

RESOLUTION NO.

RESOLUTION RECOMMENDING THAT THE CITY COUNCIL  
OF CITY OF NEWARK APPROVE TTM-18-37, VESTING  
TENTATIVE TRACT MAP 8498

WHEREAS, Classic Communities has submitted TTM-18-37, Vesting Tentative Tract Map 8498, to the City of Newark with subdivision and zoning variances covered by P-18-36, a Planned Development Plan, to allow construction of nine single-family homes on an approximately 1.72-acre site located at 36304-36310 Newark Boulevard; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Newark does hereby recommend that the City Council of City of Newark approve TTM-18-37, Tentative Tract Map 8498 covered by P-18-36, as shown on Exhibit A, pages 1 through 30 and made part hereof by reference, subject to the following conditions:

Planning Division

- a. All lighting shall be directed on-site so as not to create glare off-site, as required by the Community Development Director.
- b. Construction site trailers and buildings located on-site shall be used for office and storage purposes only, and shall not be used for living or sleeping quarters. Any vehicle or portable building brought on the site during construction shall remain graffiti free.
- c. Measures to respond to and track complaints pertaining to construction noise shall include: (1) a procedure and phone numbers for notifying the City of Newark Building Inspection Division and Newark Police Department (during regular construction hours and off-hours); and (2) a sign posted on-site pertaining to the permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours).
- d. Parking lot cleaning with sweeping or vacuum equipment shall not be permitted between 7:00 p.m. and 8:00 a.m.
- e. Garages shall only be used for automobile parking and not for storage.
- f. There shall be no short term rentals allowed.
- g. The site and its improvements shall be maintained in a neat and presentable condition, to the satisfaction of the Community Development Director. This shall include, but not be limited to, repainting surfaces damaged by graffiti and site clean-up. Graffiti

removal/repainting and site cleanup shall occur on a continuing, as needed basis. Any vehicle or portable building brought on the site during construction shall remain graffiti free.

- h. All exterior utility pipes and meters shall be painted to match and/or complement the color of the adjoining building surface, as approved by the Community Development Director.
- i. Color elevations shall be submitted by the applicant as part of this application to be reviewed and approved by the Planning Commission and City Council. The building elevations shall reflect all architectural projections such as roof eaves, bay windows, greenhouse windows, chimneys and porches. A site plan showing the building locations with respect to property lines shall also show the projections. Said elevations shall specify exterior materials. Any minor changes shall be submitted for the review and approval of the Community Development Director to assure consistency with the approved project.
- j. Prior to the issuance of a building permit, any change to the floor plans as submitted by the applicant as part of this application shall be reviewed and approved by the Planning Commission and City Council. Any minor changes shall be submitted for the review and approval of the Community Development Director to assure consistency with the approved project.
- k. Prior to the issuance of a building permit, the roof material as submitted by the applicant as part of this application shall be reviewed and approved by the Community Development Director. All roof material shall consist of fire retardant shake roof, concrete tile, or a roof of similar noncombustible material. Mansard roofs with the above material may be used to screen tar and gravel roofs. All roofs shall be of Class C fire resistant construction or better. Composition shingles shall be Presidential-style or of comparable quality, subject to the review and approval of the Community Development Director.
- l. Prior to the issuance of a building permit, the project shall be submitted for the review and approval of Republic Services and the Community Development Director, in that order. The appropriate garbage, refuse and recycling service shall be approved prior to the issuance of a Certificate of Occupancy, as required by the Community Development Director. No refuse, garbage or recycling shall be stored outdoors except within the approved trash and recycling containers.
- m. During project construction, if historic, archeological or Native American materials or artifacts are identified, work within a 50-foot radius of such find shall cease and the City shall retain the services of a qualified archeologist and/or paleontologist to assess the significance of the find. If such find is determined to be significant by the archeologist and/or paleontologist, a resource protection plan conforming to CEQA Section 15064.5 shall be prepared by the archeologist and/or paleontologist and approved by the Community Development Director. The plan may include, but would not be limited to, removal of resources or similar actions. Project work may be resumed in compliance with such plan. If human remains are encountered, the County Coroner shall be contacted

immediately and the provisions of State law carried out.

