

**SUBDIVISION AGREEMENT
Parker and Pine Filing No. 2**

THIS AGREEMENT is made this 30th day of September, 2021, by and between the Town of Parker, a Colorado home rule municipality (the "Town"), and Echelon Parker, LLC, a Delaware limited liability company (the "Developer").

RECITALS:

A. The Developer is the owner of certain real property located in the Town of Parker known as Parker and Pine Filing No. 2, which is more particularly described in **Exhibit A**, attached hereto and incorporated herein (the "Property").

B. The Town Council and the Planning Commission of the Town of Parker held all necessary public hearings concerning the plat for the Property. A copy of the final plat is attached hereto as **Exhibit B** and incorporated herein.

C. The approvals cited above are contingent upon the express condition that all duties created by this Agreement are faithfully performed by the Developer.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the parties hereto agree as follows:

1. **Purpose.** The purpose of this Agreement is to set forth the terms, conditions and fees to be paid by the Developer, upon subdivision of the Property. All conditions contained herein are in addition to any and all requirements of the Town of Parker Subdivision Ordinance and Zoning Ordinance, the Town of Parker Charter, any and all state statutes, and any other sections of the Parker Municipal Code, and are not intended to supersede any requirements contained therein.

2. **Agreements and Other Requirements.** Intentionally left blank.

3. **Fees.** The following fees shall be paid to the Town by the Developer.

a. The Developer hereby agrees to pay the Town the actual cost to the Town for plan review, engineering review, hydrological and surveying review, prior to and during the development process, and for construction observation, inspection and materials testing during the construction process for public improvements, and for construction observation, inspection and materials testing and electronic deliverable review during the warranty period for public improvements, and for legal services (the "actual costs") rendered in connection with the review of the subdivision of the Property, including related administrative fees not to exceed one hundred fifteen percent (115%) of the actual costs. In addition, the Developer shall reimburse the Town for the costs of making corrections or additions to the master copy of the official Town map and

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1. Purpose. The purpose of this Agreement is to set forth the terms, conditions and fees to be paid by the Developer, upon subdivision of the Property. All conditions contained herein are in addition to any and all requirements of the Town of Parker Subdivision Ordinance and Zoning Ordinance, the Town of Parker Charter, any and all state statutes, and any other sections of the Parker Municipal Code, and are not intended to supersede any requirements contained therein.

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for the fee for recording the final plat and accompanying documents with the Douglas County Clerk and Recorder.

b. The Developer shall pay the impact fees, as established by Town ordinances, in effect at the time this Agreement is executed. The Developer shall pay the foregoing impact fees in effect at the time specified by such ordinances.

c. The Developer acknowledges and agrees that the Town, pursuant to this Agreement, shall be granted construction easement(s) that are reasonably sufficient to complete the public improvements.

4. Specific Conditions. The Developer hereby agrees that:

a. Any approval obtained from the Town of Parker does not obviate the Developer's need to comply with the requirements of Sections 7 and 9 of the Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended, or with any other applicable federal, state or local laws and regulations.

b. Prior to recording of the Final Plat for the Property, the Developer shall pay Two Hundred Twenty-Six Thousand One Hundred Forty-Eight Dollars (\$226,148.00) to the Douglas County School District RE-1, which payment is for a fee in lieu of a land dedication for the school sites benefiting the School District and its students.

c. Prior to the issuance of each building permit within the Property, the Developer shall pay to the Douglas County School District a School Mitigation Fee of Three Hundred Ninety-Two Dollars (\$392.00) for each residential unit.

d. Prior to any certificate of occupancy, temporary or otherwise for the Property, the Developer shall install all park improvements within the Baldwin Gulch Open Space (Tract A Parker Auto Plaza Filing No. 1) as described in the landscape plans approved by the Town for the Property (the "Park Improvements"). The Developer shall post a letter of credit amounting to one hundred ten percent (110%) (the "Park Security") of the materials cost as described in **Exhibit C**, attached and incorporated herein. The Developer will complete the Park Improvements according to the landscape plans prior to any certificate of occupancy, temporary or otherwise for the Property.

e. Prior to recording of the final plat for the Property, the Developer shall execute and deliver to the Town a "License Agreement," which is attached hereto as **Exhibit E** and incorporated by this reference. The Developer hereby agrees to perform any and all requirements of the License Agreement. Prior to recording of the final plat for the Property, the Developer shall pay the License Fee of Two Hundred Thirty-Nine Thousand Five Hundred Fifty-Seven and 50/100 Dollars (\$239,557.50).

5. Title Commitment. A title commitment for the Property shall be provided to the Town. The title commitment shall show that all property to be dedicated to the Town is or shall be, subsequent to the execution and recording of the final plat, free and clear of all liens and encumbrances (other than real estate taxes which are not yet due and payable), which would make the dedications unacceptable as the Town, in its sole discretion, determines.

6. Breach by the Developer; the Town's Remedies. In the event of a breach of any of the terms and conditions of this Agreement by the Developer, the Town Council shall be notified immediately and the Town may take such action, as permitted and/or authorized by law, this Agreement or the ordinances and Charter of the Town, as the Town deems necessary to protect the public health, safety and welfare; to protect lot buyers and builders; and to protect the citizens of the Town from hardship and undue risk. The remedies include, but are not limited to:

- a. The refusal to issue any building permit or certificate of occupancy;
- b. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;
- c. A demand that the security given for the completion of the Park Improvements be paid or honored; or
- d. Any other remedy available at law.

Unless necessary to protect the immediate health, safety and welfare of the Town, or to protect the interest of the Town with regard to security given for the completion of the Park Improvements, the Town shall provide the Developer thirty (30) days' written notice of its intent to take any action under this paragraph, during which thirty-day period the Developer may cure the breach described in the notice and prevent further action by the Town.

7. Park Improvements and Warranty. All Park Improvements, as approved by the Director of Engineering/Public Works of the Town, shall be installed and completed at the expense of the Developer. The Park Improvements required by this Agreement and the costs of these Park Improvements, are set forth on Exhibit C, attached hereto and incorporated herein.

