & Agreement for Publicly Accessible Spaces
- 2) Attachment 2 – Standard O&M Agreement for Publicly Accessible Spaces
- 3) Attachment 3 – Standard Covenant & Agreement for Non-Public (Privately Accessible) Spaces
- 4) Attachment 4 – Standard O&M Agreement for Non-Public (Privately Accessible) Spaces

The Written Agreements are required to be approved by the City Attorney and the RAP Board. Any deviations to the standard agreement are subject to City Attorney and RAP Board approval.

ATTACHMENT 2

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL DOCUMENT
TO:

Department of Recreation and Parks
221 N. Figueroa Street, Suite 400
Los Angeles, CA 90012

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**COVENANT AND AGREEMENT REGARDING PARK AND RECREATIONAL FACILITIES
(PUBLICLY ACCESSIBLE)**

The undersigned, [insert], a _____ (“Owner”), hereby certifies that it is the owner of that certain real property located in the City of Los Angeles, County of Los Angeles, State of California, located at _____ and more particularly described in **Exhibit A** attached hereto and by this reference incorporated herein (the “Property”).

In consideration of Owner’s receipt of credits granted by the City of Los Angeles (“City”), acting by and through its Department of Recreation and Parks (“Department”), in the amount of \$ _____ (the “Publicly-Accessible Park Fees Credit”) toward the recreational and park impact fees otherwise required to be paid by Owner pursuant to Los Angeles Municipal Code Section 12.33 (the “Park Fees”) in connection with Owner’s residential development (Case Number: _____) (the “Project”), Owner hereby promises, covenants and agrees to and for the benefit of the City and the Department as follows:

1. Owner shall design, construct and install, at Owner’s sole cost, those certain publicly-accessible park and recreational facilities, amenities and areas, totaling approximately _____ square feet (collectively, the “Publicly-Accessible Park Facilities”), at the Property in accordance with the plans marked as _____ and the specifications set forth in the recreation credit cost estimate sheet marked as _____, each of which are attached hereto as **Exhibit B** and by this reference incorporated herein (collectively, the “Publicly-Accessible Park Plans”). Any changes to the Publicly-Accessible Park Plans shall require the prior written approval of the Department. Prior to the issuance of the Certificate of Occupancy for the first dwelling units of the Project, Owner must obtain written confirmation from the Department that the Publicly-Accessible Park Facilities have been installed at the Property in accordance with the Publicly-Accessible Park Plans.
2. Owner shall maintain, at Owner’s sole cost, the Publicly-Accessible Park Facilities in accordance with the operation and maintenance agreement attached hereto as **Exhibit C** and by this reference incorporated herein (the “Maintenance Agreement”). Any changes to the Maintenance Agreement shall require the prior written approval of the Department.
3. The use of the Publicly-Accessible Park Facilities shall be restricted to park and recreational purposes only.
4. The Publicly-Accessible Park Facilities shall be available and accessible for use by all of the residents of the Project and the general public free of charge and with no discrimination of access between the residents of the Project and the general public and shall remain open from [sunrise to sunset/10 a.m. to 5 p.m./6 a.m. to 6 p.m.] seven days a week.

5. Owner shall post and maintain, at Owner's sole cost, signage indicating that the Publicly-Accessible Park Facilities are publicly accessible at the entrances to the Publicly-Accessible Park Facilities in accordance with the signage plans attached hereto as **Exhibit D** and by this reference incorporated herein (the "Signage Plans"). Any changes to the Signage Plans shall require the prior written approval of the Department.

In the event that any of the foregoing covenants and agreements are not satisfied or are violated, the required Park Fees will become immediately due and payable and Owner shall pay an amount equal to the Publicly-Accessible Park Fees Credit to the Department within thirty (30) days of receipt of a written demand from the Department.

This Covenant and Agreement Regarding Park and Recreational Facilities (Publicly Accessible) (this "Covenant"), and all obligations, covenants and agreements set forth herein, shall run with the Property and shall be binding upon any future owners, encumbrancers, their successors, heirs or assigns and shall continue in full force and effect until the Los Angeles City Council approves the termination hereof. This Covenant is for the benefit of the City and the Department.

Owner hereby represents and warrants to City that (i) Owner is legally authorized (and has obtained all necessary consents, if any, from third parties such as consents from lienholders, if applicable) to enter into and record this Covenant, and (ii) this Covenant is duly authorized, executed and delivered by Owner and is a valid and enforceable obligation of Owner.

OWNER'S NAME: (Print/Type) _____

SIGNATURE OF OWNER: _____(sign)

SIGNATURES OF TWO OFFICERS REQUIRED FOR A CORPORATION
SIGNATURES: 1. _____ **2.** _____(sign)

Dated this _____ **day of** _____, _____.

(Attach Additional Notary Acknowledgements As Necessary)

*****Space Below This Line For Department Internal Use*****

Must be approved by the Department of Recreation & Parks prior to recording CASE NO. _____
COND NO. _____

APPROVED BY _____ **SIGNATURE** _____ **DATE:** _____

ACKNOWLEDGMENT

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

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Exhibit A

Legal Description of Property

[see attached]

DRAFT

Exhibit B

Publicly-Accessible Park Plans

[see attached]

DRAFT

Exhibit C

Maintenance Agreement

[see attached]

DRAFT

Exhibit D

Signage Plans

[see attached]

DRAFT

PUBLICLY ACCESSIBLE PARK AND RECREATIONAL FACILITY
OPERATION AND MAINTENANCE AGREEMENT

THIS PUBLICLY ACCESSIBLE PARK FACILITY OPERATION AND MAINTENANCE AGREEMENT (“**Agreement**”) is made and entered into as of _____, 202X, by and between **developer name** (“**Developer**”), and THE CITY OF LOS ANGELES, a municipal corporation, acting by and through the BOARD OF RECREATION AND PARK COMMISSIONERS (the “**City**”).

Developer is the owner of that certain real property (“**Site**”) located at the **[Address]** in the City of Los Angeles, State of California.

A condition of **Vesting Tentative Tract Map (VTT) No. #####** is the payment of the in-lieu Subdivision Park Fees to the Department of Recreation and Parks (“**RAP**”) Park fees, as required by LAMC §§ 12.33 and in the total amount of **\$\$\$\$\$** (“**Developer’s Park Fees**”)

Developer has developed a public plaza on a portion of the Site fronting on Broadway Street as shown on **Exhibit C.1**, which will be a privately owned public open space (“**POPS**”) pursuant to plans and recreation credit exhibits approved by the Board of Recreation and Park Commissioners (“**RAP Board**”). The POPS is accessible for use by the general public with no discrimination between residents and non-residents, are open at hours comparable to those of City parks and facilities, and have appropriate signage indicating that the space is public;

VTT-XXXXX received **\$\$\$\$** in recreation credit for the POPS towards the Developer’s Park Fees consistent with the provisions of LAMC §§ 12.33 H.2. Pursuant to LAMC §§ 12.33 H.2.f.1 the Developer and RAP have entered into this Agreement whereby Developer agrees to operate and maintain the POPS for the life of the development as follows:

Section 1. Maintenance and Operation of Park.