- n. Prior to the issuance of a Building Permit, the developer shall pay the following fees, in the amount in effect at the time, Park impact fee (currently \$25,700 per unit); Public Safety impact fee (currently \$3,548 per unit); Community Services/Facilities impact fee (currently \$2,376 per unit); Transportation impact fee (currently \$5,113 per unit) ; Housing impact fee (currently \$20.60 per sq.ft. for the first 1,000 sq. ft. and \$8.25 per sq.ft. above 1,000 sq.ft.); Art in Public Places and Private Development (currently \$270 per unit) and Community Development Maintenance fee (currently 0.5% construction value).
- o. Prior to their installation, mailbox locations and designs shall be approved by the Community Development Director and Newark Postmaster, in that order. The mailbox compartments of centralized mailboxes shall identify the individual dwelling units with permanent, easily legible lettering.
- p. Prior to the issuance of a Certificate of Occupancy, roll-up garage doors with automatic garage door openers shall be provided for each unit.
- q. Prior to final inspection and utility release for each unit, the applicant shall pre-wire each unit for satellite and cable television connections, as required by the Community Development Director. The exterior connections for the pre-wire shall be made to the roof and not on the side elevation walls of the units.
- r. Prior to the issuance of a sign permit, all signs, other than those referring to construction, sale, or future use of this site, shall be submitted for the review and approval of the Community Development Director.
- s. Prior to the issuance of a Certificate of Occupancy, the parking areas, aisles and access drives shall be installed and striped as shown on the approved site plan. Guest parking spaces shall be clearly marked as reserved for guests, as approved by the Community Development Director.
- t. Prior to the submittal for building permit review, all conditions of approval for this project, as approved by the City Council, shall be printed on the plans.

#### Engineering Division

- u. The development will require approval of a Final Map filed in accordance with the State Subdivision Map Act and the City of Newark Subdivision Ordinance. The final map must be approved prior to the issuance of any building permits.
- v. The Developer shall dedicate right-of-way along the project's Newark Boulevard frontage such that the typical half-street right of way width of Newark Boulevard is fifty-two feet (52').

- w. Private improvements such as fences, structures, etc. such as those as shown on Lot 1 will not be allowed within the public right-of-way. In order to facilitate the construction of the proposed private improvements, the Applicant shall petition the City to vacate a portion of Newark Boulevard right-of-way in the area of Lot 1 such that the new half-street right-of-way of Newark Boulevard is fifty-two feet (52'). If vacation of the public right-of-way is not approved, the proposed private improvements shall be redesigned in order to remove all such encroachments into the public right-of-way.
- x. Required frontage improvements along the project's Newark Boulevard frontage shall include, but are not limited to: removal of existing driveways and construction of new curb, gutter and sidewalk; construction of new City Standard driveway; street trees; landscaping and irrigation; utility relocation; installation of one (1) new City standard street light; and storm drain improvements.
- y. In lieu of removing the existing joint utility pole along the project's Newark Boulevard frontage and undergrounding all associated overhead lines across the project's entire frontage, the Applicant shall, prior to the approval of the Final Map, pay to the City a Utility Undergrounding Fee equal to the estimated cost to perform the required utility undergrounding. Fee shall be determined by the City, based on PG&E's estimated cost to perform the required work.
- z. A ten foot (10') wide Landscape and Public Utility Easement shall be dedicated along the project's Newark Boulevard frontage. All perimeter walls and fences shall be located outside of the 10' easement.
- aa. A City standard Type S driveway cut shall be constructed at the project entrance on Newark Boulevard.
- bb. Any proposed utility connections, including new potable water service, and/or underground work within structurally sound street pavement on Newark Boulevard shall be bored or jacked. Open street cuts are not permitted on Newark Boulevard unless the affected area is scheduled for a pavement overlay concurrent with the site development.
- cc. Prior to the issuance of a Certificate of Occupancy, any and all damage to public improvements as a result of construction activity associated with this project shall be repaired to the satisfaction of the City Engineer.
- dd. The Developer shall establish private street access rights and install complete street improvements for the proposed private street within the development as shown on the Tentative Map as Parcel A.
- ee. Public Utility Easements (PUE), Sanitary Sewer Easements (SSE) and Water Line Easements (WLE) shall be established over all private streets within the subdivisions. The PUE, SSE and WLE dedication statements on the Final Map are to recite that the easements are available for, but not limited to, the installation, access and maintenance of sanitary

sewers, water, electrical and communication facilities. Project entry monument signs and walls shall not be located within these easements.