The Developer shall warrant any and all Park Improvements for a period of two (2) years from the date the Town's Director of Engineering/Public Works grants probationary acceptance of the Park Improvements, as approved by the Town. The warranty period shall extend to the date final acceptance is granted in writing by the Town's Director of Engineering/Public Works. The Developer shall be responsible for scheduling the necessary inspections for probationary and final acceptance. Specifically, but not by way of limitation, the Developer shall warrant the following:

The Park Improvements shall be in conformity with the Town's specifications and shall be free of defects in materials or workmanship for a period of two (2) years, as stated above, including, but not limited to, breakage or other deterioration of the Park Improvements, no matter the cause, for a period of two (2) years, as stated above.

8. Observation. The Town shall have the right to make reasonable engineering observations at the Developer's expense, as the Town may request. Observation, acquiescence in, or approval by any engineering inspector of the construction of physical facilities at any particular time shall not constitute the approval by the Town of any portion of the installation of such Park Improvements. Such approval shall be made by the Town only after completion of construction and in the manner hereinafter set forth.

9. Completion of Park Improvements. The obligations of the Developer provided for in Paragraph 7 of this Agreement, including the inspections hereof, shall be performed on or before July 31, 2023, and proper application for acceptance of the Park Improvements shall be made on or before such date. Upon completion of installation by the Developer of such Park Improvements, the Town's Director of Engineering/Public Works or his designee shall inspect the improvements and certify with specificity their conformity or lack thereof to the Town's specifications. The Developer shall make all corrections necessary to bring the improvements into conformity with the Town's specifications.

10. Related Costs – Park Improvements. The Developer shall provide all necessary engineering designs, surveys, field surveys and incidental services related to the installation of the Park Improvements, at its sole cost and expense, including reproducible “as built” drawings certified accurate by a professional engineer registered in the State of Colorado.

11. Intentionally left blank.

12. Performance Guarantee. In order to secure the construction and installation of the Park Improvements, the Developer shall, prior to recording the final plat in the real estate records of Douglas County, which recording shall occur no later than ninety (90) days after the execution of this Agreement, furnish the Town, at the Developer's expense, with the performance guarantee described herein. The performance guarantee provided by the Developer shall be an irrevocable letter of credit in which the Town is designated as beneficiary in an amount equal to one hundred ten percent (110%) of the estimated costs of the Park Improvements to be constructed and installed, as set forth in Exhibit C, to secure the performance and completion of the Park Improvements. The Developer agrees that approval of the final plat by the Town is contingent upon the Developer's provision of an irrevocable letter of credit to the Town within ninety (90) days of the execution of this Agreement, in the amount and form provided herein. Failure of the Developer to provide an irrevocable letter of credit to the Town, in the manner provided herein, shall negate the Town's approval of the final plat. Letters of credit shall be substantially in the form and content set forth in **Exhibit D**, attached hereto and incorporated herein, and shall be subject to the review and approval of the Town Attorney. The Developer shall not start the construction of any public or private improvement on the Property, including, but not limited to, staking, earth work, overlot grading or the erection of any structure, temporary or otherwise, until the Town has received and approved the irrevocable letter of credit.

The estimated costs of the Park Improvements shall be a figure mutually agreed upon by the Developer and the Town's Director of Engineering/Public Works, as set forth in Exhibit C. If, however, they are unable to agree, the Director of Engineering/Public Works' estimate shall govern after giving consideration to information provided by the Developer, including, but not limited to, construction contracts and engineering estimates. The purpose of the cost estimate is solely to determine the amount of security. No representations are made as to the accuracy of these estimates and the Developer agrees to pay the actual costs of all such Park Improvements.

The estimated costs of the Park Improvements may increase in the future. Accordingly, the Town reserves the right to review and adjust the cost estimates on an annual basis. Adjusted cost estimates will be made according to changes in the Construction Costs Index, as published by the Engineering News Record. If the Town adjusts the cost estimate for the Park Improvements,

the Town shall give written notice to the Developer. The Developer shall, within thirty (30) days after receipt of said written notice, provide the Town with a new or amended letter of credit in the amount of the adjusted cost estimates. If the Developer refuses or fails to so provide the Town with a new or amended letter of credit, the Town may exercise the remedies provided for in Paragraph 6 of this Agreement.

In the event the Park Improvements are not constructed or completed within the period of time specified by Paragraph 9 of this Agreement or a written extension of time mutually agreed upon by the parties to this Agreement, the Town may draw on the letter of credit to complete the Park Improvements called for in this Agreement. In the event the letter of credit is to expire within fourteen (14) calendar days and the Developer has not yet provided a satisfactory replacement, the Town may draw on the letter of credit and either hold such funds as security for performance of this Agreement or spend such funds to finish the Park Improvements or correct problems with the Park Improvements, as the Town deems appropriate.

Upon completion of performance of such improvements, conditions and requirements within the required time and the approval of the Town's Director of Engineering/Public Works, the Developer shall issue an irrevocable letter of credit to the Town in the amount of twenty percent (20%) of the total cost of construction and installation of the Park Improvements, to be held by the Town during the two-year warranty period. If the Park Improvements are not completed within the required time, the monies may be used to complete the improvements.

13. Nuisance Conditions. The Developer agrees to prevent the existence of any nuisances by way of its construction activities, as nuisances are defined by Title 6 of the Parker Municipal Code, and as referenced in Title 11 of the Parker Municipal Code. In the event the authorized inspector/designated Town authority determines that a nuisance exists, the Developer shall be subject to the provisions set forth in Parker Municipal Code Sections 11.12.040 and 11.12.050, regarding the abatement of nuisances and the cost assessed for the abatement thereof.

In addition to the provisions above, if the nuisance is not abated or an abatement plan is not submitted to the satisfaction of the Town, the Town may, upon thirty (30) days' notice under this Agreement, exercise the right to draw upon the performance guarantee specified in Paragraph 12 of this Agreement. The Town may draw on the performance guarantee in order to pay the cost of abating the nuisance, including any expenses and penalties incurred under the Parker Municipal Code. The Town may exercise this right in addition to, or in lieu of, the withholding of permits and/or the withholding of certificates of occupancy. The right to draw on the performance guarantee shall be subject to the sole discretion of the Town, provided the Developer has received thirty (30) days' notice, as provided herein.

