

**Exhibit "D"**  
**Findings and Conditions of Approval**  
**PLN2018-00292 – Oliveira Farm Cottages Planned District Rezoning, Vesting**  
**Tentative Tract Map No. 8477 and Private Street**  
**39392 Blacow Road**

**FINDINGS**

**Planned District Findings:**

- (a) The P district is consistent with the city's general plan and any applicable community or specific plan**

Analysis: The proposed Planned District would be consistent with the General Plan in that the proposed density of 7.84 dwelling units per acre would be consistent with the site's General Plan land use designation of Low Density Residential (2.3-8.7 units per acre). In addition, the project would comply with the applicable goals and policies of the Land Use, Community Character, Housing and Mobility Elements of the General Plan, as described in the staff report.

- (b) The precise plan and supplementary documents incorporate and conform to the required standards of Section 18.110.020 and, where applicable, Section 18.110.030**

Analysis: The proposed Planned District conforms to the required standards of FMC Sections 18.110.020 and 18.110.030 in that the proposed project conforms to the standards of the Design Guidelines for Small-Lot Single-Family Residential Developments, as described in the staff report.

- (c) The uses proposed will not be detrimental to present and potential surrounding uses**

Analysis: The proposed uses would not be detrimental to present and potential surrounding uses in that the project would replace an existing single-family home on a very large lot with new residential development of similar density and scale as that currently occupying the surrounding properties to the north, south, and east. The project would be fully independent through the creation of a new private street and the new Blacow Road frontage extension would include traffic calming measures. Furthermore, the development would be governed and maintained by a homeowners association that would be responsible for ensuring that the dwellings, streets, common areas, and other on-site improvements are maintained in a fully-functional and aesthetically-pleasing manner at all times. In addition, the project has been designed to minimize impacts on adjacent development through the provision of landscaped setbacks with trees and fences for privacy and buffering, and the dwellings and all other proposed improvements would be designed and built in accordance with current applicable building and life safety codes.

- (d) The project provides suitable and adequate connections and capacity for both circulation and infrastructure to surrounding properties**

Analysis: While no opportunities to connect the project directly to the adjacent residential neighborhoods exist because of various physical barriers which include Blacow Road to the west, and the existing single-family homes which border the site, the project would provide suitable and adequate connections to the public street and sidewalk system and

capacity for circulation and infrastructure in that it would provide a private street leading into the development from Blacow Road and locate all of the necessary utilities to serve the subdivision within its private streets. Furthermore, the proposed plans would include a sidewalk within the development which would connect directly to the Blacow Road sidewalk. The project would also complete the Blacow Road frontage which is currently blocked on either side of the project site. The number of estimated trips generated by the project would not significantly increase existing traffic volumes on Blacow Road.

**(e) Existing or proposed utility services are adequate for the development**

Analysis: Existing or proposed utility services are adequate for the development in that there are existing water, sewer, and storm drain systems serving the site within Blacow Road, all of which have been confirmed by their respective service providers as being capable of accommodating the proposed homes, and no additional off-site easements need be secured or extensions constructed in order to connect the project to these systems.

**(f) The proposed exceptions to the Design Guidelines for Small-Lot Single-Family Residential Developments will encourage a desirable living environment and are warranted by the design and amenities incorporated in the precise plan or provided to the community at large**

Analysis: The applicant is requesting exceptions to the maximum FAR, minimum rear yard setback, minimum garage recess and minimum separation between two-story units. These exceptions only occur on one or two lots and no lot would need all of the exceptions. Allowing the proposed increase in maximum FAR, and reductions in minimum rear yard setback, minimum garage recess and minimum separation between two story units is warranted in this case in that it would enable the developer to respond to the site-specific limitations to create a two-sided neighborhood that completes the frontage road and respects the adjacent density, thereby providing additional homeownership opportunities for a unique product type. The proposed exceptions would also not result in significant loss of privacy or private yard space in that there would still be at least 10 feet between units and 300 more square feet of useable rear yard space than the minimum required by the SLDG. Furthermore, the deviations from the FAR guidelines of the SLDG would enable the developer to build detached single-family homes that are consistent in size and scale with the adjacent single-family homes while offering slightly larger floor plans for larger families. Overall, the project would generally conform to the applicable design guidelines and reinforces the eclectic nature of the proposed neighborhood design. The proposed homes would sit on pad foundations and would range between 24 and 28 feet to the peak of the roof. The project has been designed to integrate cohesively with adjacent development in a manner that minimizes its impacts on the surrounding properties through provisions that feature high quality architectural elements, low-scale massing, significant articulation, and colors compatible with adjacent properties.

