

**Exhibit "B"**

**Findings and Conditions of Approval for PLN2017-00018  
Discretionary Design Review Permit, Vesting Tentative Tract Map and  
Private Street**

**Lincoln Townhomes  
40587 Lincoln Street (APN: 525 066104300)**

**FINDINGS**

The findings below are made on the basis of information presented at the public hearing and contained in the report to the *Planning Commission* dated February 14, 2019 incorporated hereby.

**Discretionary Design Review Permit Findings.**

- (a) **The proposed project is consistent with the general plan, any applicable community or specific plan, planning and zoning regulations, and any adopted design rules and guidelines;**

Analysis: The proposed project would be consistent with the density range of the Medium Density Residential General Plan land use designation and R-3-18 zoning district. The proposed project would be consistent with General Plan policies related to Land Use and Conservation as discussed in the staff report. The project would also be consistent with applicable development standards for the R-3-18 zoning district and the Multifamily Design Guidelines, as discussed in the staff report.

- (b) **When a proposed project is inconsistent with an adopted design rule, the purpose and intent of the design rule is met through alternative means; and**

Analysis: The proposed project would be consistent with all applicable design rules in the Multifamily Design Guidelines.

- (c) **The multifamily residential project's architectural, site, and landscape design will not be detrimental to the public health or safety; or a nonmultifamily project's architectural, site, and landscape design will not unreasonably interfere with the use and enjoyment of adjacent development nor be detrimental to the public health, safety, or welfare.**

Analysis: The proposed project would be consistent with all applicable design rules in the Multifamily Design Guidelines, which ensure that a multifamily project exemplifies high quality architectural, site and landscape design. The proposed project would also be consistent with applicable development standards for the R-3-18 zoning district and would be built in accordance with applicable building codes, which would ensure that the project would not create any impacts detrimental to public health or safety.

***Vesting Tentative Tract Map No. 8292 Finding***

Pursuant to FMC Section 17.20.200, based on the analysis of the project contained in the accompanying staff report, the proposed Vesting Tentative Tract Map is in conformance with the General Plan, FMC Title 17 (Subdivisions), 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 the Subdivisions Ordinance (FMC Title 17);
- (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; and
- (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.

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***

Pursuant to FMC Section 17.25.040, the following finding is required in order to allow for the proposed private street:

- (a) **The most logical development of the land requires private street access.**

Analysis: The project site is a long narrow lot. The proposed project would include a single private street that would provide vehicle access to and from the proposed units. The City’s standard street section for a public residential street requires two travel lanes and on-street parking, curbs, gutters, and

sidewalks with landscape planters on both sides of the street. If the applicant were required to construct a full public street section to this standard, the amount of developable land remaining would not allow orderly development at a density appropriate for medium density residential development.

***Tree Removal Finding***

Pursuant to FMC Section 18.215.070, the following finding is required in order to allow for the proposed removal of trees that are subject to protection under the City's Tree Preservation Ordinance:

- (a) **The proposed removal of one protected tree would be consistent with the City's Tree Preservation Ordinance because removal is necessary to enable reasonable and conforming use of the property and to achieve a superior project, and the tree cannot be preserved by a reasonably required project redesign.**

Analysis: The applicant proposes to remove one protected tree. The tree to be removed is in low or moderate health and its preservation would not result in a superior project design. The tree is required to be removed to develop the site in a logical manner that meets all applicable development standards. The protected tree that would be lost would be replaced with approximately 19 trees on the project site, in accordance with the mitigation requirements of the ordinance.

The findings above are also contained in Exhibit "B" enclosed.

**CONDITIONS OF APPROVAL**

**General Conditions:**

- A-1. ***Conformance to Approved Plans and Exhibits.*** The project shall substantially conform to Exhibit "A" (Development Plans) and all conditions of approval set forth herein.
- A-2.
- A-3. ***Exterior Additions Not Permitted.*** Small patio covers (less than 120 square feet) and hot tubs may be permitted subject to the review and approval of a Ministerial Design Review Permit by the Zoning Administrator or designee and any necessary building permit. Otherwise, no other exterior additions to the residential structures shall be permitted unless expressly allowed with the initial development of the project. This provision shall be included in the Covenants, Conditions and Restrictions (CC&Rs) for the project.
- A-4. ***Accessory Buildings and Structures.*** No accessory buildings or structures shall be permitted other than those shown on Exhibit "A" (Development Plans).