The Town Planning Department and the Department of Engineering/Public Works shall be authorized to cease processing any land use or permit applications submitted by the same developer for the property that is contained within the same Planned Unit Development, until the nuisance is abated. This shall include, but not be limited to, acceptance of applications, sending referrals, scheduling meetings or hearings, or conducting reviews of projects.

14. Association. An association shall be created by the Developer under the laws of the State of Colorado or the Property shall be included in an existing association, if possible. The

association must be lawfully established in accordance with the requirements of the Parker Municipal Code, concerning Associations, before any properties within the development are sold to third parties. The articles of incorporation shall be reviewed by the Town Attorney to ensure that they have met the Town's requirements and the articles provide that the association will maintain the private improvements, including, but not limited to, private streets, private parks, private open space, drainage facilities, landscaping and medians, common areas and facilities, recreation areas and facilities, stormwater management areas and facilities, walkways and other facilities, as identified on the final plat and/or subject to a license agreement(s) entered into between the Developer and the Town, contemporaneously with this Agreement, and to assume all responsibilities therefor as shown on the final plat and/or described in the license agreement(s), including sufficient funding to meet these responsibilities.

15. Indemnification. The Developer shall indemnify and hold harmless the Town, its officers, employees, agents or servants from any and all suits, actions and claims of every nature and description caused by, arising from or on account of any act or omission of the Developer, or of any other person or entity for whose act or omission the Developer is liable, with respect to construction of the Park Improvements; and the Developer shall pay any and all judgments rendered against the Town as the result of any suit, action or claim, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim.

The Developer shall pay all property taxes on the Property dedicated to the Town, and shall indemnify and hold harmless the Town for any property tax liability.

The Developer shall require that all contractors and other employees engaged in construction of Park Improvements shall maintain adequate workers' compensation insurance and public liability coverage and shall faithfully comply with the provisions of the Federal Occupational Safety and Health Act.

16. Waiver of Defects. In executing this Agreement the Developer waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on the Developer, as set forth herein, and concerning the procedure, substance and form of the ordinances or resolutions adopting this Agreement.

17. Modifications. This Agreement shall not be amended, except by subsequent written agreement of the parties.

18. Release of Liability. It is expressly understood that the Town cannot be legally bound by the representations of any of its officers or agents or their designees, except in accordance with the Parker Municipal Code and the laws of the State of Colorado.

19. Captions. The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

20. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns, as the case may be.

21. Invalid Provision. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Agreement is capable of two constructions, one of which would render the provision void and the other which would render the provision valid, then the provision shall have the meaning which renders it valid.

22. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Douglas County, Colorado.

23. Attorney Fees. Should this Agreement become the subject of litigation to resolve a claim of default of performance by the Developer and a court of competent jurisdiction determines that the Developer was in default in the performance of the Agreement, the Developer shall pay the attorney fees, expenses and court costs of the Town.

24. Notice. All notice required under this Agreement shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address, as set forth below. Either party, by notice so given, may change the address to which future notices shall be sent.

Notice to the Town: Town of Parker
 Attn: Director of Engineering/Public Works
 20120 E. Mainstreet
 Parker, Colorado 80138

With copy to: Town of Parker
 Attn: Town Attorney
 20120 E. Mainstreet
 Parker, Colorado 80138

Notice to Developer: Echelon Parker, LLC
 Attn: Eric Garrett
 1051 Greenwood Springs Blvd. Suite 101
 Greenwood, Indiana 46143

25. Force Majeure. Whenever the Developer is required to complete the construction, repair or replacement of the Park Improvements by an agreed deadline, the Developer shall be entitled to an extension of time equal to a delay in completing the foregoing, due to unforeseeable causes beyond the control and without the fault or negligence of the Developer, including, but not limited to, acts of God, weather, fires and strikes.

26. Approvals. Whenever approval or acceptance of the Town is necessary, pursuant to any provision of this Agreement, the Town shall act reasonably and in a timely manner in responding to such request for approval or acceptance.

27. Assignment or Assignments. There shall be no partial transfer or assignment of any of the rights or obligations of the Developer under this Agreement. There shall be no assignment of this Agreement without the prior written approval of the Town, which the Town may grant or withhold in its sole discretion. The Developer agrees to provide the Town with at least fourteen (14) days' advance written notice of the proposed transfer or assignment of this Agreement.

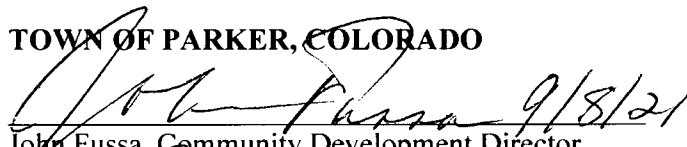
28. Recording of Agreement. This Agreement shall be recorded in the real estate records of Douglas County and shall be a covenant running with the Property, in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

29. Title and Authority. The Developer expressly warrants and represents to the Town that it is the record owner of the property constituting the Property and further represents and warrants, together with the undersigned individuals, that the undersigned individuals have full power and authority to enter into this Subdivision Agreement. The Developer and the undersigned individuals understand that the Town is relying on such representations and warranties in entering into this Agreement.

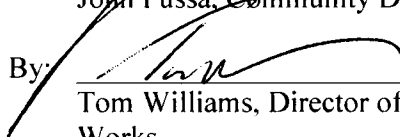
WHEREFORE, the parties hereto have executed this Agreement on the day and year first above written.

TOWN OF PARKER, COLORADO

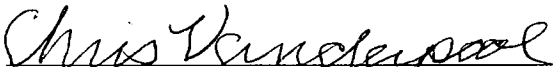
By:

 9/8/21
John Fussa, Community Development Director

By:


Tom Williams, Director of Engineering/Public Works

ATTEST:


Chris Vanderpool, Acting Town Clerk

APPROVED AS TO FORM:

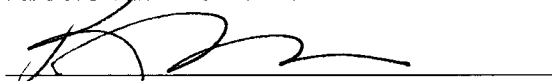

Town Attorney's Office

EXHIBIT LIST

- Exhibit A Legal Description of the Property
- Exhibit B Copy of the Final Plat
- Exhibit C Park Improvement Cost Estimate
- Exhibit D Form of Letter of Credit
- Exhibit E License Agreement

EXHIBIT A

LEGAL DESCRIPTION

Lots 1 – 3 and Tracts A - C, Parker and Pine Filing No. 2, located in the Town of Parker, County of Douglas, State of Colorado, as recorded in the records of the Douglas County Clerk and Recorder on the 30th day of September, 2021, at Reception Number 2021112808.