**(g) The project substantially conforms to the applicable Design Guidelines**

Analysis: The proposed project was designed with general conformance to the Small Lot Single-Family Design Guidelines as described in the staff report above.

**Vesting Tentative Tract Map No. 8477 Findings:**

Based on the analysis contained in the staff report, and pursuant to FMC Section 17.20.200 and Government Code Section 66474, the proposed Vesting Tentative Tract Map is in

conformance with the General Plan, Zoning Ordinance, and the Subdivision Map Act, and none of the following findings can be made:

- (a) The map fails to meet or perform one or more of the requirements or conditions imposed by the Subdivision Map Act or Title 17 of the Fremont Municipal Code (Subdivisions);**
- (b) The proposed subdivision, together with the provisions for its design and improvements, is not consistent with applicable general and specific plans;**
- (c) The site is not physically suitable for the type or proposed density of development;**
- (d) The design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;**
- (e) The design of the subdivision or the type or improvements is likely to cause serious public health problems;**
- (f) The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision; and**

In addition, the following finding should be made pursuant to Government Code Section 66473.5:

- (g) The proposed subdivision, together with the provisions for its design and improvement, is consistent with the general plan or any specific plan for the reasons stated in this staff report.**

**Private Street Finding:**

- (a) The most logical development of the land requires private street access**  
Analysis: In this case, allowing a private street is the most logical approach in that the project site is only 167 feet wide along Blacow Road. The City's standard street section for a public residential street is two travel lanes (one in each direction), and on-street parking, curbs, gutters, and sidewalks with planter strips along both sides of the street, for a full right-of-way width of nearly 60 feet. If the applicant were required to construct a full public street section to this standard, the amount of developable land remaining on the property after the 60 feet of roadway width are subtracted would not be sufficient to accommodate a residential development with small single-family lots at a density that is compatible with the adjacent residential development or to provide adequate private yard space for each lot. Allowing the applicant to construct a private street with on-street parking on one side only and a single sidewalk along one side of the street would enable the development of a project at a density that is both consistent with the adjacent single-family neighborhoods, and has ample space for private yards and a decorative landscape-based stormwater treatment area within the development.

**Tree Removal Finding:**

- (a) Development plans currently filed for the lot indicate that it is necessary to damage, remove, or relocate eight private, protected trees to enable reasonable**

**and conforming use of the property or to achieve a superior project**

Analysis: In this case, allowing a private street is the most logical approach in that the project site is only 167 feet wide along Blacow Road. The City’s standard street section for a public residential street is two travel lanes (one in each direction), and on-street parking, curbs, gutters, and sidewalks with planter strips along both sides of the street, for a full right-of-way width of nearly 60 feet. If the applicant were required to construct a full public street section to this standard, the amount of developable land remaining on the property after the 60 feet of roadway width are subtracted would not be sufficient to accommodate a residential development with small single-family lots at a density that is compatible with the adjacent residential development or to provide adequate private yard space for each lot. Allowing the applicant to construct a private street with on-street parking on one side only and a single sidewalk along one side of the street would enable the development of a project at a density that is both consistent with the adjacent single-family neighborhoods, and has ample space for private yards and a decorative landscape-based stormwater treatment area within the development.

**CONDITIONS OF APPROVAL**

**General Conditions:**

1. **Conformance to Approved Plans.** The project shall substantially conform to Exhibit “C” (Project Plans), Exhibit “E” (Planned District Land Use and Development Provisions), and all conditions of approval set forth herein.
2. **Building Permit Approvals.** The applicant shall submit final plans to the Community Development Department for building permit review and approval to ensure conformance with: (1) the conditions herein; (2) all relevant codes, policies, and other requirements of the City of Fremont; (3) the currently California Building Standards Code in effect at the time of the building permit application, including the provisions of the California Fire Code; and (4) any other applicable state/federal regulations.
3. **Demolition Permits.** The applicant shall apply for and obtain approval of demolition permits for the existing structures from the Building Division prior to the commencement of any demolition and/or site-clearing activities.
4. **Map Expiration.** Approval of Vesting Tentative Tract Map No. 8477 shall expire twenty-four (24) months after the date of approval in accordance with the provisions of the State Subdivision Map Act and any amendments thereto, and all applicable provisions of the Fremont Municipal Code.
5. **Post-Approval Modifications.** Minor modifications may be made to the project subject to review and approval by the Planning Manager and/or City Engineer if such modifications are in keeping with the intent of the original approval. However, the Planning Manager and/or City Engineer may refer any modifications to the Planning Commission or City Council at his/her/their discretion.
6. **Development Impact Fees.** The project shall be subject to Citywide Development Impact Fees. These include fees for park facilities, park dedication in-lieu, fire protection services/facilities, capital facilities, traffic facilities and affordable housing in-lieu. The applicant shall receive credit for the existing single-family home that will be demolished.
7. **Exterior Lighting.** All exterior lighting, other than public or private street lights, shall be

