



## STAFF REPORT

**TO: PLANNING COMMISSION**

**PREPARED BY: Dina Tasini, Planning Manager**

### GENERAL INFORMATION

OWNER/APPLICANT: Discovery Homes

LOCATION: 370 Muir Station Road

GENERAL PLAN: Residential 7-12 units per acre

ZONING: R 3.5/PUD (Residential, 3,500 sq. ft. site area per unit/Planned Unit Development Overlay)

ENVIRONMENTAL REVIEW: An Initial Study evaluating the project's environmental impact was prepared as required by the California Environmental Quality Act (CEQA). The initial study found the project would not have a significant impact on the environment, due to proposed mitigation measures.

PROPOSAL: Design Review of the proposed 76 townhomes.

APPROVALS REQUESTED: Design Review

### RECOMMENDATION

Adopt the *Draft* resolution and conditions of approval, recommending approval of Design Review for the construction of 76 townhomes located at 370 Muir Station Road.

### PROJECT DESCRIPTION

The applicant has received City Council approval for construction of 76 townhomes located at 370 Muir Station Road which included a General Plan Amendment, Rezoning and Planned

Development. The Martinez Municipal Code Chapter 22.42.100 requires the Planning Commission conduct a public hearing and review and approve the design of project and find that the plans conform to either the :1) conceptual architectural floor plans and elevations or 2) comprehensive design standards and guidelines adopted for the PUD. The overall site plan was previously reviewed and approved as part of the overall approval for the PUD. The applicant has maintained the approved site plan as approved by the City Council and adhered to all mitigation measures that were part of the original conditions of approval for the entitlements approved in 2014.

In order to approve the proposed design of the building and landscape plan the proposed design review shall conform to the following pursuant to Section 22.24.045 of the Martinez Municipal Code:

- A. Complying with all other applicable provisions of the Martinez Municipal Code involving the physical development of buildings, structures and property, including use restrictions;**

The applicant has applied for and received all entitlements for development of the property. The site plan has been approved and the applicant has designed the buildings in such a manner as to adhere to all conditions of development the previous entitlements required.

- B. Providing desirable surroundings for occupants as well as for neighbors. Emphasis is placed upon exterior design with regard to height, bulk, and area openings; breaks in the facade facing on a public or private street; line and pitch of the roof; and arrangement of structures on the parcel;**

The applicant has provided exterior design which is superior in their use materials of construction, such as concrete roof tiles, color, variations in garage doors, lighting throughout the project and on the residences, entry doors and windows. In addition the applicant has provided street elevations and an entry way that creates a development that is welcoming as well as relates to the street. The arrangement of the structures on the lot takes into account the natural terrain and adjacent dwellings.

- C. Having a harmonious relationship with existing and proposed neighboring developments avoiding both excessive variety and monotonous repetition, but allowing similarity of style, if warranted;**

The Design Review Committee discussed the use of three design types versus the use of one and the majority agreed the use of three styles provided some variety for the development as a whole. Each design type, three types in all, are scattered on the site and provide a sense of an interesting neighborhood as opposed to the use of one

design on the site. There are no neighborhoods immediately adjacent so the intent was to create an interesting neighborhood which was achieved through the variation in styles and sizes of each structure on the site.

- D. Using a limited palette of exterior colors; those colors must be harmonious and architecturally compatible with their surrounding environment;**

The exterior is limited to a palette of earth tones of browns. The use of earth tones is appropriate taking into consideration its proximity to the east bay regional trail and surrounding hillsides. The use of a natural palette will provide for the new townhomes to blend into the natural topography.

- E. Using a limited number of materials on the exterior face of the building or structure. In addition, all interior surfaces normally visible from public property shall be finished;**

The applicant has used a limited number of materials throughout the development yet the applicant has proposed the use of materials which will create interesting facades and rhythm and variation along the façade of the structures.

- F. Having exterior lighting appropriately designed with respect to convenience, safety, and effect on occupants as well as neighbors;**

Lighting has been appropriately designed throughout the neighborhood and provides safety and convenience for the residents and their visitors.

- G. Effectively concealing work areas, both inside and outside of buildings, in the case of non-residential facilities;**

Not applicable.

- H. Undergrounding all utility boxes unless it can be shown that they can be effectively screened from the view of the general public;**

There is a wireless antenna on the property which will be properly screened and fenced.

- I. Designing the type and location of planting with respect to the preservation of specimen and landmark trees, water conservation as set forth in Chapter \_\_\_\_\_ 22.35, and maintenance of all planting;**

There are no specimen trees being removed on site. The landscape plan meets all of the City's required water conservation requirements pursuant to Chapter 22.35.

- J. Establishing a circulation pattern, parking layout and points of ingress and egress (both vehicular and pedestrian), designed to maximize pedestrian safety and convenience and to minimize traffic congestion resulting from the impediment of vehicular movement. When applicable, access for handicapped individuals should be considered;**

Circulation pattern and parking layout was approved previously by the City Council. No significant changes have occurred to the circulation pattern, parking layout and ingress and egress.

- K. Ensuring that all signs are designed so that they are in scale with the subject development, and will not create a traffic hazard. Emphasis is placed upon the identification of the use or building rather than the advertising of same;**

Entry signs and signage on site has been reviewed and designed and is in scale with the subject development.

- L. Substantially preserving views from nearby properties where this can be done without severe or undue restrictions on the use of the site, balancing the property rights of the applicant and the affected property owner(s);**

During the environmental analysis and preliminary design review the project was redesigned to address view issues from adjacent property owners and the existing trail. The townhomes were moved from the edge of the property to an internal position to lessen impacts, and the townhomes were articulated in such a way to reduce impacts to views.

Discussion:

The applicant has met with the Design Review Committee on several occasions and has addressed the majority of their concerns. The applicant has changes window, light, roof and garage doors to provide a higher quality design as well as provided open space that will be utilized by the residents such as a community garden, play areas and a picnic area. The site is constrained because of topography so pedestrian accessibility through the site to the picnic area will have to be accomplished on roadways. The applicant explored the possibility of including a stairway from the bottom of the development up to the picnic area, but because of the steep changes in grade it was not possible. Through the design review process issues such as massing, visual impacts, and materials was improved, the project as presented was approved by the Design Review Committee and recommended for approval by the Planning Commission.