- ff. The Developer shall dedicate Emergency Vehicle Access Easements (EVAE) over the clear pavement width of all private streets and alleys. Easement geometry shall be subject to the approval of the City Engineer and Fire Marshall.
- gg. Prior to approval of the final map, the developer shall guarantee all necessary street improvements within and adjoining the development in accordance with tract improvement plans to be approved by the City Engineer. These plans must be prepared by a qualified person licensed by the State of California to do such work.
- hh. Prior to the issuance of the initial grading or any building permits for this project, the developer shall submit a Storm Water Pollution Prevention Plan for the review and approval of the City Engineer. The plan shall include sufficient details to show how storm water quality will be protected during both: (1) the construction phase of the project and (2) the post construction, operational phase of the project. The construction phase plan shall include Best Management Practices from the California Storm Water Quality Best Management Practices Handbook for Construction Activities. The specific storm water pollution prevention measures to be maintained by the contractor shall be printed on the plans. The operational phase plan shall include Best Management Practices appropriate to the uses conducted on the site to effectively prohibit the entry of pollutants into storm water runoff from this site including, but not limited to, trash and litter control, pavement sweeping, periodic storm water inlet cleaning, landscape controls for fertilizer and pesticide applications, labeling of storm water inlets with a permanent thermoplastic stencil with the wording “No Dumping - Drains to Bay,” and other applicable practices.
- ii. The project must be designed to include appropriate source control and site design measures in accordance with Provision C.3 of the Municipal Regional Stormwater NPDES Permit (MRP), Order R2-2015-0049, revised November 19, 2015, issued to the City of Newark by the Regional Water Quality Control Board, San Francisco Bay Region. Examples of source control and site design requirements include but are not limited to: directing runoff from walkways on to vegetated areas, disconnecting roof downspouts, and minimization of impervious surfaces.
- jj. The Preliminary Stormwater Management Plan, Sheet TM-7.0 of the Tentative Map, prepared by BKF dated October 26, 2018 is approved in concept only. The final Stormwater Management Plan is subject to City Engineer review and approval prior to approval of the Tract Improvement Plans. Approval is subject to the developer providing the necessary plans, details, and calculations that demonstrate the plan complies with Provision C.3 of the Municipal Regional Stormwater NPDES Permit (MRP), Order R2-2015-0049, revised November 19, 2015, issued by the San Francisco Bay Regional Water Quality Control Board.
- kk. In accordance with Provision C.10 of the Regional Water Quality Control Board’s

Municipal Regional Permit, storm drain inlet filters shall be installed in all on-site and adjacent off-site storm drain inlets. The storm drain inlet filters shall meet the full trash capture requirements of the San Francisco Bay Regional Water Quality Control Board and shall comply with maintenance and performance requirements of the Mosquito Abatement District. Alternative full trash capture devices such as hydrodynamic separators or pipe screens that meet the requirements of the Regional Water Quality Control Board and Mosquito Abatement District may also be used if approved by the City Engineer.

- ll. All stormwater treatment measures and full trash capture devices are subject to review and approval by the Alameda County Mosquito Abatement District. The developer shall modify the grading, drainage, stormwater treatment or full trash capture design as necessary to satisfy any imposed requirements from the District.
- mm. Developer shall enter into an Agreement with the City of Newark that guarantees the property owner's perpetual maintenance obligation for all stormwater treatment and trash capture measures installed as part of the project. Said Agreement is required pursuant to Provision C.3 of the Municipal Regional Stormwater NPDES Permit, Order No. R2-2015-0049. Said permit requires the City to provide verification and assurance that all treatment measure and trash capture devices will be properly operated and maintained. The Agreement shall be recorded against the property and shall run with the land.
- nn. "No Dumping - Drains to Bay" thermoplastic stencils shall be placed on all on-site and adjacent off-site storm drain inlets.
- oo. The developer shall submit detailed grading and drainage plans for review and approval by the City Engineer and the Alameda County Flood Control and Water Conservation District. These plans must be based upon a City benchmark and need to include pad and finish floor elevations of each proposed structure, proposed on-site property grades, proposed elevations at property line, and sufficient elevations on all adjacent properties to show existing drainage patterns. All on-site pavement shall drain at a minimum of one percent. The developer shall ensure that all upstream drainage is not blocked and that no ponding is created by this development. Any construction necessary to ensure this shall be the developer's responsibility.

Hydrology and hydraulic calculations shall be submitted for review and approval by the City Engineer and the Alameda County Flood Control District prior to approval of the final map(s). The calculations shall show that the City and County freeboard requirements will be satisfied.