EXHIBIT C

19-06 PARKER

IMPROVEMENTS AS REQUIRED BY THE TOWN OF PARKER
PER THE PARKS DEDICATION ORDINANCE SECTION 2, PARAGRAPH 13.07.140(c)(10a)
AND AS REQUESTED BY THE TOWN PLANNER IN THE FORM OF SUBMITTAL COMMENTS
LOCATED IN BALDWIN GULCH

ESTIMATE OF PROBABLE COST

PER SDP RESUBMITTAL DATED 05.27.2021

July 08, 2021

NOTES:

1. Prices include all required material to completely install each specified item and installation (Turn-Key Pricing). Quantities shown are landscape estimates only. Contractor to verify quantities and notify landscape architect of any substantial discrepancies.

Item	Description	Quantity	Unit	Unit Price	Item Total Amount
Section 1.0 BALDWIN GULCH - TOTAL AREA OF IMPROVEMENTS: 41,933 SQ. FT. (0.96 ACRES)					
1. Town of Parker Seed Mix #3	Native Grass Seed Mix per plans	29355	SF	\$ 0.25	\$ 7,338.75
2. Temporary Irrigation of Seed Mix	Temporary irrigation through establishment per plans	1	LS	\$ 10,000.00	\$ 10,000.00
3. Concrete Sidewalks	At walkways and under benches and exercise equip.	2966	SF	\$ 6.50	\$ 19,279.00
4. Thickened Concrete Edge	Thickened edge at playground per plans	249	LF	\$ 45.00	\$ 11,205.00
5. Concrete Stairs	Sidewalk connection to trail per plans & details	90	LF	\$ 45.00	\$ 4,050.00
6. Handrails at Stairs	Per plans & details	10	EA	\$ 250.00	\$ 2,500.00
7. Playground Equipment	Miracle Kid's Choice Structure - Model: 714-C646 (\$80,000) Miracle Ten Spin - Model: 304W (\$10,000) Miracle Swings - Model: 718-852-4SW (\$10,000)	1	LS	\$ 100,000.00	\$ 100,000.00
8. Fibar Fall Surface	Wood fibar playground fall surface per plans	4251	SF	\$ 5.00	\$ 21,255.00
9. Filter Fabric between Wood Fibar & Gravel	Per plans & details	4251	SF	\$ 0.75	\$ 3,188.25
10. Gravel & Drainage under Playground	Angular gravel and drainage under wood fibar	1	LS	\$ 20,000.00	\$ 20,000.00
11. Grading/Earthwork for Playground	As required based on existing site conditions	1	LS	\$ 10,000.00	\$ 10,000.00
12. Small Shelter	To accommodate 5-10 people per plans	1	LS	\$ 30,000.00	\$ 30,000.00
13. Picnic Tables	Per plans & details	2	EA	\$ 3,000.00	\$ 6,000.00
14. Benches	Per plans & details	6	EA	\$ 1,500.00	\$ 9,000.00
15. Trash Receptacles	Per plans & details	2	EA	\$ 1,000.00	\$ 2,000.00
16. Pet Waste Stations	Per plans & details	2	EA	\$ 500.00	\$ 1,000.00
17. Fitness Stations	Exercise equipment per plans & details	4	EA	\$ 5,500.00	\$ 22,000.00
18. Decomposed Granite Walking Path	Compacted 3/8- decomposed granite per plans & details	16	CY	\$ 80.00	\$ 1,280.00
19. Artificial Turf	To include backer board, compacted angular gravel base and drainage	3800	sf	\$ 15.00	\$ 57,000.00
20. Bike Racks	Per plans & details	3	EA	\$ 500.00	\$ 1,500.00
21. Bike Fix-it Station	Per plans & details	1	EA	\$ 1,500.00	\$ 1,500.00

SECTION 1.0: BALDWIN GULCH IMPROVEMENTS - ESTIMATE OF PROBABLE COST TOTAL: \$ 340,096.00

EXHIBIT D

FORM – IRREVOCABLE LETTER OF CREDIT

Issuing Bank's Letterhead

Irrevocable Letter of Credit

Issuing Bank: *[Type in bank name.]*

Issuance Date: *[Type LOC issuance date.]*

Letter of Credit No.: *[Type LOC number.]*

Expiry Date: *[Type LOC expiration date.]*

Amount: *[Type in aggregate amount.]*

Name of Developer: *[Type in name of developer.]*

Town of Parker
20120 East Mainstreet
Parker, Colorado 80138

Attention: Mayor and Town Attorney

Ladies and Gentlemen:

We hereby establish this Irrevocable Letter of Credit in your favor for an amount up to the aggregate sum of \$ _____ U.S. Dollars.

Funds under this credit are available to you by your draft or drafts drawn at sight on us containing the number of this Letter of Credit, as set forth above, in the Form of Sight Draft attached hereto as **Exhibit 1** and incorporated by this reference. Partial drawings are permitted. The amount of the funds available under this Letter of Credit may not be reduced, except by payment of drafts drawn hereunder, or pursuant to written authorization given to us by the Town. The sole condition for payment of any draft under this Letter of Credit is that the draft be accompanied by a letter, on the Town's letterhead, signed by the Mayor or designee, stating that one or more of the following conditions exist:

a. The Town has determined that the Developer is in default of its obligations under that certain *[type in "agreement" or "permit"]*, to secure the performance of the *[type in the name of the agreement, such as "Subdivision Agreement between the Town and Developer" and the name of the project, or "Development Agreement between the Town and Developer" and the name of the project]* or *[for permit, type in the name of the project]*;

or

b. That the expiry date of this Irrevocable Letter of Credit is less than fourteen (14) days from the date of the Mayor or designee's letter and the Developer has not provided the Town with a replacement letter of credit in an amount and form acceptable to the Town to secure the performance of the *[type in name of the agreement]* or *[for permit, type in the name of the project]* described herein.