## **ATTACHMENTS**

- Architectural and Landscape Plans entitled The Townhomes at Laurel Knoll Revision Date 7/20/2015 prepared by Discovery Design Group.
- Resolution, approving Design Review with recommended Conditions of Approval

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**RESOLUTION NO. PC 15-03 [DRAFT]**

**A RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF MARTINEZ,  
RECOMMENDING APPROVAL OF DESIGN REVIEW FOR THE  
DEVELOPMENT OF A 76 TOWNHOMES LOCATED AT 370 MUIR STATION ROAD**

**WHEREAS**, the City Council of the City of Martinez approved a General Plan Amendment; Rezoning, Major Subdivision, Planned Unit Development for the construction of a 76 attached townhomes on July 24, 2013; and

**WHEREAS**, pursuant to the California Environmental Quality Act (CEQA) the City has conducted and adopted a Negative Declaration to address the project's potential impacts on the environment; and

**WHEREAS**, the Design Review Committee met on several occasions to review and comment on the proposed design of the proposed development and on May 25, 2015 the Design Review Committee recommended approval of the proposed design to the Planning Commission; and

**WHEREAS**, the Planning Commission of the city of Martinez held a duly noted public hearing on July 28, 2015, and listened to testimony from the public.

**NOW, THEREFORE**, the Planning Commission of the City of Martinez resolves as follows:

1. That the above recitals are found to be true and constitute part of the findings upon which this resolution is based.
2. A Negative Declaration for said project has been adopted..
3. The General Plan, Rezoning and Planned Development have been approved by the City Council.
4. That the Planning Commission finds that Design Review for Planning Application #14PLN-0010.

That in order to approve the Design Review application for the proposed units, the Commission must make the following findings, which it hereby does:

- A. **Complying with all other applicable provisions of the Martinez Municipal Code involving the physical development of buildings, structures and property, including use restrictions;**

The applicant has applied for and received all entitlements for development of the property. The site plan has been approved and the applicant has designed the buildings

in such a manner as to adhere to all conditions of development the previous entitlements required.

- B. Providing desirable surroundings for occupants as well as for neighbors. Emphasis is placed upon exterior design with regard to height, bulk, and area openings; breaks in the facade facing on a public or private street; line and pitch of the roof; and arrangement of structures on the parcel;**

The applicant has provided exterior design which is superior in their use materials of construction, such as concrete roof tiles, color, variations in garage doors, lighting throughout the project and on the residences, entry doors and windows. In addition the applicant has provided street elevations and an entry way that creates a development that is welcoming as well as relates to the street. The arrangement of the structures on the lot takes into account the natural terrain and adjacent dwellings.

- C. Having a harmonious relationship with existing and proposed neighboring developments avoiding both excessive variety and monotonous repetition, but allowing similarity of style, if warranted;**

The Design Review Committee discussed the use of three design types versus the use of one and the majority agreed the use of three styles provided some variety for the development as a whole. Each design type, three types in all, are scattered on the site and provide a sense of an interesting neighborhood as opposed to the use of one design on the site. There are no neighborhoods immediately adjacent so the intent was to create an interesting neighborhood which was achieved through the variation in styles and sizes of each structure on the site.

- D. Using a limited palette of exterior colors; those colors must be harmonious and architecturally compatible with their surrounding environment;**

The exterior is limited to a palette of earth tones of browns. The use of earth tones is appropriate taking into consideration its proximity to the east bay regional trail and surrounding hillsides. The use of a natural palette will provide for the new townhomes to blend into the natural topography.

- E. Using a limited number of materials on the exterior face of the building or structure. In addition, all interior surfaces normally visible from public property shall be finished;**

The applicant has used a limited number of materials throughout the development yet the applicant has proposed the use of materials which will create interesting facades and rhythm and variation along the façade of the structures.

- F. Having exterior lighting appropriately designed with respect to convenience, safety, and effect on occupants as well as neighbors;**

Lighting has been appropriately designed throughout the neighborhood and provides safety and convenience for the residents and their visitors.

- G. Effectively concealing work areas, both inside and outside of buildings, in the case of non-residential facilities;**

Not applicable.

- H. Undergrounding all utility boxes unless it can be shown that they can be effectively screened from the view of the general public;**

There is a wireless antenna on the property which will be properly screened and fenced.

- I. Designing the type and location of planting with respect to the preservation of specimen and landmark trees, water conservation as set forth in Chapter 22.35, and maintenance of all planting;**

There are no specimen trees being removed on site. The landscape plan meets all of the City's required water conservation requirements pursuant to Chapter 22.35.

- J. Establishing a circulation pattern, parking layout and points of ingress and egress (both vehicular and pedestrian), designed to maximize pedestrian safety and convenience and to minimize traffic congestion resulting from the impediment of vehicular movement. When applicable, access for handicapped individuals should be considered;**

Circulation pattern and parking layout was approved previously by the City Council. No significant changes have occurred to the circulation pattern, parking layout and ingress and egress.

- K. Ensuring that all signs are designed so that they are in scale with the subject development, and will not create a traffic hazard. Emphasis is placed upon the identification of the use or building rather than the advertising of same;**

Entry signs and signage on site has been reviewed and designed and is in scale with the subject development.

- L. Substantially preserving views from nearby properties where this can be done without severe or undue restrictions on the use of the site, balancing the property rights of the applicant and the affected property owner(s);

During the environmental analysis and preliminary design review the project was redesigned to address view issues from adjacent property owners and the existing trail. The townhomes were moves from the edge of the property to an internal position to lessen impacts, and the townhomes were articulated in such a way to reduce impacts to views.

- 5. All the findings contained above are part and parcel of this Resolution and are incorporated herein by this reference.

**NOW, BE IT FURTHER RESOLVED** that the Planning Commission approves Design Review 14PLN-0010; subject to the attached conditions of, incorporated herein by this reference.