(a) Maintenance Guidelines and Standards. Developer (so long as it is the owner of all or a portion of the Project and a homeowner’s association has not been formed), the homeowners’ association, or other ownership body of the Project (such entity as applicable, the “**Developer**”) shall cause the POPS to be open and accessible to the public and maintained and operated in a clean and safe condition. Developer agrees that the POPS shall be maintained and operated in accordance with the guidelines and standards set forth in this Agreement.

(b) The POPS Improvements, as shown on **Exhibit C.1** and attached hereto, shall not be modified or removed without the prior written approval of RAP Board.

(c) Operation of POPS. The POPS shall be operated and maintained by Developer, and its successors and assigns, as **[insert amenity list]**, and shall be open and accessible for use by the general public with no discrimination between residents of the Residential Project and non-residents.

(1) POPS shall be open from [sunrise to sunset, daily]. In no event shall the POPS be open for residents of the Development at any time when the POPS is closed to the general public;

(2) Signage with hours of operation and park rules and regulations shall be clearly and visibly posted at the entrance(s) to the POPS by Developer, and the signage shall include the 24-hour emergency telephone number of the Developer's representative; and,

(3) Developer shall install and pay all charges associated with the installation and use of any electricity, natural gas, sewer, water, or other utility services, as well as pay all fees and obtain all permits for said services.

Section 2. Maintenance Standards and Guidelines for POPS

A. Scope of Work: Furnish all supervision, labor, materials, equipment and transportation needed to maintain the POPS in accordance with all of the applicable guidelines in this document and to a standard of quality equivalent to that cited in nearby City parks as indicated by staff of the Department of Recreation and Parks. All work and workers shall comply with applicable federal, state, and local laws. Maintenance activity shall include the following:

1. Landscape planting and an irrigation system
2. Pavement cleaning and repair (if applicable)
3. Trash pick-up and graffiti abatement
4. Site lighting
5. Site or amenity furnishings as indicated in the design plan.

B. Work Force: The park maintenance supervisor or contractor shall be experienced in landscape maintenance and shall have training in ornamental horticulture. Workers are to be personably presentable at all times on site.

C. Materials: All materials used shall be of high quality and compatible with those used to develop the POPS. The L.A. County Agricultural Commissioner's Office must be given a list of the control chemicals used. Any maintenance supervisor or contractor shall also provide the City Department of Recreation and Parks, as requested, a copy of the record of fertilizers, herbicides, insecticides, fungicides and other materials used at the POPS. Records shall indicate the dates, type and amount applied and the person making the application. All waste products must be legally disposed off-site.

D. General Tree and Shrub Care: Maintain trees, vines and shrubs in a healthy growing condition by performing all necessary operations including the following:

1. Watering: Plants shall not be watered until a moisture check has been made of representative plants in the landscape. Use a probe or other tool to check the moisture in the root ball as well as the soil surrounding the root ball. Use mulches to reduce evaporation and the frequency of watering. Maintain a large enough water basin around plants so that enough water can be applied to irrigate the major root zone. In the rainy season, open the edge of the basins to allow surface drainage away from the root crown so that excess water shall not

accumulate. Plants in terra cotta or other planters, if any, shall be watered manually.

2. Pruning Trees:

- a. All pruning shall be performed under supervision of a certified arborist. Pruning standards shall conform to ISA standards specified in the Urban Forest Program of the City Department of Recreation and Parks. Prune trees (1) to select and develop permanent scaffold branches that are smaller in diameter than the trunk or branch to which they are attached and that have vertical spacing from 18 to 48 inches and radial orientation so as to not overlay one another; (2) to eliminate diseased or damaged growth; (3) to eliminate narrow, V-shaped branch forks that lack strength; (4) to reduce toppling and wind damage by thinning out crowns; (5) to maintain growth within space limitations; (6) to maintain a natural appearance; (7) to balance the surface of the crown with the roots.
- b. Do not strip off the lower branches of young trees so as to increase the distance of the lowest branches from the ground. Lower branches shall be retained in a "tipped back" or pinched condition with as much foliage as possible in order to promote caliper or tapered trunk growth. Lower branches can be cut flush with the trunk only after the tree can remain erect without staking or other support.
- c. Evergreen trees shall be thinned and shaped when needed to prevent wind and storm damage.
- d. The primary pruning of deciduous trees shall be done during the dormant season.
- e. Damaged or diseased trees or those that constitute safety hazards may be pruned at any time of the year. All pruning cuts shall be made to lateral branches or to buds or flush with the trunk. Do not leave "stubs". Use "tree seal" for all cuts of 1 inch or larger in diameter.

3. Pruning Shrubs and Vines: The objectives of shrub and vine pruning are the same as those for trees. Shrubs and vines shall be trimmed or clipped as needed to maintain a desirable shape.

4. Trees, vines and shrubs shall be checked for possible pruning once per month. All green waste products shall be legally disposed off-site and recycled in a "green waste" container.

5. Staking and Guying: When trees attain a trunk caliper of 4", consider removing existing stakes and guy wires or ties. If the trees are still unstable, consider replacing them. Stakes and guys are to be inspected at least twice per year to prevent the girdling of trunks or branches and to prevent rubbing that causes bark wounds. Eye screws in specimen tree trunks are preferred to protective, looped wire and hose.

6. Weed Control: Keep basins and areas between plants free of weeds. This will reduce damage to tree trunks and roots by mowing machinery and by excess water accumulation. Use only recommended, legally approved herbicides to control growth in these open areas. Avoid frequent soil cultivation that destroys

shallow roots and breaks the seal of pre-emergent herbicides. Great care must be used when applying systematic herbicides so as not to damage plantings. Any plantings destroyed must be replaced with material of the same specific type and size (if practical) as the dead plantings within a four-week period or when (seasonally) recommended in accordance with accepted horticultural practices. Weeds with spreading underground rootstock must be hand dug to remove all of the invading roots. All green waste products shall be legally disposed off-site and recycled in a "green waste" container.

7. Fertilizing and Spraying

- a. Apply fertilizer for shrubs and ground cover with a formula of at least 18-8-4 two times a year between early spring and early fall at the rate of 10 lbs. per 1,000 sq. ft. Lawns shall be fertilized with a formula of 16-6-8, or approved equivalent, every three months at the rate of 8 lbs. per 1,000 sq. ft. Slow-release fertilizer may also be used per manufacturer's specifications if a good, healthy, vigorous growth and good color are maintained.
- b. Apply insecticides and slug/snail controls as needed to protect plant material.
- c. Apply the proper fungicide, herbicide and pesticide for the control of pests, weeds and plant diseases. Also treat cuts and breaks on tree surfaces.
- d. Chemicals and insecticides used shall conform to standards of the City Department of Recreation and Parks. Prior to use, the Forestry Division must be made aware and approve use of any chemicals and/or insecticides. The Forestry Divisions may be contacted at (213) 485-4826. Roundup shall not be used at any time.