- A-5. **Balconies and Patios Kept Clear.** Balconies and patios shall be kept clear of laundry, storage, and mechanical equipment such that no such items or materials may be seen from the public right-of-way or walkways within the project site. If air conditioning or other mechanical units must be placed in balconies or patios, they shall be screened with screening material and painted to match the building, to the satisfaction of the Planning Manager.
- A-6. **Minor Modifications to Approved Plans.** Minor modifications to the approved plans and Vesting Tentative Tract Map No. 8292 shall be subject to review and approval of the Planning Manager and/or City Engineer. Minor modifications to building elevations and footprints that support a superior project design may be made, subject to review and approval of the Planning Manager and City Engineer. The Planning Manager and City Engineer shall retain the authority to determine the level of review required (i.e., depending on the severity or location of the modification, the project may be referred to the Planning Commission or City Council for public comment, review and approval).
- A-7. **Final Colors and Materials Approval.** The final colors and materials palette for the project shall be subject to review and approval of the Community Development Department as part of the building permit application submittal.
- A-8. **Garage Doors.** All garage doors shall be of high quality materials and design, to the satisfaction of the Planning Manager.
- A-9. **Addressing.** An application shall be submitted to the City's GIS Division for approval of the addressing for the development prior to building permit issuance. Building addresses shall be plainly legible and visible from the public street. These numbers shall contrast with their background.
- A-10. **Standard Development Requirements.** Pursuant to FMC Section 18.218.040, the project shall be subject to the standard development requirements to address resource protection, identified in FMC Chapter 18.218.
- A-11. **Development Impact Fees.** The project shall be subject to Citywide Development Impact Fees. These fees include fees for fire protection services, capital facilities, park facilities and parkland, and traffic facilities. The fees shall be calculated at the rate in effect at the time of building permit issuance.
- A-12. **City Indemnification.** The applicant shall defend, indemnify, and hold harmless the City or any of its boards, commissions, agents, officers, and employees (collectively "City") from any claim, action or proceeding against the City to attack, set aside, void, or annul, the approval of the project. The City shall promptly notify the applicant of any such claim, action or proceeding and shall 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.
- A-13. **Affordable Housing.** Prior to issuance of a building permit for each lot, the applicant/property owner(s) shall pay the City of Fremont an affordable

housing fee which amounts to the required affordable housing fee consistent with the City's Affordable Housing Ordinance (FMC Chapter 18.155).

- A-14. **Building and Subdivision Permit Reviews.** The applicant shall submit plans to the Community Development and Public Works Departments for building permit and subdivision improvement review and approval, respectively, to ensure conformance with the conditions herein, as well as with all relevant codes, policies, and other requirements of the Fremont Municipal Code, State and federal laws.
- A-15. **Signage.** Signage is not included with this permit. Approval of a sign permit is required prior to the installation of any signs.
- A-16. **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.

**Special Project Conditions:**

***Solid Waste:***

- B-1. **Waste Handling Guidelines.** All phases of development must comply with the City of Fremont *Waste Handling Guidelines* document, available on the City's website at: [www.fremont.gov/whg](http://www.fremont.gov/whg). The applicant shall work with City staff to incorporate solid waste requirements into the project.
- B-2. **Collection Services.** Weekly garbage, recycling, and organics collection services are required for all residential properties, and are provided by the City's franchise hauler on an exclusive franchise basis.

***Landscape:***

- B-3. **A/C Screening.** Air conditioning condenser units shall be located in the rear yards of each unit or screened with appropriate landscape or architecturally integrated low walls.
- B-4. **Landscape Plans.** Detailed landscape construction documents shall be submitted with Final Improvement Plans for review and approval, indicating full details regarding: (1) paving materials and textures of walkways and paved pedestrian areas; (2) lighting of walkways and pedestrian areas with low intensity non-glare type fixtures; (3) design and detail for the front yard landscapes; and (4) landscaping of common open space. The landscape design shall meet all of the required Bay-Friendly Basic Practices. As part of the landscape plans the applicant shall submit:
  - a. A Layout Plan to illustrate the design of all hardscape elements including walls, fences, gates, landscape structural elements, decorative landscape features, light location, at grade or above grade utility boxes and vaults, walkways and decorative pavement.
  - b. A Planting Plan utilizing a plant palette heavy in water-conserving plants.