- pp. Where a grade differential of more than a 1-foot is created along the boundary lot lines between the proposed development and adjacent property, the developer shall install a masonry retaining wall unless a slope easement is approved by the City Engineer. Said retaining wall shall be subject to review and approval of the City Engineer. A grading permit is required by the Building Division prior to starting site grading work.

- qq. The applicant shall submit a detailed soils report prepared by a qualified engineer, registered with the State of California. The report shall address in-situ and import soils in accordance with the City of Newark Grading and Excavation Ordinance, Chapter 15.50. The report shall include recommendations regarding pavement sections for all public and private streets. Grading operations shall be in accordance with recommendations contained in the soils report and shall be completed under the supervision of an engineer registered in the State of California to do such work.
- rr. The Project Geotechnical Engineer shall be retained to review all final grading plans and specifications. The Project Geotechnical Engineer shall approve all grading plans prior to City approval and issuance of grading permits.
- ss. Prior to approval of the final map, the Applicant's engineer shall submit a pavement maintenance program for the drive aisles and parking areas for the review and approval of the City Engineer. The Applicant shall incorporate the program into the required Storm Water Pollution Prevention Plan and Storm Water Treatment Measures Maintenance Agreement.
- tt. Prior to issuance of a Certificate of Occupancy or release of utilities for any building, vehicle access ways and parking facilities serving said building shall be paved in accordance with the recommendation of a licensed engineer based on a Traffic Index of 5.0 and striped as shown on the approved site plan. All on-site uncovered parking facilities and drive aisles shall be drained at a minimum slope of 1.0% for asphalt surfaces and 0.3% for Portland cement concrete surfaces.
- uu. The Developer shall incorporate a Homeowner's Association consisting of all property owners of lands in the development at the time of incorporation and in the future for the purpose of maintaining the association's property, common drive aisles, parking facilities, stormwater treatment facilities, and landscaping, including landscaping in adjacent public rights-of-way, and for paying for security lighting, any common garbage collection services, any security patrol services, if provided, and other functions of a Homeowner's Association. All common areas within the development shall be owned and maintained by the Homeowner's Association. Each property owner shall automatically become a member of the association and shall be subject to a proportionate share of the maintenance expenses. The Homeowner's Association shall be incorporated prior to the sale of any individual lots and/or prior to acceptance of tract improvements, whichever occurs first.
- vv. Prior to City Council approval of the final map(s), the bylaws governing the property owners' association(s) and any declaration of covenants, conditions and restrictions (CC&Rs) filed for this development shall be reviewed and approved by the City Council at its discretion after mandatory review and recommendations by the City Attorney. Said covenants, conditions and restrictions shall be prominently displayed in the project sales office at all times. Approval of the covenants, conditions and restrictions shall not make the City a party to enforcement of same. The CC&Rs shall apply equally to both owners and renters. The CC&Rs shall be written to require renters to comply with the regulations

of the CC&Rs, and a copy of the CC&Rs shall be given to each renter. The CC&Rs shall be written to allow less than a majority of owners to have pavement or landscape maintenance done and the cost thereof assessed to all owners in the project. The CC&Rs shall include a pavement maintenance program for on-site pavement.

- ww. The Homeowner's Association CC&Rs shall prohibit the on-site parking of non self-propelled recreational vehicles, including boats, and any self-propelled recreational vehicles not used for transportation unless separate storage facilities are provided. The CC&Rs shall regulate the provision of any on-site parking of self-propelled recreational vehicles used for transportation.
- xx. The developer shall also assist the Homeowner's Association by having a management consultant firm review the maintenance and operating functions of the association. The management consulting firm shall be responsible to prepare a written report with recommendations to the association for managing the association's obligations and setting initial monthly assessment costs for each lot in the development. Membership and assessment cost shall be mandatory for all property owners of property in the development and shall run with the land. The developer shall pay all costs of incorporation and initial management review and reports.
- yy. The Homeowner's Association shall be responsible for trash and litter control and sweeping of all private streets within the development. All private storm drain systems and all associated trash capture devices shall be cleaned on a regularly scheduled basis as detailed in the required Stormwater Treatment Measures Maintenance Agreement.
- zz. The Homeowner's Association shall be required to contract with a professional management firm to handle all necessary maintenance operations. Documentation of such contract shall be submitted to the City of Newark. All commonly owned facilities shall be properly maintained in a manner consistent with the CC&Rs and project requirements.
- aaa. The CC&Rs for the project shall include a disclosure statement to all property owners indicating that the project site is located within a seismic hazard zone for liquefaction. The disclosure statement shall indicate that the buildings have been designed to current code requirements. The disclosure statement shall also indicate that the buildings, site improvements, and utilities are subject to damage during an earthquake and that the buildings may be uninhabitable after an earthquake. This CC&R disclosure statement is subject to review and approval of the City Engineer prior to final map approval.
- bbb. The Developer is to provide a complete set of construction plans and a copy of the project geotechnical report and recorded Final Map to the Homeowners Association at the time of its formation.
- ccc. The CC&Rs shall contain a provision that prohibits the amendment of those provisions of the CC&Rs requested by City without the City's approval.



