

Attachment 3 to Ordinance No. XX-2015

EXHIBIT "G"

Findings and Conditions of Approval for PLN2014-00338

Planned District P-2014-338, Vesting Tentative Map Tract Map No. 8205,
Private Street and Preliminary Grading Plan
Niles Mixed-Use Development
37899 Niles Boulevard
APN 507-0170-001-08

On March 3, 2015, the City Council added conditions which are included herein and shown as underlined text.

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the City Council dated March 3, 2015, incorporated hereby.

General Plan Amendment Finding:

1. The proposed General Plan Amendment is consistent with the general plan and furthers the public interest, convenience, and general welfare of the city as described in the staff report.

Planned District Findings:

2. **The P district is consistent with the city's general plan and any applicable community or specific plan** in that the proposed General Plan Amendment will implement the General Plan's policy of supporting mixed-use development of the project site (formerly Henkel Property). The General Plan Amendment will change the land use designation from Service Industrial (Special Study Area) to Town Center Commercial and Medium Density Residential. The residential density will be approximately 19.6 units per acre, which is at the lower end of the density range, and through appropriate site and building design, the proposed mixed-use project will be compatible with the mix of adjacent land uses. The project will be consistent with the applicable goals and policies of the Land Use, Housing and Community Plan Elements and the 2015-2023 Housing Element of the General Plan as described in the staff report.
3. **The precise plan and supplementary documents incorporate and conform to the required standards of Sections 18.110.020** in that the project would substantially adhere to the standards of the Community Commercial District for mixed-use development and R-3, Multifamily Residence. The Precise Plan and supplementary documents incorporate the provisions for permitted uses and future development within the Planned District.
4. **The uses proposed will not be detrimental to present and potential surrounding uses** in that the proposed project has been designed to address the unique characteristics of this site and its relation to the surrounding residential neighborhood, adjacent streets and uses. The Planned District application is appropriate for the proposed project because its purpose is to provide a means to effectuate desirable development that includes variations in siting, land use mix, and dwelling types. The proposed project would be consistent with the Niles HOD, and its

completion would result in a pedestrian-oriented mixed-use district with an attractive and distinct identity, along with amenities such a privately-owned community room for future residents and a linear park that connects to the Alameda Creek Trail for the public's use.

5. **The project provides suitable and adequate connections and capacity for both circulation and infrastructure to surrounding properties** in that the number of anticipated trips generated by the project would not result in a significant environmental impact as determined by the General Plan and City policies and as documented in the Mitigated Negative Declaration prepared for the proposed project. The project would include construction of a new public street that would connect Niles Boulevard to Chase Court to complete the roadway network at the eastern region of the Niles District in conformance with City development standards and policies.
6. **Existing or proposed utility services are adequate for the development** in that such facilities exist and no additional off-site service mains would be needed to accommodate the project.
7. **Any exception or modification from standard ordinance requirements will encourage a desirable living environment and is warranted by the design and amenities incorporated in the precise plan or provided to the community at large** in that that the applicant has requested a rezoning to Preliminary and Precise Planned District that would foster the objectives of the project and include the development of a pedestrian-oriented mixed-use development. The proposed height, massing and siting of the buildings would be compatible with the existing character of the Niles HOD, and the proposed reduction of commercial area would not be detrimental to maintaining an active commercial presence on Niles Boulevard.
8. **The project substantially conforms to the applicable design guidelines** of the Niles HOD in that the project will emphasize several characteristics to maintain compatibility with the existing character of the Niles HOD, including creating a strong sense of place and encouraging diversity in architectural styling. The *Niles Historical Overlay District Design Guidelines* note that a variety of building designs are essential to the character of Niles, which is apparent in the diversity of existing building architecture surrounding the project site. The Guidelines provide an overall vision that new buildings and landscapes reinforce the gateways and the strong sense of place found in Niles, retain strong connections to the hills and creek, encourage restaurants, outdoor dining, a central town square, and promote public spaces and parking areas that are safe, clean and easily accessible. The proposed project retains and emphasizes these characteristics through thoughtful site and architectural design.