- c. Irrigation Plan utilizing low flow, durable, approved irrigation equipment that complies with the Water Efficient Landscape Ordinance (WELO) and Bay-Friendly requirements. Landscape irrigation shall be designed with an efficient irrigation system to eliminate runoff and overspray and to promote surface infiltration.
  - d. Construction details of bioretention areas or other stormwater treatment landscape areas, walkways, paths, benches, walls, fences, planting details irrigation detail and other architectural or landscape structural features as appropriate to the project.
- B-5. **Location of Utilities.** The design team shall coordinate the placement of utilities to:
  - a. Locate and screen above-ground utilities (backflow preventers, irrigation controllers, gas/electrical meters, cable boxes, transformers, etc.) from view.
  - b. Maximize the space available for trees where possible.
  - c. All tree planting areas shall be free of all utility structures and other built features, consistent with the spacing requirements defined in Landscape Standard Details (LSD) 5 and 6.
- B-6. **Utility Lines and Boxes.** Utilities lines and boxes shall be coordinated and located so as to not prohibit the placement of trees as shown on the Entitlement Plans. Conflicting proposed utility lines shall be relocated or placed under or directly adjacent to the driveway area if necessary.
- B-7. **Lighting Plan.** A lighting plan, submitted in conjunction with a photometric plan, shall be subject to City review and approval during the Improvement Plan review process. All lighting shall be consistent with the architectural design of the buildings. In compliance with the Fremont Municipal Code, lighting will be reviewed to avoid substantial light or glare that may have an impact on day or nighttime views in the area. All wall lighting fixtures or sconces shall be of high quality, decorative lighting fixtures with concealed lighting elements. Sufficient security lighting shall be installed within commons areas, and walkways and subject to the review and approval of the Community Development Department staff.
- B-8. **Storm Treatment Areas.** The storm treatment areas shall be coordinated among disciplines and clearly shown on the landscape plans.
- B-9. **Site Details.** The final design, material selection, and color and finish treatment of project fencing, bollard lights, pedestrian pole lights, and other site elements shall be subject to the review and approval of the Community Development Department during the preparation of the construction documents.
- B-10. **Tree Protection.** The health and well-being of off-site trees and trees which straddle property lines shall not be affected by construction activities. All off-site or neighboring trees in danger of damage from construction activities shall be protected per the City of Fremont standard details for Tree

Protection, LSD-9 and (where approved) LSD-10. The developer shall be responsible for any damage to neighboring trees, including decline.

**Stormwater Facilities:**

- B-11. **Informational.** The project will need to provide the necessary plans and details to show that it meets the San Francisco Regional Water Quality Control Board Municipal Regional Permit small project requirements prior to the issuance of any building permits. In order to meet these small project standards, all new impervious surface site work must be managed using one or more of the following site design measures: landscape dispersion, pervious pavement, rain gardens, or rain barrels.
- B-12. **Informational.** During the building permit review process, the following shall be provided:
- a. An updated Stormwater Requirements Checklist. The form may be found at <http://fremont.gov/stormwaterdevelopment>.
  - b. An updated Stormwater Management Plan. Guidance for the Stormwater Management Plan can be found at: [www.fremont.gov/stormwaterdevelopment](http://www.fremont.gov/stormwaterdevelopment).
  - c. Any changes to the proposed layout or treatment measures may trigger hydromodification (HM) requirements if the project imperviousness is greater than the one acre HM threshold.
  - d. Disturbance of area one acre or more will trigger requirements to file a Notice of Intent (NOI). WDID# must be provided for applicable projects prior to issuance of grading or building permits. Additional information may be found at: [http://www.swrcb.ca.gov/water\\_issues/programs/stormwater/construction.shtml](http://www.swrcb.ca.gov/water_issues/programs/stormwater/construction.shtml)