Drafts for payment by the Town, pursuant to this Letter of Credit, shall be deemed timely presented if, prior to the date of expiration of the Letter of Credit, the draft is deposited in the U.S. mail or otherwise delivered for transmission by any other usual means of communication

EXHIBIT 1

FORM OF SIGHT DRAFT

[*Name of Issuing Bank*]
[*Address of Issuing Bank*]

Date: _____

At sight, pay to the order of Town of Parker _____ Dollars
(\$ _____), for value received and charge to the account of [*name of Developer*].

Drawn under Letter of Credit No. _____, dated _____ [*type in
letter of credit issuance date*].

By: _____
_____, Mayor
Town of Parker

EXHIBIT E

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, is made and entered into this ___ day of _____, 20___, by and between the Town of Parker, a Colorado home rule municipality whose address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Town"), and _____, a _____, whose address is _____ (the "Licensee").

RECITALS

WHEREAS, Licensee is the owner of the property described on **Exhibit A** (the "Benefitted Property"), which will be developed for multi-family use;

WHEREAS, Licensee desires to use property owned by the Town for park purposes to serve such multi-family development and the general public; and

WHEREAS, the Town hereby agrees to license its property for the uses provided for in this License Agreement, subject to the terms and conditions contained in this License Agreement.

AGREEMENT

1. **LICENSED PROPERTY.** The property that is licensed for the use provided for in this License is described in **Exhibit B**, which is attached hereto and incorporated by this reference ("Licensed Property"). The Licensed Property for the use described herein is subject to all easements and rights-of-way of record.

2. **LICENSE FEE.** Licensee shall make payment to the Town in the amount of Two Hundred Thirty-Nine Thousand Five-Hundred Fifty-Seven and 50/100 Dollars (\$239,557.50) (the "License Fee") on the date of this License Agreement. The License Fee represents one-half the amount Licensee would have paid as a "cash in lieu of land dedication" pursuant to Section 13.07.140 of the Parker Municipal Code. All rights granted in this License Agreement are conditional upon timely payment of the License Fee. The License Fee is nonrefundable.

3. **USE.** Licensee covenants and agrees that it shall utilize the Licensed Property for the construction, installation, use, maintenance, repair, replacement and removal of the playground equipment, fitness stations, benches, trash cans, pavilion and other amenities, structures and fixtures (the "Playground Equipment and Other Amenities"), as identified and depicted on **Exhibit C**, which is attached hereto and incorporated by this reference. Licensee shall comply with the requirements of **Exhibit C-1**, which is attached hereto and incorporated by this reference. Licensee covenants and agrees that it shall not utilize the Licensed Property for any other purpose, nor shall it use the Licensed Property or permit it to be used for purposes prohibited by the applicable laws of the United States, State of Colorado, or any political subdivision thereof. Licensee is solely responsible for funding the cost of the purchase, construction, installation, maintenance, repair, replacement and removal of all Playground Equipment and Other Amenities. Licensee understands and agrees that the Playground Equipment and Other Amenities shall be available for use by the general public. Licensee shall comply with all applicable laws, rules, orders, ordinances and regulations of any governmental authority.

4. TERM. The Licensee shall have the right to use the Licensed Property until terminated as provided herein, subject to the terms and conditions of this License Agreement.

5. RELOCATION. In the event the construction or reconstruction of any roadways, including bridge improvements, upon, over, under and across the Licensed Property, or the construction, reconstruction or repair of any of the Town's property necessitates the relocation, or removal of the Playground Equipment and Other Amenities, then Licensee shall, at its sole cost and expense, timely perform or cause the performance of such relocation or removal of the Playground Equipment and Other Amenities.

6. INSURANCE. The Licensee shall obtain necessary and adequate insurance, with limits commensurate with the hazards and risks associated with this use, but in no event less than the liability limits established by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as now in effect or as hereinafter amended.

a. Workers' Compensation Insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of services under this License Agreement, and Employer's Liability Insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000) each accident, Five Hundred Thousand Dollars (\$500,000) disease-policy limit, and Five Hundred Thousand Dollars (\$500,000) disease-each employee. Evidence of qualified self-insured status may be substituted for the workers' compensation requirements of this subparagraph.

b. Commercial General Liability Insurance to be written with a limit of liability of not less than One Million Dollars (\$1,000,000) for all damages arising out of bodily injury, personal injury (including coverage for employee and contractual acts), including death, at any time resulting therefrom, arising out of any one occurrence, and not less than Two Million Dollars (\$2,000,000) general aggregate for all damages arising out of bodily injury, including death, at any time resulting therefrom, during the policy period. This policy shall also include coverage for blanket contractual and independent contractor risks. The limits of Commercial General Liability Insurance for broad-form property damage (including products and completed operations) shall be not less than One Million Dollars (\$1,000,000) for all damages arising out of injury to or destruction of property in any one occurrence, and not less than Two Million Dollars (\$2,000,000) for all damages arising out of injury to or destruction of property, including the Town's property, during the policy period. The policy shall contain a severability of interest's provision.

The Licensee shall not start installation until it has obtained all insurance required under this paragraph and filed a certificate of insurance or a certified copy of the insurance policy with the Town Risk Manager. The Commercial General Liability Insurance policy shall list the Town as an additional named insured and shall contain a clause providing that coverage shall not be cancelled by the insurance company without notice to the Town within two (2) business days of the cancellation or substantive change to the policy. A copy of the certificate of insurance is attached hereto as **Exhibit D** and incorporated by this reference.

7. UTILITIES. Licensee covenants and agrees to pay all charges for water, electric power and other utilities assessed, levied or incurred on the Licensed Property, during the term of this License.

8. INSTALLATION, MAINTENANCE, REPAIR AND ALTERATIONS. Licensee shall install the Playground Equipment and Other Amenities in accordance with the plans approved by the Town. Prior to installation, Licensee shall obtain all necessary permits and shall comply with all requirements thereof, including, but not limited to, Section 13.10.250 of the Parker Municipal Code concerning prairie dog management. After initial installation, Licensee covenants and agrees not to make or permit to be made any alterations in, or additions to, the Licensed Property without the prior written consent of the Public Works Director and to keep the Licensed Property and all improvements thereon, including the Playground Equipment and Other Amenities, in good repair at the expense of Licensee. Licensee shall inspect, maintain, repair and replace the Playground Equipment and Other Amenities in accordance with the requirements outlined in Exhibit C-1.