- ddd. All new utilities including, but not limited to, electric, telephone and cable television services shall be provided underground for all buildings in the development in accordance with the City of Newark Subdivision Standards. Electrical transformers shall be installed in underground vaults with an appropriate public utility easement or within the public right-of-way.
- eee. Private street lighting shall be provided with sufficient wattage and spacing to provide a minimum maintained foot-candle level of 0.10 at all points along the paved surface of the Private Street.
- fff. The Street Light and Joint Trench plan shall be submitted by the applicant with the first tract improvement plan check and approved prior to final map approval.
- ggg. The developer shall request Pacific, Gas & Electric Co. to commence with the design of the underground utility improvements for the proposed development immediately following approval of the tentative map.
- hhh. The developer shall submit design development Landscape Plans with the first tract improvement plan check. The Landscape Plans shall show details, sections and supplemental information as necessary for design coordination of the various civil design features and elements including utility location to the satisfaction of the City Engineer. Complete Landscape Plans shall be concurrently approved with the tract improvement plans and Final Map.
- iii. The developer shall ensure that a water vehicle for dust control operations is kept readily available at all times during construction at the City Engineer's direction. A pick-up or vacuum type street sweeper shall be available at all times at the direction of the City Engineer to removed tracked dirt and debris from adjacent streets.
- jjj. The developer shall implement the following measures for the duration of all construction activity to minimize air quality impacts:
  - 1. Watering should be used to control dust generation during demolition of structures and break-up of pavement.
  - 2. All trucks hauling demolition debris from the site shall be covered.
  - 3. Dust-proof chutes shall be used to load debris into trucks whenever feasible. Watering should be used to control dust generation during transport and handling of recycled materials.
  - 4. All active construction areas shall be watered at least twice daily and more often during windy periods; active areas adjacent to the existing land uses shall be kept damp at all times or shall be treated with non-toxic stabilizers or dust palliatives.
  - 5. All trucks hauling soil, sand, and other loose materials shall be covered or require all trucks to maintain at least 2 feet of freeboard.
  - 6. All unpaved access roads, parking areas, and staging areas at construction sites shall be paved, watered three times daily, or treated with (non-toxic) soil stabilizers.

7. All paved access roads, parking areas, and staging areas at construction sites shall be swept daily with water sweepers; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality.
8. Limit traffic speeds on unpaved roads to 15 mph.
9. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
10. Replant vegetation in disturbed areas as quickly as possible.
11. Minimize idling time (5 minutes maximum).
12. Maintain properly tuned equipment.

These measures shall be incorporated into the grading specifications as well as the best management practices of the storm water pollution prevention plan, and shall be implemented to the satisfaction of the City Engineer.

- kkk. The developer shall provide all required paper and digital submittals of the tentative map, project final map, tract improvement plans, and as-built plans as required by the City Engineer, including, but not necessarily limited to the following: (1) One full-sized reproducible copy and one reduced reproducible copy of the approved tentative map; (2) Electronic copies of the approved final map and improvement plans in a format approved by the City Engineer; (3) One full-sized mylar copy and one electronic copy of the recorded final map; (4) Four photocopied sets of the approved tract improvement plans; (5) One electronic copy and one mylar set of the as-built tract improvement plans. All digital copies of the final map and improvement plans shall be prepared in accordance with Southern Alameda County GIS Authority digital submittal standards.
- lll. The plans submitted for construction must be drawn to an appropriate scale as required by the City Engineer.