diffused or concealed in order to prevent illumination of adjoining properties or the creation of objectionable off-site visual impacts

8. **Standard Development Requirements.** The project shall be subject to the standard development requirements contained within FMC Section 18.218.050 including development requirements concerning air quality, special-status species (burrowing owls, nesting birds and roosting bats), cultural resources, and noise. The complete text of this code section shall be contained within the plans submitted for a building permit.
9. **Mitigation Measure AIR-1.** The project applicant shall develop a plan that demonstrates that the off-road equipment used on-site to construct the project would achieve a fleet-wide average 83 percent reduction in particulate matter exhaust emissions or greater.

A feasible plan to achieve this reduction would be to require that all diesel-powered off-road equipment, larger than 25 horsepower, operating on the site for more than two days continuously shall, at a minimum, meet U.S. EPA particulate matter emissions standards for Tier 3 engines with CARB-certified Level 3 Diesel Particulate Filters<sup>10</sup> or equivalent. The use of equipment meeting U.S. EPA Tier 4 standards for particulate matter would also meet this requirement. Alternatively, the use of equipment that includes electric or alternatively-fueled equipment (i.e., non-diesel) would meet this requirement. Other measures may be the use of added exhaust devices, or a combination of measures, provided that these measures are approved by the City and demonstrated to reduce community risk impacts to less-than-significant.

Prior to issuance of a grading permit, the applicant shall provide a copy of the plan to the Planning Division for review and approval and written documentation that the appropriate equipment has been secured.

10. **Mitigation Measure HAZ-1.** Prior to issuance of a demolition permit for the existing structures, testing for asbestos-containing materials and lead-based paint shall be conducted by a certified environmental professional. If asbestos-containing materials or lead-based paint are detected, then an asbestos operations and maintenance plan or lead-based paint management plan shall be developed for the structures by said professional and submitted to the Planning Manager for review and approval. The plans shall demonstrate how these hazardous materials would be properly disposed of in accordance with federal and state law, including BAAQMD Regulation 11, Rule 2 (Asbestos Demolition, Renovation, and Manufacturing) as a condition of the demolition permit. Following completion of removal activities, the applicant shall submit documentation to the City verifying that all hazardous materials were properly removed and disposed.
11. **Mitigation Measure NOISE-1.** To reduce potential traffic noise impacts, the following measures shall be implemented by the applicant/developer for the homes located on Lots 1 and 8:
  - Glazing shall have a sound transmission class (STC) rating of 35.
  - Exterior finish shall be three-coat stucco or system with equivalent weight per square foot.
  - Interior gypsum at exterior walls shall be 5/8" Type X or Type C.
  - Ceiling gypsum shall be 5/8" Type X or Type C.
  - Mechanical ventilation shall be installed in all residential uses to allow residents to keep doors and windows closed, as desired for acoustical insulation.

- As an alternative to the above-listed interior noise control measures, the applicant may provide a detailed analysis of interior noise-control measures once building plans become available. The analysis should be prepared by a qualified noise control engineer and shall outline the specific measures required to meet the City's 45dB Ldn interior noise level standards.
12. **City Indemnification.** The applicant/developer, or any agent thereof, or successor thereto, shall defend, indemnify and hold harmless the City of Fremont, its officials, employees or agents (collectively "City") from any claim, action or proceeding against the City to attack, set aside, void, or annul, the City's approval concerning this project. The City shall promptly notify the applicant/developer of any such claim, action, or proceeding and cooperate fully in the defense. Nothing contained in this condition shall prohibit the City from participating in a defense of any claim, action or proceeding if the City bears its own attorney's fees and costs, and the City defends the action in good faith.

**Conditions to be Satisfied Prior to Issuance of a Building Permit and/or Final Map Approval:**

***Architectural Design Requirement***

13. **Single Story Roof Pitch.** The applicant shall work with City staff to revise the design of the single story unit on Lot 7 to lower the roof pitch.