9. RE-ENTRY. Licensee covenants and agrees to permit the Town or its duly authorized representatives to enter upon the Licensed Property, at any reasonable hour of the day, for the purpose of inspecting the same, and to do such other acts and things as it deems necessary for the protection of its interests therein.

10. NOTICE. Any notice required under this License shall be in writing and mailed by certified mail to the respective parties at the address herein given. The Director of Engineering/Public Works shall be the representative of the Town to accept or give any approval, notice or the like provided hereunder. In the event Licensee should change the address herein given during the term of this License, Licensee shall notify the Town in writing of such change of address:

The Town: Director of Engineering/Public Works
 Town of Parker
 20120 E. Mainstreet
 Parker, Colorado 80138

Licensee: _____
 Attn: _____

11. NO COVENANT OF TITLE OR QUIET POSSESSION. The rights granted herein are without covenant of title or warranty of quiet possession of the Licensed Property and no water or water rights are granted by this License.

12. SUCCESSORS AND ASSIGNS. This License shall inure to the benefit of, and be binding upon, the respective legal representatives, heirs, successors and assigns of the parties.

13. ASSIGNMENT OR SUBLEASE. Licensee covenants and agrees not to assign this License or to sublet any part of the Licensed Property without first obtaining the written consent

of the Town. Written consent to assignment of this License Agreement shall only be granted to the owner of the Benefitted Property. No other assignment shall be allowed.

14. LICENSED PROPERTY TAKEN "AS IS." Licensee understands and agrees that the Licensed Property is licensed "as is." The Town makes no warranty, written or implied, that the Licensed Property is fit for any purpose or that it meets any federal, state, county or local law, ordinance or regulation applying to the Licensed Property.

15. LIABILITY AND INDEMNIFICATION. The Town shall not be liable for any loss, injury, death or damage to any person or personal property which may arise from the use or condition of the Licensed Property during the term of the License. Licensee hereby expressly agrees, to the extent permitted by law, to defend, indemnify and hold harmless the Town, its officers, agents, employees and insurers against any liability, loss, damage, demand, action, cause of action or expense of whatever nature (including court costs and attorney fees), which may result from any loss, injury, death or damage allegedly sustained by any person, firm, corporation or other entity, which arises out of or is caused by reason of Licensee's negligent use of the Licensed Property or Licensee's failure to fulfill the terms and conditions of the License.

16. RESERVATION FOR COUNCIL USE. This License is made under and conformable to the provisions of all Town of Parker regulations insofar as applicable. These provisions are incorporated herein and made a part hereof by this reference and shall supersede any apparently conflicting provisions otherwise contained in the License. The Town reserves the right to make full use of the Licensed Property as may be necessary or convenient in the operation of the public streets, drainage infrastructure, or drainageways under the control of the Town and the Town retains all rights to operate, maintain, install, repair, remove or relocate any of its facilities located within the Licensed Property at any time and in such a manner as it deems necessary.

17. TERMINATION.

a. This License Agreement may be terminated by the Town at any time upon thirty (30) days' written notice to Licensee.

b. If default shall be made in any of the covenants or agreements contained herein contained to be kept by Licensee, upon notice to Licensee and failure to cure such default within seven (7) days' notice (except that if the Licensee cannot cure such default within said seven (7) day period, this period shall be extended for a reasonable additional time, provided that the Licensee commences to cure such default within said seven (7) days and proceeds with due diligence thereafter to effect such cure), this License Agreement may be terminated by the Town, and it shall be lawful for the Town to enter into the Licensed Property, or any part thereof, either with or without process of law, to terminate the interest of Licensee or of any person or persons occupying the same, and to expel, remove or put out such person or persons, using such force as may be necessary in so doing, without being liable to prosecution or to damages therefor. If, at any time, the License shall be terminated as aforesaid, or by any other means, Licensee agrees to surrender and deliver up the Licensed Property peaceably to the Town immediately upon the termination and, if Licensee shall remain in possession after termination, Licensee shall be deemed

guilty of a forcible detainer on the Licensed Property and, waiving all notice, shall be subject to eviction and removal, forcibly or otherwise, with or without process of law.

c. If the Town terminates this License Agreement pursuant to subsection 17(b) due to a default by Licensee, Licensee shall make payment to the Town in the amount of Two Hundred Thirty-Nine Thousand Five-Hundred Fifty-Seven and 50/100 Dollars (\$239,557.50) (the "Fee in Lieu Balance") upon demand by the Town. The Fee in Lieu Balance represents the amount Licensee would have paid as a "cash in lieu of land dedication" pursuant to Section 13.07.140 of the Parker Municipal Code, less the amount of the License Fee. Additionally, if the Town terminates this License pursuant to subsection 17(b) due to a default by Licensee, Licensee shall transfer all of its ownership interests in the Playground Equipment and Other Amenities to the Town and Licensee shall have no further obligation to inspect, repair, maintain or replace the Playground Equipment and Other Amenities.

d. If the Town terminates this License Agreement pursuant to subsection 17(a), the Fee in Lieu Balance shall not be due or payable by Licensee; provided however, Licensee shall transfer all of its ownership interests in the Playground Equipment and Other Amenities to the Town and Licensee shall have no further obligation to inspect, repair, maintain or replace the Playground Equipment and Other Amenities.

e. The Town shall have the right to assess and file a lien against the Benefitted Property for any amount due under this Agreement that is not paid upon demand. The lien shall be a first and prior lien to all other liens.

18. **VENUE.** For the resolution of any dispute arising hereunder, venue shall be in the courts of Douglas County, State of Colorado.

19. **ENTIRE AGREEMENT.** This License Agreement sets forth the entire agreement and understanding of the parties hereto with respect to this transaction, and this License Agreement supersedes any prior agreements, whether written or oral, regarding the matters described herein.

20. **RECORDING.** This License Agreement shall be recorded in the real estate records of Douglas County and shall be a covenant running with the Benefitted Property in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the date set forth above.