E. Ground Cover Care:

1. Control weeds with pre-emergent, weed herbicides, and hand weeding. Avoid damaging plantings.
2. Apply 4 lbs. pounds of actual nitrogen per 1,000 sq. ft. in two to four applications during the first year of a new planting or if the ground cover is nitrogen starved. One application shall be in the early spring when growth begins. Reduce the application to 3 lbs. of actual nitrogen per 1,000 sq. ft. in the following years or as needed to maintain vigorous growth and good color. Complete, tri-formula fertilizers are not desired unless a soil test shows specific nutrient deficiencies.
3. Water enough so that that moisture penetrates throughout the root zone and only as frequently as necessary to maintain healthy growth.
4. A cleared circle 18" to 24" in diameter shall be maintained at the base of trees to reduce competition for nutrients by ground cover. A cleared circle 12" to 18" in diameter shall be maintained at the base of palms.
5. Edge the ground cover to keep it in bounds and trim tip growth as needed to achieve an overall even appearance. Great care shall be taken not to damage

adjacent plantings when mowing. The debris generated must be legally disposed off-site and preferably recycled in a "green waste" container.

6. Control rodents, insects, and diseases as necessary, using legally approved materials.
7. Replace dead and missing plants. Plantings shall be replaced within a month. All replacements shall be the same specific types and, if possible, sizes as the plantings. All dead plants shall be legally disposed of off-site and recycled in a "green waste" container.

F. Lawn Care:

1. Lawns shall be kept weed free.
2. Mowing and edging: Mow, edge, and trim lawns weekly or as required to maintain an even, well-groomed appearance.
3. Renovation: Renovate lawns occasionally by using a vertical mower to reduce thatch-like undergrowth and encourage new growth.
4. Excess lawn clippings shall not be left on the grass and shall be legally disposed of off-site and recycled in a "green waste" container.

G. Vine Care:

1. Pruning
 - a. Vines and espalier plants shall be checked and re-tied as required.
 - b. Do not use nails to secure vines.
 - c. Prune all vines annually using accepted horticultural practices.
 - d. Vines shall be pruned and maintained so as not to obstruct fixtures, signs, windows, etc.
2. Apply 1/4 lb. of a formula 10-10-5 fertilizer at least twice a year to each vine.
3. Water as necessary to provide optimal growth.

H. Irrigation Systems:

1. Check and adjust sprinkler valves and heads as needed.
2. Program or reprogram the irrigation controller as needed.
3. The irrigation system shall be kept in good working order and condition. Any damage to the irrigation system caused by any person other than an employee of the City shall be repaired by the Developer at no cost to the City. Repairs shall be made within one watering period.
4. Faulty electrical controllers shall be replaced as soon as possible.

5. In late winter, check all systems for proper operation. Lateral lines shall be flushed out after removing the last sprinkler head or two at each end of the lateral. All heads shall be adjusted as needed for unimpeded coverage.
6. Set and program automatic controllers for seasonal water requirements. The watering schedule shall be arranged so as not to interfere with the public's use of the POPS.
7. An accurate, up-to-date log shall be maintained of all irrigation repairs with the date and nature of the repair. The log shall be made available to the City for inspection, upon request.

I. Paving:

1. Keep all paved areas free from foreign matter, waste, and trash on a daily basis. Concrete walks and unit paver areas shall be steam cleaned as needed but at least twice a year.
2. All paved areas shall be cleaned of debris caused by maintenance operations or silting.
3. Keep cracks in walks or along paved areas free from plant growth.
4. Drains: All subsurface drains shall be periodically flushed with clean water to avoid the accumulation of silt and debris. Keep all inlets to subsurface drains clear of leaves, paper and other debris to ensure the unimpeded passage of water.
5. Patch, repair or replace damaged paving as necessary to keep the area safe and suitable for children at play.
6. Do not use gas blowers per City Ordinance.

J. Trash Pick-up:

1. Pick-up litter throughout the POPS and empty trash containers at least once per day. Legally dispose of all trash off-site.

K. Site Lighting:

1. Maintain site lighting in accordance with the POPS's design plans.
2. Replace any lighting equipment, fixtures and infrastructure as needed to ensure site lighting remains functional.
3. Repair and replace damaged poles and luminaries within 72 hours.

L. Site Furnishings:

1. Clean and wipe benches as often as needed to keep them clean and tidy but no less than once a week. Maintain all site furnishings in a clean condition, including but not limited to drinking fountains, play equipment, seating, bollards, pergolas, gateways, and trash containers.

2. Repair or replace worn or damaged furnishings.

M. Debris Removal:

1. All debris accumulated as a result of maintenance operations shall be removed from the site and disposed of in a lawful manner.
2. All paper and litter shall be removed from the site on a daily basis. Fallen leaves, twigs, etc., shall be removed daily and recycled in a "green waste" container.

N. Dog Run Maintenance Protocols:

1. Signage must be posted with selected hours of closure for maintenance purposes.
2. Empty trash receptacles twice daily and address all graffiti concerns of the residents within 72 hours receipt of complaint.
3. Resupply dog waste bags immediately.
4. Disinfect all frequently touched surfaces such as hydration stations, benches, pooper scoopers, entry gate handles, bag stations, and amenities.
5. Remove dog feces on a daily basis and dispose of lawfully.
6. Fill holes dug by dogs.
7. Wash hardscape, if applicable.
8. Inspect and make repairs to the dog run amenities to ensure operation and safety of the area, as needed.

O. Community Room Maintenance Protocols:

1. Pick-up debris, trash, and remove cobwebs and other foreign materials from doors, walls, ceilings, partitions, vents, etc.
2. Dust counter tops and other horizontal surfaces.
3. Remove, empty, clean, and disinfect all trash receptacles.
4. Stack chairs on tables when cleaning floor area.
5. Removal all graffiti using graffiti removal materials or scrubbing techniques.
6. Clean and disinfect doors, door frames, light switch, kick and push plates, and handles.
7. Clean and disinfect top and side of drinking fountains, and scrub and dry all fixtures
8. Sweep and dust mop floors making sure to clean corners and around obstacles.
9. Spot mop around entry ways, and clean all stains and spills.

10. Deodorize room
11. All areas shall be left clean and free of streaks, stains, film, debris, water spots, and odors.
12. Thoroughly vacuum carpeted floors, making sure to clean corners and around obstacles.
13. Clean and disinfect all furniture including desks, chairs, and tables.
14. Inspect and make repairs to the Community Room amenities listed above to ensure operation and safety, as needed.

P. Other Maintenance Standards Depending on Amenities Provided

Q. Graffiti Removal and Vandalism: All graffiti shall be removed from the POPS within two days of its coming to the notice of maintenance personnel. Damage from vandalism shall be repaired as quickly as is practicable. In the instance of a disagreement between RAP and Developer over practicability, RAP's schedule for repairs of damage from vandalism shall control.

R. Corrective Action:

1. Weed control - Corrective action shall be made within five working days of receipt of a complaint.
2. Plant Material Pruning - Within the limitations of these guidelines, corrective action on complaints shall be made within five working days of the receipt of a complaint.
3. Plant Material Replacement - Dead and missing plants shall be promptly replaced, including damage due to any contractor's negligence, at no charge to the City. Wherever possible, plantings shall be replaced within two weeks. All replacement material shall be of the same specific types and, where reasonably feasible, of the same sizes as the ones destroyed.
4. POPS Signage Replacement – Corrective action shall be made within five working of receipt of complaint of damaged or missing sign.
5. Site Furnishing and Fixtures – Corrective action shall be made within thirty working days within receipt of complaint to repair or replace all site furnishing and fixtures that are required to be provided for the benefit of the public per the POPS plan.