Niles HOD Finding

9. The project is compatible with the Niles HOD in terms of siting, massing, scale, size, building materials, texture and color because the proposed new buildings are functionally and aesthetically compatible with the building styles, materials, colors and significant features that are compatible with the Niles HOD, its history and surrounding area. The project proposes new buildings and landscape that reinforce a prominent Niles gateway and furthers the strong sense of place found in Niles. The proposed design maintains strong connections to the hills and creek, encourages restaurants, outdoor dining, and promotes public spaces and parking areas that are safe, clean and easily accessible.

Mixed-Use Ordinance Findings

10. **Community integration:** *The development integrates into the existing community and creates an appropriate internal and external human scale, providing for pedestrian comfort and amenities* through the implementation of a precise plan that incorporates plazas and open space areas connected by a wider sidewalk on Niles Boulevard, an on-site pedestrian walkway system, and a new linear park to the Alameda Creek Trail, which would all provide pedestrian open space and amenities for the future residents of the site and general public.
11. **Building and site layout:** *The building and site layout is adaptable and would permit future changes in land use over time. Each use is designed and positioned to achieve its maximum potential so that they perform as a whole and benefit from one another. An efficiently functioning infrastructure (i.e., parking, services, utilities, and effective mechanical, electrical, and structural systems) is incorporated in the design of the development capable of servicing each component of the development's differing demands.* Several refinements were made by the applicant and vetted by staff during the review process to reach the present design that maintains the quality and integrity envisioned by the General Plan for the project site and its future users and tenants.
12. **Land uses:** *The land uses provided by the development are compatible with one another and with the adjacent neighborhood. The commercial uses are those which would serve the residents of the development and the neighborhood. In addition, the project includes amenities and attractions that cannot be provided in single-purpose projects, such as interesting people-oriented spaces and a public realm that can capitalize on the synergy of diverse uses.* The project design would implement this goal by creating a mixed-use development that provides retail uses fronting Niles Boulevard, and pedestrian-friendly public spaces for both project residents and the public.
13. **Pedestrian-orientation:** *The development is able to provide a safe and well-organized pedestrian access within the site and to relevant adjacent areas. All portions of the development are accessible by a direct, convenient, attractive, and comfortable system of pedestrian facilities.* The proposed project would contain a pedestrian walkway system that provides appropriate and attractive connections throughout the site as well as to the proposed linear park and new sidewalk on Niles Boulevard. A majority of these pedestrian connections would be enhanced with special paving, making them readily identifiable and convenient to reach.
14. **Open and public spaces:** *The development provides usable public and private open space, enhances the vitality of existing commercial activity, and recognizes and responds appropriately to adjacent existing or planned public spaces (e.g., parks, civic buildings, transit stops, sidewalks, plazas, and similar spaces).* As described in the staff report, the applicant proposes ample open spaces and plaza areas, including private and public open spaces that the new residents of this development can enjoy. In addition, a community room would be provided for future residents.
15. **Parking:** *The development minimizes the amount of land developed as surface parking*

including implementing measures which reduce the overall the amount of parking needed for the development, such as but not limited to, joint-use parking and access to public transit. Parking areas have been located where they can be conveniently and safely accessed and without difficulty from the street and within the development. On-site parking areas are designed in such a way that it does not dominate street frontage nor interfere with pedestrian areas. In addition, on-street parking is located in proximity to the retail component of the development. The project would provide adequate parking to meet the City's parking requirement. Allowing for the use of on-street parking that would be created by the development would implement this goal.