\* \* \* \* \*

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the Planning Commission of the City of Martinez at a regular meeting of said Commission held on the 28<sup>th</sup> day of July 2015:

AYES:

NOES:

ABSENT:

ABSTAINED:

BY: \_\_\_\_\_

Sigrid Waggener  
Planning Commission Chair

\_\_\_\_\_  
Dina Tasini  
Planning Manager

**CONDITIONS OF APPROVAL**

(NOTE: previous conditions of approval for the Planned Unit Development, Rezoning and General Plan still apply- these conditions apply only to the Design Review Approval)

**Project Name: "Laurel Knolls" (Sub. 9263)**

**Site Location: Laurel Knolls; APN: 162-263-006 &009**

**I. Description of Permit**

These conditions apply to and constitute the approval of:

- A. Design Review on the development of 76 attached single-family (townhome) units located at 370 Muir Station Road

**II. Exhibits**

The following exhibits are incorporated as conditions of approval, except where specifically modified by these conditions:

<b>EXHIBIT</b>	<b>DATE RECEIVED</b>	<b>PREPARED BY</b>	<b>PAGES</b>
Architectural/landscape Plans	July 21, 2015	DiscoveryDesign Group/Baak&Associates/Isakson & Associates	67

All construction plans, including but not limited to the final map, improvement/grading plans and construction plans for the individual units shall conform to these exhibits, except as modified by these conditions, and shall incorporate all mitigation measures identified in the adopted Initial Study and Mitigated Negative Declaration. Where a plan or further information is required by these conditions, it is subject to review and approval by the Planning Division, Engineering Division and/or Building Department, or as noted.

**III. Design Review**

- 1. The applicant shall not change the layout and shall maintain the same architectural design as indicated on the Site Plan dated July 15, 2015. Any modification will require City approval by the Planning Division.
- 2. Light fixtures shall match those on pages 53-55 of the architectural plans dated July 15, 2015. Any changes to the products as shown requires approval by the Planning Division. No substitution is permitted without Planning Division approval.

3. Garage doors shall match those exhibited on page 56 of the architectural plans. Any changes shall require approval of the Planning Division. No substitution is permitted without Planning Division approval.
4. Entry doors shall match those exhibited on Page 56 of the architectural plans any changes shall require approval of the Planning Division. No substitution is permitted without Planning Division approval.
5. Window frame paint shall match those exhibited on Page 56 of the architectural plans any changes shall require approval of the Planning Division. No substitution is permitted without Planning Division approval.
6. Metal frames shall match the Building type and design as depicted on pages 57-59 of the architectural plans. No substitution without Planning Division approval.
7. Landscaping on the site, and recreational amenities shall conform to the conceptual landscape plan dated June 30, 2015 as shown on page 60 of the architectural packet. No substitutions without prior approval of the Planning Division.
8. Front entry gate shall be designed as shown on page 64. Gate materials and colors shall match those shown on page 65.
9. All terraced walls shall be designed using the materials as shown on Page 64.
10. Fence materials along the perimeter of the site shall match the details shown on page 64.
11. The garden shed and kiosk shall match the design as shown on page 66. The roof of the structure shall have concrete tiles.
12. The applicant shall amend page 67 to show the concrete tile roof used for each building design.
13. The entry sign shall match the design as shown on Page 62 and its location shall remain as shown on the project entry area enlargement as shown on page 61.
14. Changes and or substitutions of material, site plan changes, landscaping changes and façade changes must receive approval of

the Planning Division. The Planning Manager shall determine if the change is substantial and may elect to bring the change to the Design Review Committee for approval. If there is an overall change which effects the design of the site or buildings, staff may determine that Planning Commission review and approval may be necessary.

XVI. Validity of Permit and Approval

- A. The Design Review approvals, shall expire on July 28, 2017(24 months from Planning Commission approval.)
- B. Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Martinez, or other public agency having jurisdiction.
- C. The permittee, Discovery Homes, shall defend, indemnify and hold harmless the City and its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys or employees to attack, set aside, void, or annul the Planning Commission's decision to recommend approval. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorneys' fees, and other costs and expenses incurred in connection with such action whether incurred by Discovery Homes, the City, and/or the parties initiating or bringing such action.
- D. Discovery Homes shall defend, indemnify and hold harmless the City, its agents, officers, employees and attorneys for all costs incurred in additional investigation of, or study of, or for supplementing, preparing, redrafting, revising, or amending any document, if made necessary by said legal action and if Discovery Homes desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.
- E. In the event that a claim, action or proceeding described above, is brought, the City shall promptly notify Discovery Homes of the existence of the claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that Discovery Homes is required to defend the City in connection with any said claim, action, or proceeding, the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably be withheld. The City shall also have the right not to

participate in said defense, except that the City agrees to cooperate with Discovery Homes in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own to defend any claim, action or proceeding where Discovery Homes has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City, except that the fees and expenses of the City Attorney shall be paid by the applicant.

- F. Discovery Homes shall indemnify the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.

CONDITIONS OF APPROVAL

AS REVIEWED AND ADOPTED BY THE CITY  
COUNCIL (JULY 24, 2013)

**Project Name: "Laurel Knolls" (Sub. 9263)**

**Site Location: Laurel Knolls; APN: 162-263-006 &009**

I. Description of Permit

These conditions apply to and constitute the approval of:

- A. Planned Development #09-01 consisting of up to 76 attached single-family (townhome) units on a 6.83 acre site, the Planned Development overlay allows for exceptions to development standards normally set forth in the R-3.5 Zoning District. The following exceptions to normal the R-3.5 Zoning District development standards are allowed by this permit:
- i. Height: up to 40' above natural grade and 35' from finished grade, where a maximum of 25' above natural grade is normally permitted
  - ii. Front and Side yards: Encroachment of retaining walls and fences with heights up to 8' feet into minimum required yards, when maximum permitted height is 3.5'

And, exceptions to minimum site area, yard and coverage requirements to allow creation of up to 76 attached single lots within the common interest Planned Unit Development, ranging in size from approximately 700 to 1,000 sq. ft. in size.

- B. These conditions apply to and constitute the approval of Vesting Tentative Subdivision Map No. 9263 consisting of up to 76 residential lots, and common landscape, drainage and access parcels and/or easements

II. Exhibits and Environmental Documentation

The following exhibits are incorporated as conditions of approval, except where specifically modified by these conditions:

EXHIBIT	DATE RECEIVED	PREPARED BY	PAGES
Vesting Tentative Map/ Development Plan Sub 9263	July 3, 2013	Isakson & Associates Inc	6
Landscape Plans	July 3, 2013	Utopian Landscapes	3

All construction plans, including but not limited to the final map, improvement/grading plans and construction plans for the individual units shall conform to these exhibits, except as modified by these conditions, and shall incorporate all mitigation measures identified in the adopted Initial Study and Mitigated Negative Declaration. Where a plan or further information is required by these conditions, it is subject to review and approval by the Planning Division, Engineering Division and/or Building Department, or as noted.