**Vesting Tentative Tract Map Conditions:**

**Engineering:**

- C-1. **Construction Agreement.** This entitlement requires construction of certain public and private improvements. The developer shall submit for City's review and approval engineered plans for all required improvements. Following City's approval of the improvement plans, the developer shall execute Improvement Agreement(s) on the City's standard form that guarantee the timely completion of the public and private improvements to the satisfaction of the City Engineer. The Improvement Agreement(s) shall be executed and delivered to the City prior to approval of the Final Map. The Improvement Agreement(s) shall be accompanied by performance and labor and material security and required insurance certificates and endorsements in forms approved by the City.
- C-2. **Expiration.** Approval of this Vesting Tentative Tract Map 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 applicable

provisions of Fremont Municipal Code.

C-3. **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 five-foot minimum sidewalk, curb and gutter along Lincoln Street frontage.
- c. Developer shall close unused driveway cut(s).
- d. Proposed Type B driveway approach width shall be 20 feet.
- 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 grind and overlay Lincoln Street along the project frontage in accordance with the City of Fremont "Street Cutting Policy – Multiple Cuts within One Block."

C-4. **Dedication of Easement and Construction of Street Improvements.**

Developer shall dedicate the easement and construct ultimate public street improvements for Lincoln Street as shown on Exhibit "A." 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 accessible ramps.

C-5. **Private Street Improvements.** The developer shall design and construct the improvements in accordance to public improvement standards.

C-6. **ACFC&WCD Permit.** The developer shall apply for and obtain an Alameda County Flood Control and water Conservation District (ACFC&WCD) encroachment permit for all improvements within ACFC&WCD's right-of-way.

C-7. **Public Service Easement.** Developer shall dedicate a minimum six-foot wide public service easement on Lincoln Street along the project frontage 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.

C-8. **Grading and Geology.**

- a. The project plan set must 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 must show the development site at the stage of maximum land disturbance. A copy of the ESCP must be maintained on the project site at all times throughout the demolition/grading/construction process; the ESCP must be updated as



necessary to show adequate BMPs appropriate for the current stage of the project.

- b. The project site is within the State of California Seismic Hazard Zone for Earthquake Induced Liquefaction Zone. A geotechnical investigation report addressing the potential hazard was submitted which was reviewed and approved by the City's peer review consultant. The investigation is consistent with the guidelines published by the State of California (CGS Special Publication 117A). Plans shall be designed in conformance with the report.
  - c. Finished floor elevations must be one foot higher than overland release elevation of 100-year storm event should the storm drain become plugged.
- C-9. **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 developer as part of the Vesting Tentative Tract 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)).
- C-10. **Stormwater Treatment Measures Maintenance Agreement.** A Stormwater Treatment Measures Maintenance Agreement (O&M Agreement) shall be submitted for review and approval when the project comes in for building permit. Template documents and instructions for completing the O&M Agreement may be found at <http://fremont.gov/stormwaterdevelopment>. Building permits will not be issued without an approved, executed O&M Agreement.
- C-11. **Quitclaim of Private Easements.** Developer shall cause to quitclaim all existing private easements within the boundaries of the proposed subdivision not shown on the Final Map. Developer shall either show all existing private easements on the Final Map or provide a copy of the recorded quitclaims 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.
- C-12. **Storm.** Developer 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.
- C-13. **Flood.** The project site is within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain – Zone AE and the developer shall:

- a. Elevate the lowest floor, including basement, above 56' NAVD88.
  - b. Submit an Elevation Certificate (FEMA Form 086-0-33) for each proposed structure, based on construction drawings, prior to issuance of a building permit. Consequently, developer shall submit an Elevation Certificate based on finished construction is required for each built structure prior to issuance of an occupancy permit.
  - c. Elevate the building support utility systems such as HVAC, electrical, plumbing, air conditioning equipment, including ductwork, and other service facilities above the base flood elevation or protected from flood damage.
- C-14. **Undergrounding.** Developer 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.
- C-15. **Referrals.** Prior to recordation of the Final Map, the developer 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).