Vesting Tentative Tract Map No. 8205 Findings:

Based on the analysis of the project contained in the accompanying staff report, the proposed Vesting Tentative Tract Map is in conformance with the General Plan, FMC Section 17.20.200, and the Subdivision Map Act, and none of the following findings can be made:

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

Preliminary Grading Plan Findings:

22. ***The proposed grading plan will not have an appearance, due to the grading, excavation or fill, substantially and negatively different from the existing natural appearance*** in that grading has been designed to create drainage patterns which respect the existing topography adjacent to the project site and positive drainage into the on-site stormwater treatment facilities and off-site public storm drain system.
23. ***The proposed project will not result in geologic or topographic instability on or near the site*** in that all graded areas would be engineered with fill material compacted in accordance with the specifications of the Grading, Erosion and Sedimentation Chapter of the Fremont Municipal Code and Project Geotechnical Study to provide a safe, stable environment for the proposed use of the land for residential development and for the adjacent properties abutting the project site.
24. ***The proposed project will not endanger public sewers, storm drains, watercourses, streets,***

street improvements or other property; will not interfere with existing drainage courses; and will not result in debris being deposited in any public right-of-way in that: (a) no streets or sewer, water, or storm drain lines would be located within the building area of land to be developed; (b) site grading has been designed so as not to augment runoff onto any adjacent properties; (c) the applicant would be required to implement erosion control measures during grading and construction activities to prevent sediments and/or debris from entering the public storm drain system; and (d) the applicant would be required to repair and/or replace any public improvements that are damaged during construction of the project.

25. ***Conformity, where applicable, to special concerns relating to the adopted seismic safety element and concerns shown on maps issued by the U.S. Geological Survey and the California Division of Mines and Geology will be achieved*** in that all grading, foundations and structures would be engineered and designed in conformance with applicable geotechnical and soil stability standards of the California Building Code.
26. ***The proposed project will not unacceptably affect the health, safety or welfare of adjacent residents or landowners, nor the citizens of Fremont*** in that the final topography has been designed to be geologically stable and suitable for mixed-use development, capture all runoff from the site and channel it to the storm drain system, and prevent erosion and sediments from entering the street and storm drain system.

Private Street Findings:

27. The most logical development of the land requires private street access for the proposed attached townhouses. A public street would normally be required to provide access to the project. However, in this case, allowing the private vehicle access way (PVAW) is the most logical approach in that the land being subdivided would facilitate development of a multifamily project where private streets are typically utilized.

Tree Removal Finding:

28. The proposed tree removal would be consistent with the City's Tree Preservation Ordinance because removal is necessary to enable reasonable and conforming use of the property and to achieve a superior project, and the trees cannot be preserved by a reasonably required project redesign, in that trees would otherwise substantially impact the placement of the proposed residential units and street improvements. Removal of 52 trees would be required to implement environmental remediation approved by RWQCB and to accommodate project development. A total of 47 trees are protected under the Tree Preservation Ordinance and would, therefore, require mitigation. The project complies with the mitigation requirements of FMC Section 18.215.080 by upsizing eight specimen trees to 48-inch box or larger and paying an in lieu fee to comply with the City's required mitigation for the loss of the remaining 39 protected trees. This would be in addition to the proposed 13 Canary Island palm trees (15-foot to 18-foot brown trunk height) at the location of the gateway green. The removal of the trees would not adversely affect the appearance of the subject property as new trees and landscaping would be installed.

Parking Reduction Finding:

29. Due to the availability of on-street parking, the guest parking requirement for the project will be

lower than a development where adequate on-street parking is not provided. The proposed project would create 85 parking spaces along the Niles Boulevard frontage and proposed Street A, as well as four guest spaces on-site. The proposed parking program would adequately provide for residential guest parking due to the availability of on-street parking that would be created by the project warranting a reduction for residential “on-site” guest parking spaces.