III. Special Requirements for Final Approval and Recordation of Subdivision 9263

A. REQUIRED SITE PLAN CHANGES:

The final map, improvement plans, design review approval and/or final building permit plans shall incorporate the following modifications to the plans otherwise hereby approved:

1. The applicant shall augment the architectural detailing of Building 1's elevations that are adjacent to Muir Station Road and the entry drive to better integrate this structure into the existing visual context and architectural quality of Muir Station Road and State Highway 4. Required improvements, or equivalent, shall include: a) replacing the chain link fencing with decorative wood "board on board" fencing with masonry accent posts, b) integrating the rear balconies into the main structure with stucco posts, iron metal railings and roofs matching those of the main structure and c) added shutters and wood accents (comparable to those shown on the front elevations) to the rear and side elevations. **(Mitigation Measure Aesthetics 2)**
  
2. To mitigate the increased east bound left turn maneuvers at Muir Station Road and Center Ave. The applicant shall either: a) as part of the project's improvement plans, include improvements to the traffic signal at the Center Avenue & Muir Station Road/Muir Road intersection, providing split phases for the eastbound and westbound traffic, with a left turn arrow to be mounted on the existing overhead signal heads, or b) provide fair share funds for these traffic mitigation improvement, above standard traffic mitigation fees, in an amount to be determined by the City

Engineer. **(Mitigation Measure Traffic 1)**

3. Street width shall accommodate two way traffic with a minimum pavement width of 24 feet.
  4. The applicant shall, as part of the project's improvement plans, provide a storm drain system to collect and convey storm water runoff to adequate downstream facilities (Alhambra Creek), to the satisfaction of the City Engineer. **(Mitigation Measure Utilities 1)**. Unless otherwise approved by the City Engineer, the collected runoff shall be conveyed to the creek via underground storm drain system located adjacent to the southerly edge of existing pavement on Muir Station Road. The trench shall be covered with a 4' wide asphalt section (min. 0.3' AC over 0.67' AB) and berm to intercept local runoff for the hill side.
  5. The applicant shall provide a sidewalk with a minimum 5' sidewalk width between project down to Alhambra Avenue adjacent, to enhance pedestrian use and safety from the project into the shopping center property. However, where physical obstruction exists a reduction in sidewalk width may be permitted subject to approval by the City Engineer. Final sidewalk design and location subject to review and approval by Planning staff and City Engineer.
- B. Final storm water management plan shall be reviewed and approved by the City Engineer and shall comply with the current C.3 Guidebook. If, after review of final storm water management plan, it is necessary to enlarge "Bio-retention " areas for compliance with storm water treatment requirements ("C.3") modifications to the site plan to accommodate these changes shall not include further encroachment of retaining walls into street-side yard areas, significant increases in wall height and/or loss of landscape areas; and if additional site area is required for above changes regarding street width and C.3 requirements, lots may be deleted to prove the required bio retention area(s). Refer to NPDES section for additional information and requirements.
- C. The developer shall establish a Homeowners' Association (hereinafter referred to as the "HOA") for the purpose that includes but is not limited to the maintenance of the access and landscape easements and/or parcels as described on the Vesting Tentative Map. The HOA shall be responsible for all exterior maintenance, including repainting of buildings, inspection and maintenance of private improvements such as: private storm drain system, storm water management plan facilities (C.3 requirements), landscaping and irrigation system, retaining walls, access roads, sidewalks, parks, sewer, signs, lighting, and private utilities. The HOA shall also responsible for inspection, maintenance, and reporting plan for the storm water management

plans required by the Contra Costa County Clean Water Program -C.3 requirements. Final configuration of the easements, wording of the implementing CC & R's and "owner's statements" on final map subject to approval of the City Attorney, Community Development Director and City Engineer.

- D. Project CC & R's shall be submitted for City review and approval with the final map and improvement plans. The CC & R's shall contain a clause giving the City the right, but not the duty, to enforce the CC & R's. The CC & R's shall include the following restrictions on the uses of garages:
1. That garages always be kept sufficiently clear so as to permit the parking of 2 motor vehicles in addition to any incidental household storage.
  2. That carport and guest parking spaces be used solely for the parking of operable vehicles. Storage of any other kind is prohibited.
  3. Residents shall use their assigned garages or carports to capacity before using guest or on-street parking.
- E. As required by Map Act, Final Subdivision Map shall be prepared by licensed Land Surveyor or qualified Civil Engineer. Regardless of whether any discrepancies between the boundary locations and/or site area as shown on tentative and final maps, the developer is required to maintain the maximum permitted density, all required minimum setbacks, bio retention areas, site amenities (etc.) as shown on the Tentative Map/PUD plan. If necessary, units may be deleted to preserve consistency with the PUD plan, as required by Planning staff and City engineer.

#### IV. Site Plan

##### A. Lighting

1. Building plans and landscaping plans shall show all exterior lighting: walkways, driveway areas, recreational areas, etc. Height and style shall be shown.
2. All exterior lighting shall be directed such that lights create as little off-site glare and nuisance as is feasible. All fixtures shall be glare-shielded.
3. Energy-saving fixtures shall be used.

#### V. Architectural

- A. All exterior and roof mounted utility and meter boxes, and mechanical equipment shall be screened from public view. Equipment and screening shall be shown on final construction plans and subject to staff review and approval. The existing cell site located in close proximity to the internal roadway shall be screened. Screening materials shall be approved by the Planning Department.