S. Other Equipment:

Unless otherwise indicated herein, other POPS equipment shall be maintained in accordance with manufacturers' warranties, manuals, and product specifications.

T. Licenses, Taxes and Bonds: Any landscaping contractor operating at the POPS must have a C-27 State Landscape Contractor's License if any single project consists of more than \$250 of replacement landscaping. Any landscaping or maintenance contractor shall obtain all licenses required by applicable federal, state, and local laws. The contractor shall pay all applicable taxes, including sales taxes, on all materials supplied.

Section 3 Developer's Reporting Obligations.

1. Initial Report: Not later than six months following the issuance of Certificate of Occupancy for the Development, Developer shall prepare an initial report to City regarding use of the POPS by the public and confirming satisfaction of Developer's obligations under this Agreement. This report shall include, but not be limited to: (i) the approximate number of visitors to the POPS, (ii) the status of any safety or security issues at the POPS, (iii) the status of any fire, building and safety, or health code violation that impacts the POPS and (iv) any improvements made to the POPS.
2. Annual Report: Following the initial six month report, the Developer shall provide an annual report due on August 1st, which shall cover the reporting period of July 1st to June 30th. Developer shall prepare an annual report to City regarding use of the POPS by the public and confirming satisfaction of Developer's obligations under this Agreement. This report shall include, but not be limited to: (i) the approximate number of visitors to the POPS, (ii) the status of any safety or security issues at the POPS, (iii) the status of any fire, building and safety, or health code violation that impacts the POPS and (iv) any improvements made to the POPS

Section 4 Inspections. City shall have the right to inspect the premises for compliance per this Agreement. Such inspections shall be coordinated with Developer, as necessary. The Developer's approval of a date and time of an inspection shall not be unreasonably withheld.

Section 5 Covenants to Run with Land. The covenants contained in this Agreement shall run with the land and shall be binding upon any future owners, encumbrancers, their successors, heirs, or assigns.

Section 6 Indemnification and Insurance

(a) Indemnification. Except for the active negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, Developer shall defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Developer's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by Developer, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

(b) Insurance. During the term of this Agreement and periodically as required during

such term, Developer shall furnish CITY with evidence of insurance as attached hereto as Exhibit C.2, on an annual basis, from firms reasonably acceptable to City and approved to do such business in the State of California. Developer or any third party providing work or services under this Agreement shall name the City of Los Angeles and its boards, officers, agents, employees, assigns and successors in interest as an additional insured for all required coverage(s), as applicable. Developer will ensure that like insurance will be maintained by any such third party. Evidence of required coverage shall be on forms reasonably acceptable to City's Risk Manager and shall include the types and minimum limits set forth in Exhibit C.2 attached hereto and incorporated herein by reference.

Developer shall maintain all such insurance at its sole cost and expense throughout the term of this Agreement. City may, by applying generally accepted risk management principles, change the required amounts and types of insurance to be effective at the renewal date of the insurance then in effect by giving Developer sixty (60) calendar days written notice, provided that such amounts and/or types shall be reasonably available to Developer.

If any of the required insurance contains aggregate limits or applies to other operations of Developer outside of this Agreement, Developer shall give City written notice of any incident, occurrence, claim, settlement or judgment against such insurance that in Developer's best judgment may diminish the protection such insurance affords City within thirty (30) calendar days of the knowledge of same. Developer shall further restore such aggregate limits or shall provide other replacement insurance for such aggregate limits within sixty (60) calendar days of the knowledge of same.

If an insurance company elects to (i) cancel insurance before the stated expiration date, (ii) declines to renew in the case of a continuous policy, (iii) reduces the stated limits other than by impairment of an aggregate limit, or (iv) materially reduces the scope of coverage, thereby affecting City's interest, Developer shall provide City at least thirty (30) calendar days prior written notice of such intended election by the insurance company, or ten (10) calendar days prior written notice if such cancellation is for non-payment of premium.

Such notice shall be sent by receipted delivery addressed as follows:

City Administrative Officer, Risk Management

200 North Main Street, Room 1240, City Hall East

Los Angeles, California 90012

Or to such address as City may specify by written notice to Developer.

Notwithstanding anything to the contrary in this Agreement, Developer's failure to procure and maintain the required insurance shall constitute a material default of this Agreement under which CITY may either (i) provide Developer five (5) calendar days written notice of such failure, upon receipt of which ORGANIZATION shall have five (5) calendar days to cure such failure or (ii) CITY shall pay to procure or renew such insurance to protect CITY's interest. ORGANIZATION agrees to reimburse CITY for all

money so paid. Nothing herein shall limit any other remedies City may have under this Agreement for such default.

Self-insurance programs and self-insured retention in insurance policies are subject to separate approval by City upon review of evidence of Developer's financial capacity. Additionally, such programs or retention must provide City with an equivalent protection from liability.

Section 7. Termination of Agreement. This Agreement shall terminate and all covenants contained in this Agreement shall expire only upon written consent from the City.

Section 8. Amendments. This Agreement may be modified or amended by the mutual written agreement of City and Developer.

Section 9. Defaults. In the event the POPS is not maintained or operated in accordance with the requirements of this Agreement or reporting requirement set forth in Section 3 are not met, City shall have the right to demand payment of the previously credited Park Fees, in their entirety. If the POPS is not maintained and operated as required by this Agreement, the City shall notify Developer of such failure in writing and provide Opportunity to Cure ("Notice"). All events of default must be cured within the timeframe specified in the Notice. In the event the default is not satisfactorily cured within the allotted amount of time, RAP shall provide a Notice of Default which will include the amount of Park Fees owed by the Developer that must be paid within thirty (30) days of receipt

Section 10. Notices. Any notices to be given under this Agreement shall be given in writing. Such notices may be served by personal delivery, facsimile transmission or by first class regular mail, postage prepaid. Any such notice, when served by mail, shall be effective two (2) calendar days after the date of mailing of the same, and when served by facsimile transmission or personal delivery shall be effective upon receipt. For the purposes hereof, the address of Developer, and City to receive any such notices on its behalf, are:

City City of Los Angeles
Department of Recreation and Parks
Planning Construction and Maintenance
221 North Figueroa Street, Suite 400
Los Angeles, CA 90012
Attn: Superintendent of Planning

with copies to: Board of Recreation and Park Commissioners
Department of Recreation and Parks
221 North Figueroa Street, Suite 300
Los Angeles, CA 90012
Attn: Board Secretary

Developer: Name
Address
Attn: Name
Telephone: ###
Email:

With copies to: Name

Address
Attn: Name
Telephone: ###
Email:

Section 11. Governing Law. This Agreement shall be governed by and construed in accordance with and governed by the laws of the State of California.

[EXECUTION PAGE TO FOLLOW]

DRAFT

Section 12. Execution.

IN WITNESS WHEREOF, the parties have executed this Agreement with all the formalities required by law as of the date first set forth above.