***Public Safety Requirements***

14. **Fire Sprinklers.** A separate permit is required for fire sprinkler systems. The inspection, hydrostatic test, and flushing of the AFES shall be witnessed by the Building Inspector Specialist, Fire, and no piping shall be covered or hidden from view until an inspection has been completed.
15. **Fire Hydrants.** The applicant shall provide for approval a site plan/ civil utility plan with the location of public and on-site fire hydrants. Fire hydrant(s) shall be spaced at 500 feet intervals for single-family homes. The distance is measured as the fire engine travels on all-weather surfaces. Public fire hydrant head assemblies shall be a Clow Model 860 or equivalent and painted Kelly Moore, Kelguard Safety Yellow.
16. **Emergency Escape.** Emergency escape and rescue openings shall open directly into a public way; or to a yard or court that opens to a public way. Minimum opening is 24 inches in height and 20 inches in width with a minimum net clear opening of not less than 5.7 square feet. The net clear opening dimension shall be the result of normal operation of the opening.
17. **Fire Department Access.** Fire Department access roadway shall be provided to within 150 feet of all exterior portions of the structures/buildings. A Fire Department access roadway serving dwelling/structures 30 feet or less in height shall have a minimum 20 foot unobstructed linear width. A Fire Department roadway access serving dwelling/structures over 30 feet in height shall have a minimum 26 foot unobstructed linear width. These access roads shall be designated as Fire Lanes. Access road shall meet Fire Department standards for surface type - all weather; distance - not to exceed 150 feet in length without an approved turnaround; weight loads - 75,000 lb. minimum; turn radius - radii of 22.5 feet inside and 37.5 feet outside; intersections and turnarounds shall be level (maximum five percent) with the exception of crowning for water run-off and vertical clearance measured from the same point; grades - not to exceed 15 percent;

and cross grade - 13.5 feet minimum vertical clearance.

**Public Works Requirements**

18. **Construction Agreement.** The public and private improvements conditioned as part of this entitlement requires the execution of an Improvement Agreement that guarantees the completion of the public and private street improvements to the satisfaction of the Director of Public Works. The Improvement Agreement shall be fully executed prior to recordation of the Final Map. This agreement includes engineered plans prepared by the applicant's consultant, reviewed and approved by the City, surety (Faithful Performance, Labor and Material and Warranty) and insurance.
19. **Street Improvements.**
  - a. Developer shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project.
  - b. Developer shall construct curb, gutter, and sidewalk along Blacow frontage.
  - c. Proposed Type (B) driveway width shall be 27.5 feet.
  - d. Dedication and improvement of the public streets shall be to the satisfaction of the Director of Public Works. Improvements shall include but are not limited to the following: curb and gutter, sidewalk, asphalt pavement, streetlights, fire hydrants, street trees, tree well planters, water, sewer and storm drainage facilities, joint trench facilities, signing and striping, and accessible ramps.
  - e. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the approved street improvement plans.
  - f. Developer shall be required grind and overlay Blacow Road in accordance with the City of Fremont "Street Cutting Policy – Multiple Cuts within One Block."
  - g. Capacity of the existing 18-inch storm drain pipe along Blacow Road frontage shall be evaluated for the additional runoff from the project site with the street improvement plans. Upsizing the existing 18-inch storm drain pipe or to mitigate the additional runoff may be required.
20. **Encroachment Permit.** Prior to building permit issuance, the applicant shall apply for and obtain an encroachment permit from City of Fremont for all improvements within the City's right-of-way.
21. **Dedication of Right-of-Way and Construction of Street Improvements.** Developer shall dedicate the right-of-way and construct ultimate public street improvements for Blacow Road as shown on Exhibit "C." Improvements shall include but not limited to the following: curb and gutter, concrete sidewalk, asphalt pavement, streetlights, fire hydrants, street trees, tree well planters, sewer and storm drainage facilities, joint trench facilities, signing and striping, and medians.
22. **Private Street Improvements.** The developer shall design and construct the improvements in accordance to public improvement standards.