VI. Landscaping, Walls and Fences

- A. Final landscape plans shall be prepared by a licensed landscape architect, on the grading plan as a base map and shall be submitted for review and approval by the City at the same time grading and improvement plans are submitted. Final plans must receive City approval prior to filing of the Final Map or issuance of building or grading permits, whichever comes first. All exterior and roof mounted utility and meter boxes, and mechanical equipment shall be screened from public view. Equipment and screening shall be shown on final construction plans and subject to staff review and approval. The existing cell site located in close proximity to the internal roadway shall be screened. Screening materials shall be approved by the Planning Department.
  - 1. All exterior retaining walls within landscape areas shall have "split-face" block, "keystone" or similar textured treatment with decorative trim cap. Final wall designs subject to staff approval.
  - 2. Design and fixtures of and for the tot lot, trail connection, garden area and picnic area are subject to the review and approval of Planning staff and the City Engineer.
  - 3. Permanent project/neighborhood identification signage may be placed at the entryway and shall be subject to Design Review approval.
  - 4. Protect planting areas adjacent to alley with minimum 6" high concrete curbs or equivalent.
  - 5. Be prepared in accordance with the City's adopted water conservation and landscaping ordinance (Martinez Municipal Code Chapter 22.35).
  - 6. Specify shrubs of minimum 5-gallon size
  - 7. Provide either lawn or a continuous ground cover with complete coverage within 3 years.
  - 8. Show all non-plant features: benches, lights, arbors, mail box areas paths, etc.

9. Include an irrigation plan.

10. Fences

- a. All fencing, retaining walls, barriers, etc., shall be installed by the developer, and shall be shown on the site and landscape plan.
- b. The maximum height for all walls, fences and/or fences on retaining walls shall be 6 feet unless as otherwise shown on approved plans. Fences off-set from retaining walls 18 inches or greater shall be considered separate structures with a maximum height of 6 foot each.

B. Tree Preservation

- 1. All trees to be preserved shall be clearly indicated on the grading plan, site plan, composite plans and landscape plans.
- 2. All trees to be saved shall be fenced at the drip line with three-strand barbed wire or other approved fencing prior to grading and construction activities. Prior to grading or construction, the developer's contractor shall request City inspection of fencing.
- 3. Dead wood shall be pruned from existing trees.
- 4. If during construction, the developer wished to remove the trees, Planning staff shall approve a modified landscape plan with replacement trees prior to tree's removal.

VII. Noise Control, Dust and Conditions for Construction Activity

- A. All construction activities shall conform to the City's Noise Control Ordinance, Chapter 8.34 of the Municipal Code: Construction activities including delineation and stating/warning of vehicles are limited to the hours of 7:00 a.m. to 7:00 p.m., Monday through Friday; and 9:00 a.m. to 5 p.m. Saturday and Sunday. **Lane closures shall be limited to 9:00 a.m. to 4:00 p.m. Monday through Friday on Muir Station Road.** The permittee shall post a sign on the site notifying all workers of these restrictions.

- B. The site shall be fenced with locked gates at 7 p.m.. The gates shall remain locked until 7:00 am. Contractors shall not arrive at the site prior to the opening of the gates.
- C. Based on the site-specific sound mitigation study conducted for this project, sound levels shall be reduced to meet the following criteria for year 2000 noise contours:
  - 1. Indoor noise levels not to exceed 45 d<sub>BA</sub> CNEL.
  - 2. Private outdoor noise levels not to exceed 65 d<sub>BA</sub> CNEL.
- D. Contractors shall be required to employ the quietest construction equipment available, and to muffle noise from construction equipment and to keep all mufflers in good working order in accordance with State law.
- E. Adequate dust control measures shall be employed throughout all grading and construction periods. The Contractor shall regularly water areas that are exposed for extended periods to reduce wind erosion.
- F. Contractor shall ensure that surrounding streets stay free and clear of silt, dirt, dust, tracked mud, etc. coming in from or in any way related to project construction. Paved areas and access roads shall be swept on a regular basis. All trucks to be covered.
- G. Speeds of construction equipment shall be limited to **10** miles per hour. This includes equipment traveling on local streets to and from the site.
- H. Access shall be maintained to all driveways at all times.
- I. There shall be no parking of construction equipment or construction worker's cars on residential streets at any time.
- J. Truck routes for the import or export of cut/fill material shall be identified and approved by the City Engineer prior to the issuance of any permits. Developer shall be responsible for the repair of any damage to city streets (private and public) caused by the import or export of soils materials necessary for the project.
- K. Prior to construction, contractor shall contact city inspector for a pre-construction meeting. Haul route shall be submitted for review and approval by the building and engineering departments for approval.

VIII. Agreements, Fees and Bonds

- A. All improvement agreements required in connection with said plans shall be submitted to and approved by City and other agencies having jurisdiction prior to City approval of the Final Map or issuance of the Building, Encroachment, Grading or Site development permit, whichever comes first.
- B. All required faithful performance bonds and labor materials bonds in penal amount equal to 100 percent of the approved estimates of construction costs of improvements shall be submitted to and approved by City and other agencies having jurisdiction prior to City approval of the Final Map or issuance of the Building, Encroachment, Grading, or Site Development permit, whichever comes first.
- C. Prior to approval of the plans and issuance of permits, applicant shall pay all applicable fees, deposits and traffic signal cost contribution as required by the Community Development Director in accordance with the City's fee schedule, the City's Municipal Code, and these conditions of the project's approval. The fees include: Plan check and inspection fees, drainage fees, transportation facilities fees, park (in lieu of land dedication) fees, park and recreation facilities fees, cultural facilities fees, and police facilities fees. The final amount for the above fees shall be in accordance with the fee schedule in effect of time of payment.
- D. All fees and deposits required by other agencies having jurisdiction shall be paid prior to City approval of the Final Map or issuance of the Building, Encroachment, Grading or Site Development Permit, whichever comes first.

IX. Grading

- A. All grading shall require a grading and drainage plan prepared by a registered Civil Engineer, a soils report prepared by a registered Geotechnical Engineer and a Grading Permit approved by the City Engineer. The grading plans and soils report shall require review by the City's geotechnical consultant with all costs to be borne by the applicant.
- B. All recommendations made in the Soil Engineers report, (unless amended through the City's review) and all recommendations made by the City's geotechnical consultant shall be incorporated into the design and construction of the project.
- C. Contour grading techniques with spot elevations shall be employed throughout the project to achieve a more natural appearance, even where this will increase the amount of grading. Tops of cuts or toes of fills adjacent to existing public rights-of-way or easements shall be set back two feet minimum from said rights-of-way and easements.