"CITY"

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through the BOARD OF RECREATION AND PARK COMMISSIONERS

By: _____
Name: _____
Title: President

By: _____
Name: _____
Title: Secretary

APPROVED AS TO FORM:

MICHAEL FEUER,
CITY ATTORNEY

By: _____

"DEVELOPER"

Name

By: Name

By: _____

Name:

Title:

EXHIBIT "C.1"

DEPICTION OF POPS

DRAFT

EXHIBIT "C.2"

INSURANCE REQUIREMENTS

DRAFT

ATTACHMENT 4

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL DOCUMENT
TO:

Department of Recreation and Parks
221 N. Figueroa Street, Suite 400
Los Angeles, CA 90012

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**COVENANT AND AGREEMENT REGARDING PARK AND RECREATIONAL FACILITIES
(NON-PUBLIC)**

The undersigned, [insert], a _____ (“Owner”), hereby certifies that it is the owner of that certain real property located in the City of Los Angeles, County of Los Angeles, State of California, located at _____ and more particularly described in **Exhibit A** attached hereto and by this reference incorporated herein (the “Property”).

In consideration of Owner's receipt of credits granted by the City of Los Angeles (“City”), acting by and through its Department of Recreation and Parks (“Department”), in the amount of \$ _____ (the “Non-Public Park Fees Credit”) toward the recreational and park impact fees otherwise required to be paid by Owner pursuant to Los Angeles Municipal Code Section 12.33 (the “Park Fees”) in connection with Owner's residential development (Case Number: [insert]) (the “Project”), Owner hereby promises, covenants and agrees to and for the benefit of the City and the Department as follows:

1. Owner shall design, construct and install, at Owner's sole cost, those certain non-public park and recreational facilities, amenities and areas, totaling approximately _____ square feet (collectively, the “Non-Public Park Facilities”), at the Property in accordance with the plans marked as _____ and the specifications set forth in the recreation credit cost estimate sheet marked as _____, each of which are attached hereto as **Exhibit B** and by this reference incorporated herein (collectively, the “Non-Public Park Plans”). Any changes to the Non-Public Park Plans shall require the prior written approval of the Department. Prior to the issuance of the Certificate of Occupancy for the first dwelling units of the Project, Owner must obtain written confirmation from the Department that the Non-Public Park Facilities have been installed at the Property in accordance with the Non-Public Park Plans.
2. Owner shall maintain, at Owner's sole cost, the Non-Public Park Facilities in accordance with the operation and maintenance agreement attached hereto as **Exhibit C** and by this reference incorporated herein (the “Maintenance Agreement”). Any changes to the Maintenance Agreement shall require the prior written approval of the Department.
3. The use of the Non-Public Park Facilities shall be restricted to park and recreational purposes only.
4. The Non-Public Park Facilities shall be available and accessible for use by all of the residents of the Project and with no discrimination of access between the residents of the Project.

In the event that any of the foregoing covenants and agreements are not satisfied or are violated, the required Park Fees will become immediately due and payable and Owner shall pay an amount equal to

the Non-Public Park Fees Credit to the Department within thirty (30) days of receipt of a written demand from the Department.

This Covenant and Agreement Regarding Park and Recreational Facilities (Non-Public) (this "Covenant"), and all obligations, covenants and agreements set forth herein, shall run with the Property and shall be binding upon any future owners, encumbrancers, their successors, heirs or assigns and shall continue in full force and effect until the Los Angeles City Council approves the termination hereof. This Covenant is for the benefit of the City and the Department.

Owner hereby represents and warrants to City that (i) Owner is legally authorized (and has obtained all necessary consents, if any, from third parties such as consents from lienholders, if applicable) to enter into and record this Covenant, and (ii) this Covenant is duly authorized, executed and delivered by Owner and is a valid and enforceable obligation of Owner.

OWNER'S NAME: (Print/Type) _____

SIGNATURE OF OWNER:

(sign)

SIGNATURES OF TWO OFFICERS REQUIRED FOR A CORPORATION
SIGNATURES: 1. _____ **2.** _____ (sign)

Dated this _____ day of _____, _____.

(Attach Additional Notary Acknowledgements As Necessary)

*****Space Below This Line For Department Internal Use*****

Must be approved by the Department of Recreation & Parks prior to recording CASE NO. _____
COND NO. _____

APPROVED BY _____ **SIGNATURE** _____ **DATE:** _____

ACKNOWLEDGMENT

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

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Exhibit A

Legal Description of Property

[see attached]

DRAFT

Exhibit B

Non-Public Park Plans

[see attached]

DRAFT

Exhibit C

Maintenance Agreement

[see attached]

DRAFT

PRIVATELY ACCESSIBLE PARK AND RECREATIONAL FACILITY
OPERATION AND MAINTENANCE AGREEMENT

THIS PRIVATELY ACCESSIBLE PARK FACILITY OPERATION AND MAINTENANCE AGREEMENT (“**Agreement**”) is made and entered into as of _____, 202X, by and between **developer name** (“**Developer**”), and THE CITY OF LOS ANGELES, a municipal corporation, acting by and through the BOARD OF RECREATION AND PARK COMMISSIONERS (the “**City**”).

Developer is the owner of that certain real property (“**Site**”) located at the **[Address]** in the City of Los Angeles, State of California.

A condition of **Vesting Tentative Tract Map (VTT) No.** is the payment of the in-lieu Subdivision Park Fees to the Department of Recreation and Parks (“**RAP**”) Park fees, as required by LAMC §§ 12.33 and in the total amount of \$\$\$\$ (“**Developer’s Park Fees**”)

Developer shall provide **[list of amenities]** for the use of the residents. These recreational facilities are in excess of the development’s open space requirements per the LAMC §§ 12.33 H.2.e. The privately owned privately accessible recreational facilities (“**Private Recreational Amenities**”) pursuant to plans and recreation credit exhibits approved by the Board of Recreation and Park Commissioners (“**RAP Board**”) are shown in **Exhibit C.1**. The Private Recreational Amenities shall be accessible for use by the all the residents of the development at all times.

VTT-XXX received \$\$\$\$ in recreation credit for the Private Recreational Amenities towards the Developer’s Park Fees consistent with the provisions of LAMC §§ 12.33 H.2. Pursuant to LAMC §§ 12.33 H.2.f.1 the Developer and RAP have entered into this Agreement whereby Developer agrees to operate and maintain the Private Recreational Amenities for the life of the development as follows:

Section 1. Maintenance and Operation of Private Recreational Amenities.

(a) Maintenance Guidelines and Standards. Developer (so long as it is the owner of all or a portion of the Project and a homeowner’s association has not been formed), the homeowners’ association, or other ownership body of the Project (such entity as applicable), shall cause the Private Recreational Amenities to be open and accessible to the all residents of the development, without discrimination, and maintained and operated in a clean and safe condition. Developer agrees that the Private Recreational Amenities shall be maintained and operated in accordance with the guidelines and standards set forth in this Agreement.

(b) The Private Recreational Amenities Improvements, as shown on Exhibit C.1 and attached hereto, shall not be modified or removed without the prior written approval of RAP Board.