23. **ACFC&WCD Permit.** The developer shall apply for and obtain an ACFC&WCD encroachment permit for all improvements (i.e., installation of an outfall) within their right-of-way.
24. **Right-of-Way Dedication.** Developer shall dedicate the right-of-way needed to accommodate the ultimate street configuration along the project frontages on Blacow Road to the satisfaction of the Director of Public Works.
25. **Public Service Easement.** Developer shall dedicate a minimum six-foot wide public service easement on Blacow Road along the project frontage(s) to the satisfaction of the Director of Public Works. Project entry and monument signs, bioretention areas, and walls shall not be located within the easement.
26. **Street Trees.** Trees to be planted in the median fronting the property shall be irrigated by the project's Homeowners Association (HOA) for a minimum period of three years. Rate of irrigation shall be as required for the selected tree species and size. At the end of the third year of planting and irrigation, the HOA shall contact the City Landscape Architect to review the condition of the trees and determine if the irrigation may be discontinued. Once the City Landscape Architect determines that the trees can thrive without supplemental irrigation, irrigation to the median can be shut off. Irrigation line isolation valves shall be installed, one at the median, and one at the roadside. In the event that conditions of the trees require supplemental irrigation after the minimum three-year period, the HOA shall provide the irrigation as necessary for the trees to thrive. If the City elects to install its own irrigation meter and provides an irrigated landscaping connection to this median, the HOA will no longer be required to provide irrigation to these mitigation trees.
27. **Grading and Geology.**
  - a. **Coverage under Statewide Construction General Permit:** Projects involving land disturbance of one acre or more are required to obtain coverage under the "Construction General Permit" (NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities). The applicant shall file a Notice of Intent (NOI) to the State Water Resources Control Board (SWRCB), prepare and submit a Storm Water Pollution Prevention Plan (SWPPP), and obtain a Waste Discharge Identification number (WDID). A copy of the NOI must be submitted to the City's Project Engineer prior to issuance of development permits (including demolition, grading, and building permits).
  - b. **Erosion and Sediment Control Plan:** The project plan set shall include an Erosion and Sediment Control Plan (ESCP) sheet showing the Best Management Practices (BMPs) to be implemented to minimize pollutant discharges related to construction activity. The ESCP shall show the development site at the stage of maximum land disturbance. A copy of the ESCP and/or SWPPP Plan shall be maintained on the project site at all times throughout the demolition/grading/construction process. The ESCP and/or SWPPP shall be updated as necessary to show adequate BMPs appropriate for the current stage of the project.
  - c. **Geotechnical Report:** The project site is within the State of California Seismic Hazard Zone for Earthquake-Induced Liquefaction Zone. A design-level geotechnical report shall be submitted to the City for peer review and approved prior to recordation of the Final Map. Plans shall be designed in conformance with the design-level report.

28. **Stormwater Treatment and Flow Control Facilities.** The project shall implement post-construction measures to minimize stormwater pollutant discharges and increases in peak flows in accordance with the requirements of the Municipal Regional Permit (MRP). The Preliminary Stormwater Management Plan provided by the applicant as part of the tentative map approval is approved in concept only; the Final Stormwater Management Plan must contain/address all elements of the Final Stormwater Management Plan Checklist (available at [www.fremont.gov/swmp](http://www.fremont.gov/swmp)). The applicant shall submit engineered plans, details and calculations that demonstrate compliance with Provision C.3 of the Municipal Regional Permit.
29. **Storm Drainage.** The applicant shall submit a hydrology map and hydraulic calculations prepared, stamped, and signed by a licensed California Civil Engineer using a design storm of 15-year recurrence interval for primary facilities and 10-year recurrence interval for secondary facilities in accordance with the Alameda County Public Works Agency Hydrology and Hydraulics Criteria to ensure adequate conveyance of storm run-off from the project site. Off-site construction of storm drainage facilities to mitigate projected flows may be required based on existing capacity.
30. **Quitclaim of Private Easements.** The applicant shall cause to quitclaim all existing private easements not shown on the final map within the boundaries of the proposed subdivision. Applicant shall either show all existing private easements on the Final Map or provide a copy of the recorded quitclaim deeds prior to recordation of the Final Map. Existing private easements over streets dedicated to the public on the Final Map shall be quitclaimed prior to acceptance of public improvements.
31. **Stormwater Treatment Measures Maintenance Agreement.** The applicant shall submit a Stormwater Treatment Measures Maintenance Agreement (also known as an O&M Agreement) for review and approval concurrent with the application for building permits. The template documents and instructions for completing the O&M Agreement may be found at <http://fremont.gov/stormwaterdevelopment>. Submittal of an approved and executed O&M Agreement is required prior to building permit issuance.
32. **Hydromodification.** Any changes to the proposed layout or treatment measures may trigger hydromodification (HM) requirements if the level of project imperviousness goes beyond the 1.0-acre HM threshold.
33. **Undergrounding.** The applicant shall complete the underground conversion of existing overhead utilities both abutting and crossing the subdivision. All new utility service connections, including electrical and communications, shall be installed underground. Electrical transformers shall be installed in underground vaults within an appropriate utility easement or public service easement.
34. **Demolition of Existing Building(s).** Developer shall demolish any existing structures that encroach on the proposed lot lines.
35. **Referrals.** Prior to recordation of the final tract map, the applicant shall refer the project to the following agencies for approvals: Alameda County Water District (ACWD); Union Sanitation District (USD); and Alameda County Flood Control & Water Conservation District (ACFC&WCD).