**Fire Safety:**

- C-16. Fire Department access roads shall meet Fire Department standards for surface type 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 as measured from the same point), grades (not to exceed 15 percent with cross grade, intersections and turnarounds being level [with a maximum five percent slope] with the exception of crowning for water run-off), and vertical clearance (13.5 feet minimum)..
- C-17. **EVAEs.** An Emergency Vehicle Access Easement shall be provided before issuance of an occupancy permit. A copy of the recorded easement shall be provided to the City at the Fire Department's request.
- C-18. When applicable, all curbing which outlines the fire lanes shall be painted red with white lettering reading "No Parking - Fire Lane." Text shall be a minimum of four inches tall and shall be placed every 30 feet or portion thereof, on top of designated curbing. R26F (No Stopping Fire Lane) signs shall be installed at 100-foot intervals. All new R26F signs (No Stopping Fire Lane) shall include text at the bottom of the sign which reads "CVC 22500.1."
- C-19. Building address shall be plainly legible and visible from the public street. These numbers shall contrast with their background.
- C-20. Building projections shall not interfere with placement of Fire Department ground ladders to emergency escape and rescue openings and the roof. As measured in front of each projection, the base of Fire Department ground ladders will be placed approximately ¼ the height of the building. Example: to ladder a 30-foot building the base of the ladder will be placed 7.5 feet from

the building with the tip of the ladder touching the building.

- C-21. **Fire Extinguishing Systems.** All units shall be provided with an N.F.P.A. 13-D fire sprinkler system complying with local amendments.
- C-22. **Code Compliance.** The applicant shall meet all requirements of the currently adopted edition of the California Building, Fire and City of Fremont Municipal Codes in effect at the time of building permit / business license application. All new structures will require fire protection. Automatic fire extinguishing systems, applicable fire alarm and monitoring system will be required. The design criteria for the aforementioned systems will be determined based on occupancy group, building design, and square footage.

**Transportation:**

- C-23. **Off-site Signing and Striping.** Off-site signing and striping plans shall be approved by the Director of Public Works Department prior to issuance of the building permits. The signing and striping plans must include a general note stating that all signing and striping shall conform to the latest CA MUTCD, Caltrans Standard Plans and Specifications, and the City of Fremont Standard Details.
- C-24. **Intersection and Driveway Design.** Intersection and driveway design shall meet safety standards, including line-of-sight requirements, to the satisfaction of the City Engineer.

**HOA Requirements and Deed Restrictions:**

- C-25. A Homeowner's 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 tract map improvement plan review process) for review and approval.

The following conditions must be satisfied on an on-going basis and shall be included in the CC&Rs created for the development:

- a. The applicant shall provide a complete set of construction plans to the HOA at the time of its formation.
- b. 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.
- c. The HOA shall covenant and be responsible for the maintenance of all commonly owned facilities that are not maintained by the public utility agency.
- d. All commonly owned facilities shall be well-maintained in a good condition. 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. 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. The HOA may inspect garages for this purpose.

- e. 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.
- f. Residents shall be informed that, in the interest of aesthetics, uniformity in appearance, safety and security, balconies and patios shall kept clear of laundry, storage, and mechanical equipment such that no such items or materials may be seen from the public right-of-way or walkways within the project site.
- g. 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 periodically provide educational materials on stormwater pollution prevention (as furnished by the City) to all occupants.
- i. 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.
- j. Garbage, trash or recycling containers shall be suitably concealed in a dedicated area in accordance with the Fremont Municipal Code (FMC), except such containers may be placed at curbside on the designated garbage pick-up day.
- k. 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 is the obligation of the HOA.
- l. A provision shall be included in the CC&Rs incorporating the restrictions stated in Condition A-3 hereof.
- m. Each buyer and renter shall sign an acknowledgment that he/she has read the constitution and bylaws of the HOA, and the CC&Rs, and alternative agreement for the apartment building, if utilized, applying to the development.
- n. 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 area or to lower the standards for maintaining and repairing the common area; (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); (c) Any amendment to sections (list applicable sections), each of which were required as a condition of approval for the project.
- o. Enforcement by City. The CC&Rs and alternative agreement, if utilized, 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.

**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.