(c) Operation of Private Recreational Amenities. The Private Recreational Amenities shall be operated and maintained by Developer, and its successors and assigns, as **[insert]**

amenity list] and shall be open and accessible for use by the all the residents without discrimination.

(1) Developer shall install and pay all charges associated with the installation and use of any electricity, natural gas, sewer, water, or other utility services, as well as pay all fees and obtain all permits for said services.

Section 2. Maintenance Standards and Guidelines for Private Recreational Amenities

- A. Scope of Work: Furnish all supervision, labor, materials, equipment and transportation needed to maintain the Private Recreational Amenities in accordance with all of the applicable guidelines in this document and to a standard of quality equivalent to that cited in nearby City parks as indicated by staff of the Department of Recreation and Parks. All work and workers shall comply with applicable federal, state, and local laws. Maintenance activity shall include the following:
 - 1. Landscape planting and an irrigation system
 - 2. Pavement cleaning and repair (if applicable)
 - 3. Trash pick-up and graffiti abatement
 - 4. Site lighting
 - 5. Site or amenity furnishings as indicated in the design plan.
- B. Work Force: The park maintenance supervisor or contractor shall be experienced in landscape maintenance and shall have training in ornamental horticulture. Workers are to be personally presentable at all times on site.
- C. Materials: All materials used shall be of high quality and compatible with those used to develop the Private Recreational Amenities. The L.A. County Agricultural Commissioner's Office must be given a list of the control chemicals used. Any maintenance supervisor or contractor shall also provide the City Department of Recreation and Parks, as requested, a copy of the record of fertilizers, herbicides, insecticides, fungicides and other materials used at the Private Recreational Amenities. Records shall indicate the dates, type and amount applied and the person making the application. All waste products must be legally disposed off-site.
- D. General Tree and Shrub Care: Maintain trees, vines and shrubs in a healthy growing condition by performing all necessary operations including the following:
 - 1. Watering: Plants shall not be watered until a moisture check has been made of representative plants in the landscape. Use a probe or other tool to check the moisture in the root ball as well as the soil surrounding the root ball. Use mulches to reduce evaporation and the frequency of watering. Maintain a large enough water basin around plants so that enough water can be applied to irrigate the major root zone. In the rainy season, open the edge of the basins to allow surface drainage away from the root crown so that excess water shall not accumulate. Plants in terra cotta or other planters, if any, shall be watered manually.

2. Pruning Trees:
 - a. All pruning shall be performed under supervision of a certified arborist. Pruning standards shall conform to ISA standards specified in the Urban Forest Program of the City Department of Recreation and Parks. Prune trees (1) to select and develop permanent scaffold branches that are smaller in diameter than the trunk or branch to which they are attached and that have vertical spacing from 18 to 48 inches and radial orientation so as to not overlay one another; (2) to eliminate diseased or damaged growth; (3) to eliminate narrow, V-shaped branch forks that lack strength; (4) to reduce toppling and wind damage by thinning out crowns; (5) to maintain growth within space limitations; (6) to maintain a natural appearance; (7) to balance the surface of the crown with the roots.
 - b. Do not strip off the lower branches of young trees so as to increase the distance of the lowest branches from the ground. Lower branches shall be retained in a "tipped back" or pinched condition with as much foliage as possible in order to promote caliper or tapered trunk growth. Lower branches can be cut flush with the trunk only after the tree can remain erect without staking or other support.
 - c. Evergreen trees shall be thinned and shaped when needed to prevent wind and storm damage.
 - d. The primary pruning of deciduous trees shall be done during the dormant season.
 - e. Damaged or diseased trees or those that constitute safety hazards may be pruned at any time of the year. All pruning cuts shall be made to lateral branches or to buds or flush with the trunk. Do not leave "stubs". Use "tree seal" for all cuts of 1 inch or larger in diameter.
3. Pruning Shrubs and Vines: The objectives of shrub and vine pruning are the same as those for trees. Shrubs and vines shall be trimmed or clipped as needed to maintain a desirable shape.
4. Trees, vines and shrubs shall be checked for possible pruning once per month. All green waste products shall be legally disposed off-site and recycled in a "green waste" container.
5. Staking and Guying: When trees attain a trunk caliper of 4", consider removing existing stakes and guy wires or ties. If the trees are still unstable, consider replacing them. Stakes and guys are to be inspected at least twice per year to prevent the girdling of trunks or branches and to prevent rubbing that causes bark wounds. Eye screws in specimen tree trunks are preferred to protective, looped wire and hose.
6. Weed Control: Keep basins and areas between plants free of weeds. This will reduce damage to tree trunks and roots by mowing machinery and by excess water accumulation. Use only recommended, legally approved herbicides to control growth in these open areas. Avoid frequent soil cultivation that destroys shallow roots and breaks the seal of pre-emergent herbicides. Great care must be used when applying systematic herbicides so as not to damage plantings. Any plantings destroyed must be replaced with material of the same specific type

and size (if practical) as the dead plantings within a four-week period or when (seasonally) recommended in accordance with accepted horticultural practices. Weeds with spreading underground rootstock must be hand dug to remove all of the invading roots. All green waste products shall be legally disposed off-site and preferably recycled in a "green waste" container.

7. Fertilizing and Spraying

- a. Apply fertilizer for shrubs and ground cover with a formula of at least 18-8-4 two times a year between early spring and early fall at the rate of 10 lbs. per 1,000 sq. ft. Lawns shall be fertilized with a formula of 16-6-8, or approved equivalent, every three months at the rate of 8 lbs. per 1,000 sq. ft. Slow-release fertilizer may also be used per manufacturer's specifications if a good, healthy, vigorous growth and good color are maintained.
- b. Apply insecticides and slug/snail controls as needed to protect plant material.
- c. Apply the proper fungicide, herbicide and pesticide for the control of pests, weeds and plant diseases. Also treat cuts and breaks on tree surfaces.
- d. Chemicals and insecticides used shall conform to standards of the City Department of Recreation and Parks. Prior to use, the Forestry Division must be made aware and approve use of any chemicals and/or insecticides. The Forestry Division may be contacted at (213)-485-4826. Roundup shall not be used at any time.

E. Ground Cover Care:

1. Control weeds with pre-emergent, weed herbicides and hand weeding. Avoid damaging plantings.
2. Apply 4 lbs. pounds of actual nitrogen per 1,000 sq. ft. in two to four applications during the first year of a new planting or if the ground cover is nitrogen starved. One application shall be in the early spring when growth begins. Reduce the application to 3 lbs. of actual nitrogen per 1,000 sq. ft. in the following years or as needed to maintain vigorous growth and good color. Complete, tri-formula fertilizers are not desired unless a soil test shows specific nutrient deficiencies.
3. Water enough so that that moisture penetrates throughout the root zone and only as frequently as necessary to maintain healthy growth.
4. A cleared circle 18" to 24" in diameter shall be maintained at the base of trees to reduce competition for nutrients by ground cover. A cleared circle 12" to 18" in diameter shall be maintained at the base of palms.
5. Edge the ground cover to keep it in bounds and trim tip growth as needed to achieve an overall even appearance. Great care should be taken not to damage adjacent plantings when mowing. The debris generated must be legally disposed off-site and preferably recycled in a "green waste" container.