TOWN OF PARKER, COLORADO

By: _____
Michelle Kivela, Town Administrator

ATTEST:

Chris Vanderpool, Acting Town Clerk

APPROVED AS TO FORM:

Town Attorney's Office

APPROVED AS TO FORM AND SUFFICIENCY
AS TO PARAGRAPH 6:

Steve Bedard, Risk Manager

LICENSEE:

By: _____
_____ [name/title]

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
20__, by _____, as _____ of _____.

My commission expires: _____.

SEAL

Notary Public

EXHIBIT A

Benefitted Property

Lots 1 through 3, Parker and Pine Filing No. 2, County of Douglas, State of Colorado.

EXHIBIT B

Licensed Property

Baldwin Gulch Amenity Area Legal Description:

A Part of Tract A, Parker Auto Plaza Filing 1, recorded at Reception Number 2004113377, Douglas County, Colorado Clerk and Recorder's Office, situated in the Southeast 1/4 of Section 9, and the Southwest 1/4 of Section 10, T.6S., R.66W., of the 6th P.M., Town of Parker, County of Douglas, State of Colorado, more particularly described as follows:

Beginning at the Northwest Corner of Tract A, Parker Auto Plaza Filing 1;

Thence the following five (5) courses along the Northerly Line of said Tract A;

- 1) Thence S89°42'09"E a distance of 136.53 feet;
- 2) Thence S00°17'51"W a distance of 85.51 feet;
- 3) Thence S64°21'00"E a distance of 346.26 feet;
- 4) Thence S38°32'29"E a distance of 41.50 feet;
- 5) Thence N89°59'52"E a distance of 345.68 feet;

Thence S00°03'13"W a distance of 44.27 feet;

Thence S17°51'30"E a distance of 9.05 feet;

Thence S70°46'31"W a distance of 169.97 feet to a point of curve;

Thence along a curve to the right having a central angle of 70°12'17", a radius of 150.00 feet an arc length of 183.80 feet a chord bearing of N74°07'21"W and a chord distance of 172.51 feet;

Thence N39°01'12"W a distance of 53.84 feet to a point of curve;

Thence along a curve to the left having a central angle of 28°53'05", a radius of 320.00 feet an arc length of 161.32 feet a chord bearing of N53°27'44"W and a chord distance of 159.62 feet to a point of reverse curve;

Thence along a curve to the right having a central angle of 04°40'21", a radius of 1825.00 feet an arc length of 148.83 feet a chord bearing of N65°34'06"W and a chord distance of 148.79 feet to a point of reverse curve;

Thence along a curve to the left having a central angle of 06°31'12", a radius of 175.00 feet an arc length of 19.91 feet a chord bearing of N66°29'32"W and a chord distance of 19.90 feet to a point of compound curve;

Thence along a curve to the left having a central angle of 21°05'17", a radius of 100.00 feet an arc length of 36.81 feet a chord bearing of N80°17'46"W and a chord distance of 36.60 feet to a point of reverse curve;

Thence along a curve to the right having a central angle of 83°58'12", a radius of 15.00 feet an arc length of 21.98 feet a chord bearing of N48°51'19"W and a chord distance of 20.07 feet;

Thence N06°52'13"W a distance of 49.94 feet to a point of curve;

Thence along a curve to the left having a central angle of 173°24'24", a radius of 50.00 feet an arc length of 151.33 feet a chord bearing of S86°25'35"W and a chord distance of 99.83 feet to a point on the Easterly Right-of-Way (R.O.W.) Line of Twenty Mile Road;

Thence along said Easterly R.O.W. Line and along a curve to the right having a central angle of 06°00'15", a radius of 625.00 feet an arc length of 65.50 feet a chord bearing of N20°57'01"W and a chord distance of 65.47 feet to the **Point of Beginning**.

Parcel Contains (41,643 Square Feet) 0.9560 Acres, more or less.

All lineal distances are represented in U.S. Survey Feet.

Bearings shown hereon are based on the North Line of Tract A assumed to bear S89°42'09"E as shown on the plat of Parker Auto Plaza Filing No. 1.

Date Prepared: July 12, 2021

Date of Last Revision:

Prepared By: Charles N. Beckstrom, PLS No. 33202

For and on behalf of
Engineering Service Company
14190 East Evans Avenue
Aurora, Colorado 80014
Phone: 303-337-1393