- D. Erosion control measures shall be implemented per plans approved by the City Engineer for all grading work not completed before October 1. At the time of approval of the improvement and/or grading plans, an approved Erosion Control Plan prepared by a registered Civil Engineer shall be filed with the City Engineer.
  - E. All graded slopes in excess of 5 ft. in height shall be hydroseeded no later than September 15 and irrigated (if necessary) to ensure establishment prior to the onset of the rainy season.
  - F. The applicant's engineer shall certify the actual pad elevation for the lot in accordance with City standards prior to issuance of Building Permit.
  - G. All front yard landscaping or alternate erosion control measures shall be installed prior to release for occupancy to mitigate erosion problems on each lot.
  - H. The finished grading shall be inspected and certified by the developer's engineer that it is in conformance with the approved Grading Plan and Soils Report pursuant to the provisions of Title 15 of the Martinez Municipal Code.
  - I. All existing trees shall be clearly indicated on the grading plan. Refer to Section VI Landscaping for tree preservation requirements.
  - J. Any grading on adjacent properties will require written approval of those property owners affected.
  - K. If cultural resources are discovered during subsurface excavations, the Contractor shall cease construction and a qualified archeologist shall be contacted to make recommendations for mitigation.
  - L. The plans shall include the boundary treatment shown on cross sections, drawn to scale, for retaining walls, fencing and drainage.
- X. Drainage
- A. A hydrologic study shall be prepared and submitted to the City Engineer and Contra Costa County Flood Control District, when required, for review and approval to ensure discharge of storm runoff to facilities of adequate capacity. The developer shall make necessary upgrades to existing systems as required by the City Engineer. Drainage area is defined as all that area draining into, and including, the area of the proposed development.
  - B. All concentrated runoff shall be collected and conveyed to an approved storm drainage system. Existing slopes that have no additional discharge

directed onto them or are not substantially re-graded can remain as natural runoff.

- C. Applicant shall not increase storm water runoff to adjacent downhill lots unless either, (1) a Drainage Release is signed by the property owner(s) of affected downhill lots and recorded in the office of the County Recorder; or (2) site drainage is collected and conveyed in approved drainage facilities within a private drainage easement through a downhill property. This condition may require collection of on-site runoff and construction of an off-site storm drainage system. All required releases and/or easements shall be obtained prior to filing of Final Map or issuance of the Building, Encroachment, Grading or Site Development Permit, whichever comes first.
- D. The storm drain system shall be designed per City and County Flood Control District Standards to carry at least a 10-year storm. Furthermore, the system shall be designed to ensure that local streets remain passable during a 100-year storm. Passable is defined as one 10-ft. travel lane in each direction, pavement free of water runoff. The developer shall install a drainage system to ensure passability. Should the runoff due to the proposed development contribute incrementally to an existing flooding problem, then the developer may be required to contribute funds for his proportional share of future drainage system costs as required by the City Engineer.
- E. Parking areas, streets and on-site drainage shall be collected and conveyed to an approved storm drainage facility. When approved by the City Engineer, drainage may be conveyed under the sidewalk and discharged through the curb in accordance with City standards. Drainage shall be directed to a concrete curb and gutter whenever practical.
- F. All public drainage facilities, which cross private lots and to be maintained by the City, shall require a 10-ft. minimum width storm drain easement. Private storm drain facilities to be maintained by an Association of Homeowners or by individual lot owners shall be contained within 10-ft. private drainage reserves. Said easements and/or reserves shall be delineated on the Final Map or recorded by separate document prior to City approval of the Final Map or issuance of Building Permit, whichever comes first.
- G. Concentrated drainage flows shall not be permitted to cross sidewalks or driveways.
- H. The developer shall comply with Contra Costa County Flood Control District Design requirements.
- I. Fifteen (15) inch minimum RCP (reinforced concrete pipe) shall be used for all public storm drain lines and 12-inch minimum pipe shall be used for laterals and for private storm drain lines.

XI. NPDES Requirements

- A. Efficient irrigation, appropriate landscape design and proper maintenance shall be implemented to reduce excess irrigation runoff, promote surface filtration, and minimize use of fertilizers, herbicides, and pesticides.
- B. To the maximum extent practicable, as determined by the City Engineer, drainage from paved surfaces shall be routed through grassy swales, buffer strips or sand filters prior to discharge into the storm drain system.
- C. All storm drain inlets (catch basins) shall be imprinted with the sign "No Dumping, Flows to Creek" as per City Standard #SD-1.
- D. Trash enclosures and dumpster areas shall be covered and protected from roof and surface drainage.
- E. All areas used for washing, steam cleaning, maintenance, repair or processing shall have impermeable surfaces and containment berms, roof covers, recycled water wash facilities, and shall discharge into the sanitary sewer, as approved by the City Engineer.
- F. A parking lot sweeping program, as approved by the City Engineer, shall be implemented which at a minimum, provides for sweeping immediately prior to, and once during, the storm season.
- G. For projects one (1) acre or larger, developer shall comply with the State Water Resources Control Board requirements, NPDES permit, for construction. The Developer shall be responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) for the project. A copy of the SWPPP and the Notice of Intent and WDID shall be submitted to the City prior to issuing permits for construction. The SWPPP and The WDID shall be kept at the job site during construction.
- H. Developer shall comply with the requirements of Provision C.3 of the State Regional Water Resources Control Board NPDES Permit as applicable to this project. This project shall be designed and constructed to comply with C.3 requirements for flow-control and treatment measures in accordance with the current edition of the Contra Costa Clean Water Program's Stormwater C.3 Guidebook.
  - a. Prior to the issuance of building, grading, or site development permits, the applicant shall submit a complete stormwater control plan with the operation and maintenance plan for review and approval by the City Engineer. All required documents and agreements shall be submitted and executed prior to issuing permits for construction.