6. Control rodents, insects and diseases as necessary, using legally approved materials.
7. Replace dead and missing plants. Plantings shall be replaced within a month. All replacements shall be the same specific types and, if possible, sizes as the plantings. All dead plants shall be legally disposed of off-site and recycled in a "green waste" container.

F. Lawn Care:

1. Lawns shall be kept weed free.
2. Mowing and edging: Mow, edge and trim lawns weekly or as required to maintain an even, well-groomed appearance.
3. Renovation: Renovate lawns occasionally by using a vertical mower to reduce thatch-like undergrowth and encourage new growth.
4. Excess lawn clippings shall not be left on the grass and shall be legally disposed of off-site and preferably recycled in a "green waste" container.

G. Vine Care:

1. Pruning
 - a. Vines and espalier plants shall be checked and re-tied as required.
 - b. Do not use nails to secure vines.
 - c. Prune all vines annually using accepted horticultural practices.
 - d. Vines shall be pruned and maintained so as not to obstruct fixtures, signs, windows, etc.
2. Apply 1/4 lb. of a formula 10-10-5 fertilizer at least twice a year to each vine.
3. Water as necessary to provide optimal growth.

H. Irrigation Systems:

1. Check and adjust sprinkler valves and heads as needed.
2. Program or reprogram the irrigation controller as needed.
3. The irrigation system shall be kept in good working order and condition. Any damage to the irrigation system caused by any person other than an employee of the City shall be repaired by Developer at no cost to the City. Repairs shall be made within one watering period.
4. Faulty electrical controllers shall be replaced as soon as possible.
5. In late winter, check all systems for proper operation. Lateral lines shall be flushed out after removing the last sprinkler head or two at each end of the lateral. All heads shall be adjusted as needed for unimpeded coverage.

6. Set and program automatic controllers for seasonal water requirements. The watering schedule shall be arranged so as not to interfere with the use of the Private Recreational Amenities.
7. An accurate, up-to-date log shall be maintained of all irrigation repairs with the date and nature of the repair. The log shall be made available to the City for inspection, upon request.

I. Paving:

1. Keep all paved areas free from foreign matter, waste and trash on a daily basis. Concrete walks and unit paver areas shall be steam cleaned as needed but at least twice a year.
2. All paved areas shall be cleaned of debris caused by maintenance operations or silting.
3. Keep cracks in walks or along paved areas free from plant growth.
4. Drains: All subsurface drains shall be periodically flushed with clean water to avoid the accumulation of silt and debris. Keep all inlets to subsurface drains clear of leaves, paper and other debris to ensure the unimpeded passage of water.
5. Patch, repair or replace damaged paving as necessary to keep the area safe and suitable for children at play.
6. Do not use gas blowers per City Ordinance.

J. Trash Pick-up:

1. Pick-up litter throughout the Private Recreational Amenities and empty trash containers at least once per day. Legally dispose of all trash off-site.

K. Site Lighting:

1. Maintain site lighting in accordance with the Private Recreational Amenities' design plans.
2. Replace any lighting equipment, fixtures and infrastructure as needed to ensure site lighting remains functional.
3. Repair and replace damaged poles and luminaries within 72 hours.

L. Site Furnishing:

1. Clean and wipe benches as often as needed to keep them clean and tidy but no less than once a week. Maintain all site furnishings in a clean condition, including but not limited to drinking fountains, play equipment, seating, bollards, pergolas, gateways and trash containers
2. Repair or replace worn or damaged furnishings.

M. Debris Removal:

1. All debris accumulated as a result of maintenance operations shall be removed from the site and disposed of in a lawful manner.
2. All paper and litter shall be removed from the site on a daily basis. Fallen leaves, twigs, etc., shall be removed daily and recycled in a "green waste" container.

N. Graffiti Removal and Vandalism: All graffiti shall be removed from the Private Recreational Amenities within two days of its coming to the notice of maintenance personnel. Damage from vandalism shall be repaired as quickly as is practicable. In the instance of a disagreement between RAP and Developer over practicability, RAP's schedule for repairs of damage from vandalism shall control.

O. Corrective Action:

1. Weed control - Corrective action shall be made within five working days of receipt of a complaint.
2. Plant Material Pruning - Within the limitations of these guidelines, corrective action on complaints shall be made within five working days of the receipt of a complaint.
3. Plant Material Replacement - Dead and missing plants shall be promptly replaced, including damage due to any contractor's negligence, at no charge to the City. Wherever possible, plantings shall be replaced within two weeks. All replacement material shall be of the same specific types and, where reasonably feasible, of the same sizes as the ones destroyed.
4. Site Furnishing and Fixtures – Corrective action shall be made within thirty working days within receipt of complaint to repair or replace all site furnishing and fixtures that are required to be provided for the benefit of the public per the Private Recreational Amenities' plan

P. Other Equipment:

Unless otherwise indicated herein, other Private Recreational Amenities equipment shall be maintained in accordance with manufacturers' warranties, manuals, and product specifications.

Q. Licenses, Taxes and Bonds: Any landscaping contractor operating at the Private Recreational Amenities must have a C-27 State Landscape Contractor's License if any single project consists of more than \$250 of replacement landscaping. Any landscaping or maintenance contractor shall obtain all licenses required by applicable federal, state, and local laws. The contractor shall pay all applicable taxes, including sales taxes, on all materials supplied.

R. Dog Run Maintenance Protocols:

1. Signage must be posted with selected hours of closure for maintenance purposes.
2. Empty trash receptacles twice daily and address all graffiti concerns of the residents within 72 hours receipt of complaint.

3. Resupply dog waste bags immediately.
4. Disinfect all frequently touched surfaces such as hydration stations, benches, pooper scoopers, entry gate handles, bag stations, and amenities.
5. Remove dog feces on a daily basis and dispose of lawfully.
6. Fill holes dug by dogs.
7. Wash hardscape, if applicable.
8. Inspect and make repairs to the dog run amenities to ensure operation and safety of the area, as needed.

S. Community Room Maintenance Protocols:

1. Pick-up debris, trash, and remove cobwebs and other foreign materials from doors, walls, ceilings, partitions, vents, etc.
2. Dust counter tops and other horizontal surfaces.
3. Remove, empty, clean, and disinfect all trash receptacles.
4. Stack chairs on tables when cleaning floor area.
5. Removal all graffiti using graffiti removal materials or scrubbing techniques.
6. Clean and disinfect doors, door frames, light switch, kick and push plates, and handles.
7. Clean and disinfect top and side of drinking fountains, and scrub and dry all fixtures
8. Sweep and dust mop floors making sure to clean corners and around obstacles.
9. Spot mop around entry ways, and clean all stains and spills.
10. Deodorize room
11. All areas shall be left clean and free of streaks, stains, film, debris, water spots, and odors.
12. Thoroughly vacuum carpeted floors, making sure to clean corners and around obstacles.
13. Clean and disinfect all furniture including desks, chairs, and tables.
14. Inspect and make repairs to the Community Room amenities listed above to ensure operation and safety, as needed.

T. Other Maintenance Standards Depending on Amenities Provided

Section 3 Developer's Reporting Obligations.