### ***Stormwater Facilities***

36. Upon completed construction, Basins A and B as labeled on sheet C-5 shall be maintained by the City of Fremont in perpetuity. Basin C or any other stormwater treatment provided for C.3 LID site compliance shall be covered under a completed Stormwater Treatment Measure Operations and Maintenance (O&M) Agreement as recorded with the Alameda County Recorder's Office.

**HOA/CC&R Requirements and Deed Restrictions**

37. **Formation of HOA/CC&Rs.** A Homeowners Association (HOA) shall be formed and Covenants, Conditions and Restrictions (CC&Rs), including these imposed conditions, shall be submitted to the Community Development Department (or to the Public Works Department during the Final Map and Improvement Plan review process) for review and approval. The applicant shall provide a complete set of construction plans to the HOA at the time of its formation. The following conditions shall be satisfied on on-going basis and shall be included in the CC&Rs created for the development:

- a. The HOA shall be required to contract with a professional management firm to handle maintenance operations. Documentation of such contract shall be submitted to the City prior to Final Map approval.
- b. No exterior additions to the residential structures shall be permitted.
- c. No interior additions to create habitable space in the attic of the single story unit on Lot 7 shall be permitted.
- d. Attached or detached, non-habitable, open-air structures such as patio covers and trellises are permitted in rear yards to within 10 feet of the rear property line on all single-family lots, as long as they do not cover more than 30 percent of the useable yard space, which shall be defined as the area behind the rear wall of the house spanning the entire width of the lot from the left side property line to right side property line. Enclosed accessory structures shall be limited to no more than 120 square feet in area and 12 feet in height when measured to the midpoint of the roof.
- e. The HOA shall covenant and be responsible for the maintenance of all commonly owned facilities, including the Private Streets (or private vehicular accessways), which are not maintained by the public utility agency.
- f. Homeowners Association CC&Rs. The following statements or similar must be included in the CC&Rs:  
Stormwater Treatment Measures Maintenance Agreement. The Development is subject to the Stormwater Treatment Measures Maintenance Agreement dated \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ recorded on \_\_\_\_\_, \_\_\_\_\_ as Document No. \_\_\_\_\_ in the records of Alameda County, CA. Under the Stormwater Treatment Measures Maintenance Agreement, this Development is responsible for ensuring that stormwater treatment measures installed on-site to meet the requirements of the National Pollutant Discharge Elimination System (NPDES) Permit remain in effective operating condition in perpetuity.

Commencing on the date the Homeowners Association begins operation, the Association assumes the rights and duties of the Property Owner as defined in the Stormwater Treatment Measures Maintenance Agreement. The Board shall have full right, power and authority to act on behalf of the Association, its Members and the

town home and single-family homeowner's tenants under the Stormwater Treatment Measures Maintenance Agreement.