EXHIBIT C

Playground Equipment and Other Amenities

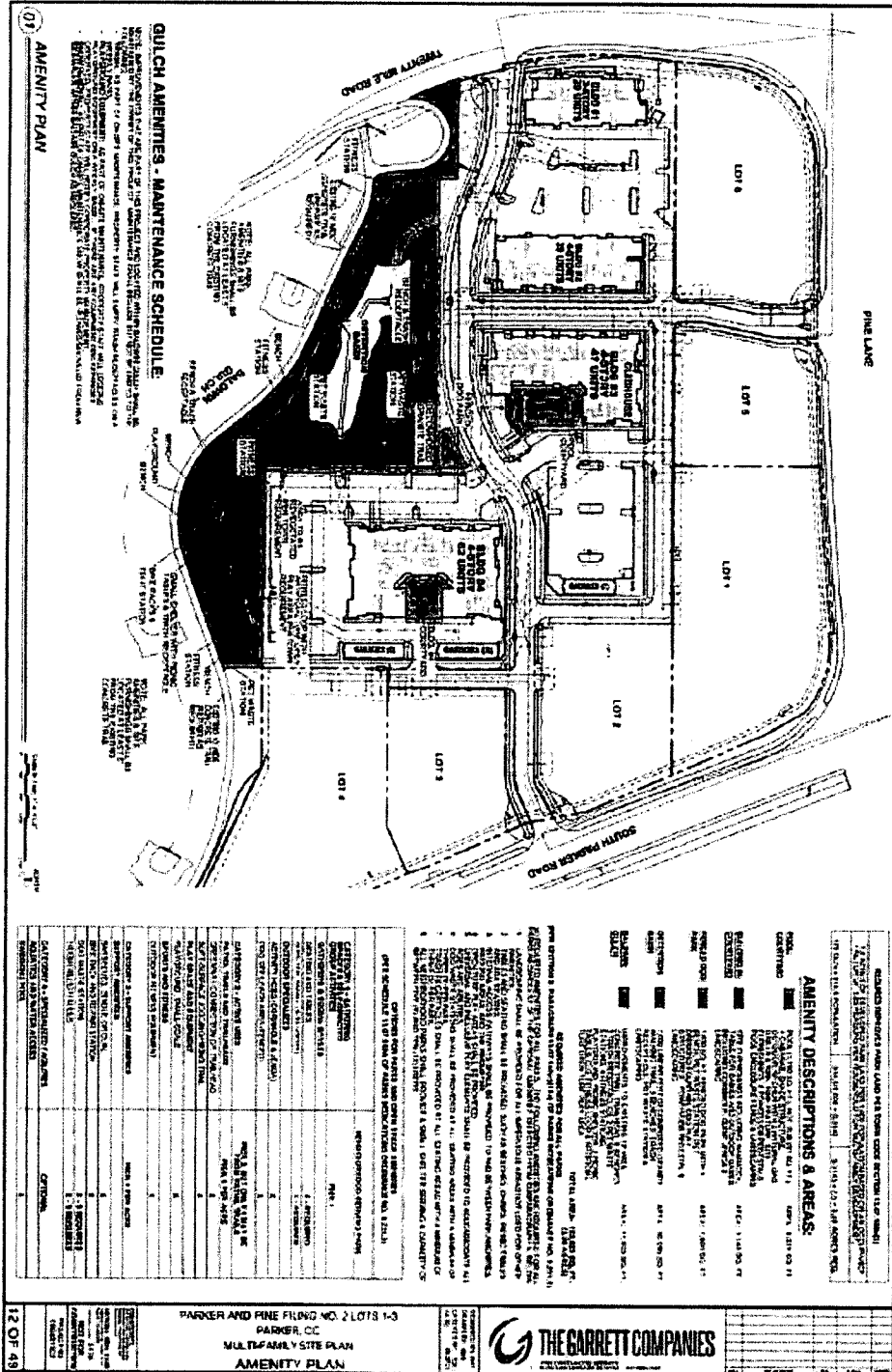


EXHIBIT C-1

Installation of Playground Equipment and Other Amenities

Licensee shall, at its sole cost and expense, install within the Licensed Property equipment which has been approved by the Town's Director of Parks, Recreation and Open Space ("Director") and meets the current playground safety standards and guidelines of the American Society for Testing and Materials (ASTM), the Consumer Product Safety Commission (CPSC) and the Americans with Disabilities Act (ADA). The Playground Equipment and Other Amenities shall be installed by a manufacturer approved installer. Prior to opening for use, Licensee shall have the playground equipment inspected by a third-party Certified Public Safety Inspector (CPSI) who must indicate that the playground equipment meets all the applicable playground safety standards. Any insufficiencies of the playground equipment found by the CPSI shall be brought into compliance by Licensee. A copy of the inspection report showing full compliance with all applicable safety standards shall be provided to the Director. Additionally, upon installation, Licensee shall complete a use audit (separate from the above-required safety standards inspection report), to determine inspection frequency, based on recommendations from the designer/manufacturer of the playground equipment. A copy of the use audit and manufacturer recommendations shall be provided to the Director. All other amenities shall be installed and inspected in accordance with designer and manufacturer specifications, and at a minimum as described in the "Maintenance Schedule."

Maintenance and Replacement of Playground Equipment and Other Amenities

The Licensee shall be responsible for the maintenance and repair of the Licensed Area and the inspection, maintenance, repair and replacement of the Playground Equipment and Other Amenities. Licensee shall maintain the Licensed Area and the Playground Equipment and Other Amenities in clean, safe and sanitary condition, and shall not knowingly cause any waste or injury thereto. In the event Licensee fails to maintain the Licensed Area or Playground Equipment and Other Amenities in good order and condition and in compliance with all applicable laws, orders and regulations, including all ASTM guidelines, and such failure results in a health and/or safety hazard as reasonably determined by the Town, and such failure continues following notice from the Town, the Town may, but shall not be obligated to, close the Licensed Area and make such repairs or remove such hazard, at Licensee's expense, without providing prior written notice to Licensee. Within thirty (30) days after the Town renders a reasonably detailed bill for the reasonable costs of said repairs, Licensee shall reimburse the Town for such reasonable costs.

In addition to the requirements of the use audit, Licensee shall perform an inspection and required maintenance at minimum of once per week and inspect those items listed below and perform maintenance per ASTM/CPSC guidelines immediately following the inspection. Priority 1 hazards (accessible hazards that would cause an accident that would result in death, brain damage, permanent paralysis, loss of vision, loss of speech, loss of limb, or organ destruction) shall be corrected immediately.

Playground inspection list per CPSC:

- a. Broken Equipment such as loose bolts, missing end caps, crack etc.
- b. Broken glass and other trash

- c. Cracks in Plastic
- d. Loose anchoring
- e. Hazardous or dangerous debris
- f. Insect damage or presence
- g. Problems with surfacing
- h. Displaced loose-fill surfacing
- i. Holes, flakes, and/or buckling of unitary surfacing
- j. User modifications (such as ropes tied to parts or equipment rearranged)
- k. Vandalism
- l. Worn, loose, damaged, or missing parts
- m. Wood splitting
- n. Rusted or corroded metals
- o. Rot

In addition to the foregoing, maintenance for the Licensed Area and Playground Equipment and Other Amenities shall be inspected, maintained and replaced in accordance with designer and manufacturer specifications, and, at a minimum, shall be performed as provided below (including the obligation of Licensee to replace the Playground Equipment and Other Amenities), which schedule shall be subject to change, based on usage, upon written notice from Licensor.

Inspection, Maintenance and Replacement Schedule

<u>Amenity</u>	<u>Frequency</u>	<u>Replacement</u>
Trash cans	Mondays, Fridays	As needed upon failure*
Benches	Mondays	As needed upon failure*
Fitness Stations	Mondays	As needed upon failure*
Pavilion	Mondays	As needed upon failure*
Playground	Per Manufacturer	As needed upon failure*/**
Bike Fix It Station	Mondays	As needed upon failure*
Artificial Turf Play Area	Mondays	As needed upon failure*
Pet Waste Stations	Mondays	As needed upon failure*
Overall Park	Mondays	

*Failure is the point the amenity has lost its original look/ function and cannot be repaired

** becomes a Priority hazard as described by ASTM or CPSC guidelines

EXHIBIT D
Insurance Certificates