- b. The construction improvement plans with all required calculations, and specifications for the stormwater control facilities shall be submitted to the City for review and approval. These plans and specifications shall include, but not limited to, grading plan, drainage plans, detail drawings for the proposed facilities, proposed and existing structures, piping, subdrains, landscaping and irrigation plans. The plans shall include a watershed map showing the tributary areas to each facilities and the proposed surface improvement. The locations of the roof drain downspouts shall be shown of the plans. The plans shall also be reviewed and approved by the project soil engineer and the City's geotechnical consultant (if deemed necessary by the City Engineer) prior to City approval of the plans.
- c. The owner(s)/HOA, in perpetuity, shall be responsible for the ongoing operation and maintenance of the C.3 storm water control facilities (including reporting) at his/their own expense. Prior to City approval of the plans and issuance of permits, the owner(s) shall execute all required agreements to insure proper operation and maintenance of the facilities. The agreement will run with the land and include, but not limited to, provision for transfer of ownership and long-term operating and maintenance of the facilities, providing the City and other regulatory agencies the right of entry to perform periodic inspections to insure compliance with requirements, as per the CCCCWP, C.3 Guidebook.
- d. Stormwater control plan and the operation and maintenance plan shall be included as a part of the CC&R (or other approved document) for this development.
- e. Prior to the issuance of a Certificate of Occupancy, the applicant shall submit as built drawings of the stormwater control facilities, including any updates. All required agreements must be executed and recorded.
- I. Garbage dumpster shall be accessible to garbage trucks and provided with a roof cover.
- J. Development shall include adequate accessible and convenient areas for collecting and loading recyclable materials, to the satisfaction of the City Engineer, in conformance with the California Integrated Waste Management Board Recycling Ordinance.

XII. Street Improvements

- A. Frontage Improvement: Pursuant to Chapter 12.30 of the Martinez Municipal Code sidewalks, curb, gutter, and street pavement shall be constructed and/or replaced along the entire property frontage. The developer shall replace any damaged sidewalk, curb and gutter, relocate existing driveways, and construct and dedicate to the City the improvements within the City's right-of-way, including concrete curb, gutter, sidewalk, paving, drainage system, street lights, and street trees, all to the satisfaction of the City Engineer. The existing street structural section shall be removed and replaced along the frontage of the property to the centerline of the street if the existing structural section is cracked or damaged in any way, or if the street structural section is determined by the City Engineer to be inadequate for the intended traffic. All improvement shall be designed and constructed to the satisfaction of the City Engineer.
- B. All streets shall be paved and improved after utilities are installed in accordance with City of Martinez Standard Drawings and Design Guidelines and the Approved plans.
- C. Public Roads:
1. Muir Station Road: To be improved to collector street standards. Paving design and construction control shall be based on State of California "R" value method, using Traffic Indices (T.I.'s) approved by the City Engineer. The street structural section shall be designed to a T.I. of 7.0 with a minimum 0.30 ft. AC pavement section over a minimum 1.0 ft. Class 2 aggregate base. Maximum street grade shall be 15 percent (or matching existing slope). All required right of way shall be dedicated to the City of Martinez on the Final Map as required by the City Engineer. A 5 feet wide sidewalk (adjacent to the curb), as measured from back of curb, shall be installed along the entire frontage of the property.
- D. Private Interior Roads:
- Paving design and construction control shall be based on State of California "R" value method, using Traffic Indices (T.I.'s) approved by the City Engineer. The street section design shall utilize a T.I. of 5.5 with a minimum 0.25 ft. AC pavement section over a minimum 0.50 ft. Class 2 aggregate base. Private streets within the project shall provide a minimum 20 ft. unobstructed paved width (except for Drive "C"), with a maximum 15 percent grade unless otherwise approved by the City Engineer. Private streets shall also provide for approved provisions for the turning around of Police Department and Fire Department apparatus.
- Private streets shall be located within the common area or private access easement(s). Unless otherwise approved by the City Engineer, a 4' wide

(minimum) private sidewalk shall be installed within the common area (or easement). Prior to approval of the Final Map and the plans, the developer shall demonstrate, to the satisfaction of the City Engineer, that the proposed clearances between the street and garage is sufficient for safe travel. If additional space is required to accommodate access, the distances between the garage doors and the streets would be increased thereby increasing the driveway width.

- E. Valley gutters shall not be used to provide drainage across any through street or intersection, unless otherwise approved by the City Engineer.
- F. All new utility distribution services on-site and off-site shall be installed underground. Existing poles and overhead wires along the frontage of the property shall be undergrounded (or relocated above ground) as approved by the City Engineer. If utilities are to be relocated above ground, the City may require the insulation of conduit for potential future undergrounding.
- G. Sidewalk pipe drains shall be installed on either side of the driveway and shall conform to City Standard No. S-13.
- H. A City Encroachment Permit is required for any work within the City Right-of-Way.
- I. All traffic control devices, including Stop signs, No Parking signs, legends and striping shall be installed in accordance with plans approved by the City Engineer.
- J. Street names for public and private streets are subject to the approval by the Community Development Department and the Fire District.
- K. Street lights shall be installed at Developer's expense in accordance with plans approved by the City Engineer. Developer shall bear full costs of energizing and monthly utility charges until acceptance of improvements by the City Council. Street lights shall be installed along the frontage of Muir Station Road. The location and design is subject to the City Engineer approval.
- L. Street trees shall be planted in accordance with City standards. The species of tree shall be approved by the Parks Superintendent.
- M. The developer shall keep the adjoining streets free and clean of project dirt, mud, materials and debris during the construction period as is found necessary by the City Engineer.

XIII. Water System

- A. Water system facilities shall be designed to meet the requirements of the City of Martinez Water Department and the fire flow requirements of the Contra Costa County Consolidated Fire Protection District. All requirements of the responsible agency shall be guaranteed prior to approval of the improvement plans. Any required offsite easements shall be obtained at the developer own expense.
- B. Water system connection, including installation of the water meter, shall be made in accordance with the Water Department standards. Prior to obtaining water service, fees shall be paid in accordance with the water fee schedule in effect at time of payment.
- C. Backflow prevention, required as part of the water service installation, must be completed before occupancy of the building, and appropriately screened with suitable material.

XIV. Sanitary Sewer System

- A. Sewer system connections and plans for sanitary sewer facilities shall be approved by the Central Contra Costa County Sanitary District. All requirements of that District shall be met before approval of the improvement plans.

XV. Other Requirements

- A. Construction shall comply with all applicable City and State building codes and requirements including handicapped and energy conservation requirements, grading and erosion control ordinances.
- B. Design of all public improvements shall conform to the City of Martinez Design Guidelines, Standard Special Provisions, and Standard Drawings. Prior to preparation of improvement plans, the developer or his representative should contact the City's Engineering Development Review section of the Community Development Department.
- C. Complete grading, site and improvement plans, specifications and calculations shall be submitted to and approved by the City Engineer, Community Development Director, and/or other agencies having jurisdiction for all improvements within the proposed development prior to filing of the Final Map or issuance of a Building, Site, Grading or Encroachment Permit whichever comes first. Approved plans shall become the property of the City of Martinez upon being signed by the City Engineer and Community Development Director.