- g. **Drainage Easements.** An easement over and under each lot as the servient tenement is reserved in favor of each other lot as the dominant tenement for the purpose of allowing the Homeowners Association 's agents to enter the lot to maintain that portion of an in-tract storm drainage system located thereon. No owner or occupant shall commit any act that would interfere with the operation of any drainage system (including *drainage swales, bioretention areas, media filters, etc.*) installed on the owner's lot. Each owner shall maintain the system free of debris and other obstacles at all times. Reciprocal appurtenant easements between each lot and the common area and between adjoining lots are reserved for the flow of surface water.
- h. **Storm Drainage Restrictions.** As part of the original construction of the development, stormwater treatment measures were installed within the development in connection with the Development's drainage system. Neither the Homeowners Association nor any owner shall do any work, construct any improvement, place any landscaping or otherwise perform any action whatsoever which alters or interferes with the drainage pattern for any lot or any portion of the common areas, except to the extent such alteration in drainage pattern is approved in writing by the City of Fremont.
- i. **Stormwater Treatment Measure Maintenance.** The on-site stormwater treatment measures (bioretention ponds, media filters, etc.) shall be inspected and maintained as detailed in the Stormwater Treatment Measures Maintenance Agreement. The Homeowners Association shall maintain an inspection and maintenance record on file made available to the City upon request. In addition, all on-site storm drains shall be cleaned at least annually before commencement of the rainy season (by October 1) of each year.
- j. **Landscape Maintenance.** Landscaping shall be designed with an efficient irrigation system to reduce runoff and promote surface infiltration. Landscaping shall also be designed and maintained to minimize the use of fertilizers, herbicides and pesticides. Each owner, and the Homeowners Association , is encouraged to use integrated pest management practices (less toxic pest management) as a first step in maintaining landscaping. Chemical pesticides and fertilizers should be employed as a last step in managing weeds and other pests.
- k. **Good Housekeeping Information.** At time of sale, the applicant/developer shall provide to the buyer information on good housekeeping of hazardous products (e.g., proper use and disposal, prohibited discharges, etc.) and stormwater best management practices. Informational material will be furnished by the City. Contact the Environmental Services Division at (510) 494-4570 for informational handouts.
- l. **Stormwater Treatment Facilities and Structures.** Yards, patios or other impervious surfaces shall not be placed in or through a stormwater improvement, and the placement of such may not interfere with the drainage pattern established by the Declarant.
- m. All of the above stormwater sections shall be included in the Rights of City section of the CC&Rs.
- n. All commonly-owned facilities shall be maintained in a good condition at all times.

- o. The exterior parking of boats, campers, and trailers on the site shall be prohibited. In no event shall household storage preclude the parking of vehicles in a garage area. All parking spaces designated for guest parking on private streets shall be restricted for guest usage only. All new occupants and property owners at the time of purchase or lease shall receive a separate notice on bright color paper of this condition. In addition, residents/owners shall agree to and comply with the following provisions:
  - 1. Garages shall be used by residents/owners for parking their cars and not for storage, workshops, or other uses which would interfere with the ability to park in the garage the number of cars for which the garage was designed to accommodate.
  - 2. The HOA shall have the right to inspect any garage interior, with reasonable notice, to determine if a resident/owner is violating parking requirements.
  - 3. No power equipment, hobby shops, car maintenance (other than emergency work) shall be permitted within the private garage areas where such activities would displace normal use of the garages for day to day parking purposes.
- p. In the interest of aesthetics, uniformity in appearance, safety and security, all garage doors shall be maintained in a closed position, except during entering or exiting movements from the garage or when an occupant is working in the garage.
- q. The HOA shall be responsible for the maintenance of all common areas. Landscaping shall be designed with an efficient irrigation system to reduce runoff and promote surface filtration and to minimize the use of fertilizers, herbicides, and pesticides which can contribute to urban runoff pollution.
- h. The HOA shall be responsible for irrigating trees in the median fronting the property within Blacow Road, as set forth in Condition of Approval, No. 25.
- i. The HOA shall periodically provide educational materials on stormwater pollution prevention (as furnished by the City) to all occupants.
- j. The HOA shall be responsible for litter control and sweeping of all paved surfaces of the private street and within the development. All private storm drain systems shall be cleaned immediately before the commencement of the rainy season (October 1).
- k. All roof-mounted and other mechanical equipment shall be screened from view from adjacent public rights-of-way and internal private streets. Satellite dishes are exempt from this condition as more particularly described under federal law.
- l. Garbage, trash or recycling containers shall be suitably concealed in a dedicated area in accordance with the Fremont Municipal Code, except such containers may be placed at curbside on the designated garbage pick-up day.
- m. A provision shall be included in the CC&Rs stating that the payment of the utility (e.g., water, energy) bills for all common facilities, including its maintenance, are the obligation of the HOA.
- n. The HOA shall be responsible for maintenance of the facilities in the private streets which are not maintained by a public utility agency. Facility maintenance shall include

utility work resulting from trench backfill failure.