#### Landscape Division

- mmm. The developer shall retain a licensed landscape architect to prepare working drawings for landscape plans in accordance with City of Newark requirements. All landscape plans are subject to the review and approval of the City Engineer.
- nnn. Landscape construction plans shall be developed in accordance with Newark Municipal Code Section 15.44.080 related to Bay Friendly Landscaping Practices and City of Newark standard details.
- ooo. All landscaping materials selected for landscape-based stormwater treatment measures shall be consistent with the recommendations in the Alameda Countywide Clean Water Program C.3 Technical Guidance Manual.
- ppp. Landscaping adjacent to the public right-of-way must conform to the City's visibility requirements in accordance with Newark Municipal Code, Chapter 10.36.

- qqq. Prior to approval of the final map, the developer shall enter into a Landscape Maintenance Agreement to ensure the perpetual maintenance of all landscaping along the property frontage and within the common areas of the site. This agreement shall be transferred to the Homeowners Association and incorporated into the project CC&Rs.
- rrr. This project is subject to all applicable requirements of the State of California's Model Water Efficient Landscape Ordinance. The landscape design plan package, including the design plans, shall include all applicable requirements specified in this ordinance.
- sss. Prior to installation by the developer, plant species, location, container size, quality, and quantity of all landscaping plants and materials shall be reviewed and approved by the City Engineer. All plant replacements shall be to an equal or better standard than originally approved subject to approval by the City Engineer.
- ttt. Prior to the release of utilities or issuance of any Certificate of Occupancy, all landscaping and irrigation systems shall be completed or guaranteed by a cash deposit deposited with the City in an amount to cover the remainder of the work.
- uuu. Prior to issuance of Certificate of Occupancy or release of utilities, the developer shall guarantee all trees for a period of 6 months and all other plantings and landscape for 60 days after completion thereof. The developer shall insure that the landscape shall be installed properly and maintained to follow standard horticultural practices. All plant replacements shall be to an equal or better standard than originally approved subject to approval of the City Engineer.

#### Fire Division

- vvv. Each house shall be provided with a NFPA 13D automatic fire sprinkler Systems.
- www. A sign will be requiring indicating dead end at the 150-foot mark.

#### Building Division

- xxx. Construction for this project, including site work and all structures, can occur only between the hours of 8:00 AM and 7:00 PM, Monday through Saturday and between the hours of 10:00 AM and 6:00 PM on Sundays and holidays. The applicant may make a written request to the Building Official for extended working hours and/or days. In granting or denying any request the Building Official will take into consideration the nature of the construction activity which would occur during extended hours/days, the time duration of the request, the proximity to residential neighborhoods and input by affected neighbors. All approvals will be done so in writing.
- yyy. Each building shall be equipped with a fully automatic fire sprinkler system.
- zzz. This project will require a demolition permit from both the City and the Bay Area Air

Quality Control Board.

- aaaa. This project will require the payment of school developer fees. School developer fees are assessed and collected by the Newark Unified School District

Police Division

- bbbb. The development shall comply with Chapter 15.06, Security Code, of the Newark Municipal Code and Section 5.10 of the California Fire Code for radio reception.

- cccc. Housing numbers should be well placed, illuminated and easily recognizable for first responders.

General

- dddd. This Vesting Tentative Tract Map shall be given a public hearing before the City Council for the Council's review and approval.

- eeee. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission and City Council review and, if so decided, said changes shall be submitted for the Commission's and Council's review and decision. The applicant shall pay the prevailing fee for each additional separate submittal of project exhibits requiring Planning Commission and/or City Council review and approval.

- ffff. If any condition of this Vesting Tentative Tract Map be declared invalid or unenforceable by a court of competent jurisdiction, Vesting Tentative Tract Map shall terminate and be of no force and effect, at the election of the City Council on motion.

- gggg. The applicant hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.

- hhhh. In the event that any person should bring an action to attack, set aside, void or annul the City's approval of this project, the applicant shall defend, indemnify and hold harmless the City and/or its agents, officers and employees from any claim, action, or proceeding against the City and/or its agents, officers and employees with counsel selected by the applicant (which shall be the same counsel used by applicant) and reasonably approved by the City. Applicant's obligation to defend, indemnify and hold harmless the City and/or its agents, officers and employees shall be subject to the City's compliance with Government Code

Section 66474.9.

- iii. The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other exactions. The applicant is hereby further notified that the 90-day approval period in which the applicant may protest these fees, dedications, reservations and other exactions, pursuant to Government Code Section 66020(a), has begun. If the applicant fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

This Resolution was introduced at the Planning Commission's December 11, 2018 meeting by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and passed as follows:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
TERRENCE GRINDALL, Secretary

\_\_\_\_\_  
WILLIAM FITTS, Chairperson