1. Initial Report: Not later than six months following the issuance of Certificate of Occupancy for the Development, Developer shall prepare an initial report to City regarding use of the Private Recreation Amenities by the public and confirming satisfaction of Developer's obligations under this Agreement. This report shall include, but not be limited to: (i) the approximate number of visitors to the Private Recreation Amenities, (ii) the status of any safety or security issues at the Private Recreation Amenities, (iii) the status of any fire, building and safety, or health code violation that impacts the Private Recreation Amenities and (iv) any improvements made to the Private Recreation Amenities.
2. Annual Report: Following the initial six month report, the Developer shall provide an annual report due on August 1st, which shall cover the reporting period of July 1st to June 30th. Developer shall prepare an annual report to City regarding use of the Private Recreation Amenities by the public and confirming satisfaction of Developer's obligations under this Agreement. This report shall include, but not be limited to: (i) the approximate number of visitors to the Private Recreation Amenities, (ii) the status of any safety or security issues at the Private Recreation Amenities, (iii) the status of any fire, building and safety, or health code violation that impacts the Private Recreation Amenities and (iv) any improvements made to the Private Recreation Amenities.

Section 4 Inspections. City shall have the right to inspect the premises for compliance per this Agreement. Such inspections shall be coordinated with Developer, as necessary. The Developer's approval of a date and time of an inspection shall not be unreasonably withheld.

Section 5 Covenants to Run with Land. The covenants contained in this Agreement shall run with the land and shall be binding upon any future owners, encumbrancers, their successors, heirs or assigns.

Section 6 Indemnification and Insurance

(a) Indemnification. Except for the active negligence or willful misconduct of CITY, or any of its boards, officers, agents, employees, assigns and successors in interest, Developer shall defend, indemnify and hold harmless CITY and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Developer's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by Developer, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of CITY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

(b) Insurance. During the term of this Agreement and periodically as required during

such term, Developer shall furnish CITY with evidence of insurance as attached hereto as Exhibit C.2, on an annual basis, from firms reasonably acceptable to City and approved to do such business in the State of California. Developer or any third party providing work or services under this Agreement shall name the City of Los Angeles and its boards, officers, agents, employees, assigns and successors in interest as an additional insured for all required coverage(s), as applicable. Developer will ensure that like insurance will be maintained by any such third party. Evidence of required coverage shall be on forms reasonably acceptable to City's Risk Manager and shall include the types and minimum limits set forth in Exhibit C.2 attached hereto and incorporated herein by reference.

Developer shall maintain all such insurance at its sole cost and expense throughout the term of this Agreement. City may, by applying generally accepted risk management principles, change the required amounts and types of insurance to be effective at the renewal date of the insurance then in effect by giving Developer sixty (60) calendar days written notice, provided that such amounts and/or types shall be reasonably available to Developer.

If any of the required insurance contains aggregate limits or applies to other operations of Developer outside of this Agreement, Developer shall give City written notice of any incident, occurrence, claim, settlement or judgment against such insurance that in Developer's best judgment may diminish the protection such insurance affords City within thirty (30) calendar days of the knowledge of same. Developer shall further restore such aggregate limits or shall provide other replacement insurance for such aggregate limits within sixty (60) calendar days of the knowledge of same.

If an insurance company elects to (i) cancel insurance before the stated expiration date, (ii) declines to renew in the case of a continuous policy, (iii) reduces the stated limits other than by impairment of an aggregate limit, or (iv) materially reduces the scope of coverage, thereby affecting City's interest, Developer shall provide City at least thirty (30) calendar days prior written notice of such intended election by the insurance company, or ten (10) calendar days prior written notice if such cancellation is for non-payment of premium.

Such notice shall be sent by receipted delivery addressed as follows:

City Administrative Officer, Risk Management

200 North Main Street, Room 1240, City Hall East

Los Angeles, California 90012

Or to such address as City may specify by written notice to Developer.

Notwithstanding anything to the contrary in this Agreement, Developer's failure to procure and maintain the required insurance shall constitute a material default of this Agreement under which CITY may either (i) provide Developer five (5) calendar days written notice of such failure, upon receipt of which ORGANIZATION shall have five (5) calendar days to cure such failure or (ii) CITY shall pay to procure or renew such insurance to protect CITY's interest. ORGANIZATION agrees to reimburse CITY for all

money so paid. Nothing herein shall limit any other remedies City may have under this Agreement for such default.

Self-insurance programs and self-insured retention in insurance policies are subject to separate approval by City upon review of evidence of Developer's financial capacity. Additionally, such programs or retention must provide City with an equivalent protection from liability.

Section 7 Termination of Agreement. This Agreement shall terminate and all covenants contained in this Agreement shall expire only upon written consent from the City.

Section 8. Amendments. This Agreement may be modified or amended by the mutual written agreement of City and Developer.

Section 9. Defaults. In the event the Private Recreational Amenities is not maintained or operated in accordance with the requirements of this Agreement or the Developer fails to meet the reporting requirements of Section 3, City shall have the right to demand payment of the previously credited Park Fees, in their entirety. If the Private Recreational Amenities are not maintained and operated as required by this Agreement, the City shall notify Developer of such failure in writing and provide Opportunity to Cure ("Notice"). All events of default must be cured within the timeframe specified in the Notice. In the event the default is not satisfactorily cured within the allotted amount of time, RAP shall provide a Notice of Default which will include the amount of Park Fees owed by the Developer that must be paid within thirty (30) days of receipt

Section 10. Notices. Any notices to be given under this Agreement shall be given in writing. Such notices may be served by personal delivery, facsimile transmission or by first class regular mail, postage prepaid. Any such notice, when served by mail, shall be effective two (2) calendar days after the date of mailing of the same, and when served by facsimile transmission or personal delivery shall be effective upon receipt. For the purposes hereof, the address of Developer, and City to receive any such notices on its behalf, are:

City City of Los Angeles
Department of Recreation and Parks
Planning Construction and Maintenance
221 North Figueroa Street, Suite 400
Los Angeles, CA 90012
Attn: Superintendent of Planning

with copies to: Board of Recreation and Park Commissioners
Department of Recreation and Parks
221 North Figueroa Street, Suite 300
Los Angeles, CA 90012
Attn: Board Secretary

Developer: Name
Address
Attn: Name
Telephone: ###
Email:

With copies to: Name
 Address
 Attn: Name
 Telephone: ###
 Email:

Section 11. Governing Law. This Agreement shall be governed by and construed in accordance with and governed by the laws of the State of California.

Section 12. Execution.

IN WITNESS WHEREOF, the parties have executed this Agreement with all the formalities required by law as of the date first set forth above.

“CITY”

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through the BOARD OF RECREATION AND PARK COMMISSIONERS

By: _____
Name: _____
Title: President

By: _____
Name: _____
Title: Secretary

APPROVED AS TO FORM:

MICHAEL FEUER,
CITY ATTORNEY

By: _____

“DEVELOPER”

Name

By: Name

By: _____
Name: _____
Title: _____

EXHIBIT "C.1"

DEPICTION OF PRIVATE RECREATIONAL AMENITIES

DRAFT

EXHIBIT "C.2"

INSURANCE REQUIREMENTS

DRAFT

DRAFT