- o. The HOA shall be responsible for payment of the water and private street lighting (maintenance and energy) bills.
- p. The HOA shall be responsible for the maintenance, repair, replacement and removal of blockages in all building sewers. Maintenance of the building sewers includes repair of any trench failures and/or trench surface material failures.
- q. Maintenance and "knock-down" repair of fire hydrants and water facilities along the private streets shall be done by the utility agency at the expense of the HOA. The HOA shall be responsible for repainting any fire hydrants along the private streets.
- r. Each buyer shall sign an acknowledgment that he/she has read the constitution and bylaws of the HOA and the CC&Rs applying to the development.
- s. **Rights of City.** The CC&Rs shall include the following provision:

Notwithstanding anything to the contrary in this Declaration, no amendment which deals with any of the following matters shall be effective without the prior written consent of the Director of the City's Community Development Department: (a) Any amendment, the design or purpose of which is to eliminate an obligation of the HOA to maintain, manage and repair the common improvements or to lower the standards for maintaining and repairing the common improvements; (b) Any amendment with regard to the fundamental purpose for which the project was created (for example, a change from residential use to a different use); and (c) Any amendment to sections (list applicable sections), each of which were required as a condition of approval for the project.

- t. **Enforcement by City.** The CC&Rs shall include the following provision:

Notwithstanding any provision of this Declaration to the contrary, and with respect to matters within the regulatory powers of the City, the City has the right, but not any duty, to enforce the terms of this Declaration in the City's absolute discretion.

### ***Landscaping Requirements***

- 38. **Tree Planting Areas.** All tree planting areas shall be a minimum of six feet in width and free of all utility structures and other built features, consistent with the spacing requirements defined in Landscape Standard Details (LSDs) 5 and 6.
- 39. **Street Trees (Size).** All street trees shall be a minimum 24-inch box size with the final tree selection coordinated and approved by the City Landscape Architect. City of Fremont Standard Detail for street tree planting (LSD-1) shall be included in the plan set.
- 40. **Street Trees (Plans).** Stationing of street trees, irrigation water meters, and irrigation sleeves shall be included on the Plan and Profile sheets.
- 41. **Decorative Paving.** All enhanced street paving throughout the project shall consist of pavers.
- 42. **Site Furnishings/Amenities.** All common area furniture, amenities and fixtures shall be accessible, and shall be subject to review and approval by the Community Development

Department during the building permit review process.

43. **Utility Screening.** All above-ground utilities, including irrigation backflow preventers, irrigation controllers, fire service backflow preventers, cable or other service boxes, etc. shall be screened with a continuous evergreen (non-seasonal) hedge, minimum five-gallon size, three-foot minimum height. Fire backflow preventers shall be painted black or olive green.

#### ***Solid Waste/Recycling Requirements***

44. **Trash/Recycling/Green Waste Service.** Weekly garbage, recycling and organics collection services are required for all residential properties, and are provided exclusively by the City's franchised waste hauler.
45. **Cart Storage.** Garbage, recycling, and organics carts shall always be kept hidden from public view, except on collection days. At least 27 square feet of storage space shall be provided for the carts either in the garage or within the side yard behind a fence.
46. **Tree Pruning.** Canopies for street trees and front yard trees must remain at least 14 feet from the ground to prevent garbage trucks from hitting and damaging the canopies.
47. **Demolition Requirements.** During construction, 100 percent of asphalt and concrete shall be reused or recycled, and 65 percent of remaining debris must be reused or recycled. The applicant shall save all receipts from disposal and recycling to turn in at the completion of the project, prior to final approval. Contaminated or hazardous material and soil are exempt from this recycling requirement. However, the applicant shall submit copies of the manifest to the Environmental Services Division for all hazardous materials removed from the project site.

#### **Conditions to be Satisfied Prior to Request for Final Inspection:**

48. **Final Engineering Certification.** Upon completion of grading, the project engineer that prepared the final approved grading plan shall submit to the City a statement that the as-built grading conditions do not deviate from the approved plan by more than one foot of vertical elevation, subject to the review and approval of the Public Works Department prior to the issuance of occupancy permits for each structure.
49. **Final Landscaping Certification.** Upon completion of all landscape work, the project landscape architect shall submit a letter to the Public Works Department certifying that the on-site and streetscape landscaping have been constructed in conformance with the approved landscape and irrigation plan, subject to the review and approval of the City Landscape Architect.

#### **END OF CONDITIONS**

#### **APPLICANT PLEASE NOTE:**

The fees, dedications, reservations and/or other exactions imposed on this project are those listed in the foregoing conditions of approval. Any fee, dedication, reservation or other exaction is deemed imposed on the date of this approval. The applicant is hereby notified that the 90-day period in which the applicant may protest these fees, dedications, reservations and other exactions pursuant to Government Code Section 66020(a) begins on the date they are imposed. If the applicant fails to file a protest within this 90-day period complying with all the requirements of Government Code Section 66020, the applicant shall be legally barred from

later challenging such actions.