- D. Prior to City approval of the Final Map, all fees, bonds, and deposits shall be paid and posted; all agreements shall be executed and all grading and improvement plans shall be approved by the City Engineer and Community Development Director. No construction shall take place until recordation of the Final Map and issuance of the appropriate Encroachment, Site, Grading and/or Building Permits.
- E. If more than one unit is to be recorded on the area of the Tentative Map, master plans for the water mains, sanitary sewers, and storm sewers must be approved prior to the submittal of an improvement plan. The master plans are subject to review with any requested time extension of approval of the Tentative Map.
- F. The developer shall comply with all the mitigation measures listed in the approved Mitigated Negative Declaration prepared for this project. The Community Development Director shall interpret the mitigation measures and furnish the developer with specific improvements to be installed.
- G. Prior to issuance of the first building permit, the access to building sites shall be graded and improved to at least an all-weather surface condition, and operating fire hydrants shall be in place.
- H. Prior to issuance of the first certificate of occupancy, the public improvements including streets, sewers, storm drains, street lights, and traffic signs required for access to the sites of that phase of the project shall be completed. All public improvements shall be completed and accepted by the City prior to issuance of certificate of occupancy on final dwelling unit in the project.
- I. Prior to acceptance of improvements, offers of dedication, and release of bonds and deposits by the City, the City's record copies of the grading, site, and improvement plans shall be updated to show "As Built" conditions of the project. Said plans shall be prepared by the responsible Civil Engineer of work and shall reflect all changes made during the course of project construction. Grading and improvement plans shall be 24" x 36" in size. The as built plans and final map shall be provided in 4 mil photo mylars and in the form of electronic files compatible with AutoCAD.
- J. All on-site improvements not covered by the building permit including sidewalks, driveways, paving, sewers, drainage, curbs and gutters must be constructed in accordance with approved plans and/or standards and a Site Development Permit approved by the City Engineer.
- K. Building permits for retaining walls shall be obtained as follows:
  - 1. For major walls to be constructed during the mass-grading phase,

obtain permit prior to issuance of the Grading Permit.

2. For all other walls, obtain permit prior to issuance of Permits for structures on the respective lot.
- L. The minimum width of the Subdivision's entry access road on Muir Station shall be 36 feet unless otherwise approved by the City Engineer.
- N. Any existing water wells on the property shall be filled and sealed off or otherwise disposed of as directed by the City Engineer.
- O. Proposed tot lot design and equipment shall be submitted for review and approval.
- P. All required offsite easements that is necessary to complete the improvement of this project shall be obtained by the developer, at his own sole expense, and submitted to the City prior to approval of the Final Map.
- Q. Where existing onsite utility easements and facilities are to be removed, located or abandoned, the developer shall be responsible for securing all necessary approvals from the owner(s) of the easements and facilities prior to approval of the Final Map.
- R. Approval by the applicant's Soils Engineer, the City's Soils Consultant, the Fire District, Sewage District, water agency, and State Department of Fish & Game of all improvements and buildings is required prior to City approval of the grading and improvement plans, and the issuance of any permits.
- S. Final Map and/or CC & R's clearly showing lot numbers and property lines shall be submitted with building permit applications. Final Map shall be 18" x 26" in size.
- T. There shall be no parking of construction vehicles or equipment on the surrounding residential streets, including all workers vehicles.

XVI. Validity of Permit and Approval

- A. The tentative map, and Planned Unit Development approvals integral to the map, shall expire on July 24, 2015(24 months from City Council approval.) unless:
  1. The final map, the Improvement plans and all required documents are filed with City Engineer prior to the expiration date;
  2. Or if an application for extension with all required fees are received prior to the expiration date as state in item B below.

- B. Extension of the tentative map approval: Extension(s) shall be in accordance with the City's Municipal Code and Subdivision Map Act requirements. Tentative map extension can be considered upon receiving an application with required fee prior to the expiration date of the approved Tentative Map. If the tentative map is expired a new application is required. A public hearing will be required for all extension applications. Extensions are not automatically approved: Changes in conditions, City policies, surrounding neighborhood, and other factors permitted to be considered under the law, may require or permit denial.
- C. Nothing contained herein shall be construed to permit any violation of relevant ordinances and regulations of the City of Martinez, or other public agency having jurisdiction.
- D. The permittee, Discovery Homes, shall defend, indemnify and hold harmless the City and its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys or employees to attack, set aside, void, or annul the City Council's decision to recommend approval PUD 09-01, Major Subdivision 9263, and any environmental document approved in connection therewith. This indemnification shall include damages or fees awarded against the City, if any, cost of suit, attorneys' fees, and other costs and expenses incurred in connection with such action whether incurred by Discovery Homes, the City, and/or the parties initiating or bringing such action.
- E. Discovery Homes shall defend, indemnify and hold harmless the City, its agents, officers, employees and attorneys for all costs incurred in additional investigation of, or study of, or for supplementing, preparing, redrafting, revising, or amending any document (such as the Negative Declaration), if made necessary by said legal action and if Discovery Homes desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.
- F. In the event that a claim, action or proceeding described in Subsection E, above, is brought, the City shall promptly notify Discovery Homes of the existence of the claim, action or proceeding, and the City will cooperate fully in the defense of such claim, action or proceeding. Nothing herein shall prohibit the City from participating in the defense of any claim, action or proceeding. In the event that Discovery Homes is required to defend the City in connection with any said claim, action, or proceeding, the City shall retain the right to (i) approve the counsel to so defend the City, (ii) approve all significant decisions concerning the manner in which the defense is conducted, and (iii) approve any and all settlements, which approval shall not be unreasonably withheld. The City shall also have the right not to participate in said defense, except that the City agrees to cooperate with

Discovery Homes in the defense of said claim, action or proceeding. If the City chooses to have counsel of its own to defend any claim, action or proceeding where Discovery Homes has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City, except that the fees and expenses of the City Attorney shall be paid by the applicant.

- G. Discovery Homes shall indemnify the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.
  
- H. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirement, 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. You are hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If you fail to file a protest within this 90-day period complying with all of the requirements of Section 66020, you will be legally barred from later challenging such exactions.