CONDITIONS OF APPROVAL:

- A-1. **Permitted Uses and Provisions for Future Development.** The permitted uses for Planned District P-2014-338 and provisions for future development shall comply with the requirements contained in Exhibit “F.”
- A-2. **Exhibits.** The final construction plans that are submitted for building permits shall substantially conform to Exhibits “D” and “E,” Planned District Plans and Vesting Tentative Tract Map No. 8205, respectively, as well as all other accompanying approvals and conditions contained herein. All construction documentation shall be coordinated for consistency, including but not limited to, architectural, structural, mechanical, electrical, plumbing, landscape and irrigation, grading, utility and street improvement plans.
- A-3. **Minor Modifications to Approved Planned District Plans.** Minor modifications may be made to the Planned District of the project plans subject to review and approval by the Planning Manager and/or City Engineer, if such modifications are in keeping with the intent of the original approval. However, the Planning Manager may refer any modifications to the Planning Commission and/or City Council if he/she feels the request is of such a nature that it warrants consideration by the Planning Commission and/or the City Council.
- A-4. **Minor Modifications to Approved Vesting Tentative Tract Map No. 8205, Private Street and Preliminary Grading Plans.** Minor modifications may be made to the tentative tract map, private street, and preliminary grading plans of the project plans subject to review and approval by the City Engineer if such modifications are in keeping with the intent of the original approval. However, the City Engineer may refer any modifications to the Planning Commission and/or City Council if he/she feels the request is of such a nature that it warrants consideration by the Planning Commission and/or the City Council.
- A-5. **Building Permit Review.** Prior to issuance of a grading or building permit, the applicant shall submit plans to the Community Development and Public Works Departments for building permit and improvement plan review and approval, respectively, to ensure conformance with the conditions herein, as well as with all relevant codes, policies, and other requirements of the Fremont Municipal Code, State and federal laws.
- A-6. **Development Impact Fees.** The project shall be subject to Citywide Development Impact Fees. These fees include fees for park facilities, park dedication in-lieu, fire protection services/facilities, capital facilities, and traffic facilities. Impact fee credits shall be provided for previous buildings located on the site. In addition, the applicant/developer may elect to defer payment of development impact fees in accordance with the FMC.

- A-7. **Affordable Housing Ordinance (AHO).** The project shall comply with all applicable provisions of the Affordable Housing Ordinance. The applicant has elected to pay the affordable housing in-lieu fee to comply with the AHO. The applicant may elect to defer payment of the affordable housing in-lieu fee in accordance with the AHO. The final fee amount would be calculated based on the residential square footages for each building with the fee in effect at the time of issuance of building permits. The applicant may also elect to seek approval of a different affordable housing alternative if such proposal is requested and approved prior to issuance of the first building permit for a home within a final map, such as providing onsite BMR units.
- A-8. **State and Regional Agency Requirements.** The applicant shall comply with the provisions of the permits required from any state or regional agencies, including, but not limited to, the Regional Water Quality Control Board (RWQCB) for environmental site remediation), Bay Area Air Quality Management District (BAAQMD), Alameda County Water District (ACWD), Alameda County Flood Control & Water Conservation District (ACFC), Union Sanitary District (USD), and the Alameda County Department of Environmental Health.
- A-9. **Federal State and Local Laws.** The applicant shall comply with all applicable federal, state and local laws.
- A-10. **Code Requirements.** The applicant shall meet all requirements of the currently adopted edition of the California Building, Fire and City of Fremont Municipal Codes in effect at the time of building permit application.
- A-11. **Development Identity and Building Signs.** Signs are not a part of this approval. All signage conceptually shown or located on the plans are subject to review and approval. The applicant shall apply to the Community Development Department for a Master Sign Program that shall be subject to review in accordance with the Fremont Municipal Code. To create interest and compatibility with the approved architecture of the development, the Master Sign Program shall include high quality materials. All monument gateway/entry signs shall be included in the proposed Master Sign Program. Standard channel letter type signs should be avoided, and cabinet type signs shall be prohibited.
- A-12. **Development Addressing.** An application shall be submitted to the City's GIS Division for the addressing of the project. The addressing application shall be submitted concurrently with subsequent submittal of the Tentative Tract Map application. Addressing shall be approved prior to building permit issuance.
- A-13. **Green Building.** The development shall comply with the current CalGreen Mandatory requirements as adopted by the City for commercial mixed-use and residential development. The applicant shall also work with Community Development staff to consider incorporating additional green building technology and practices within the design of the project, such as pre-wiring for photo-voltaic roof-mounted panels at all carports and providing EV charging stations within the parking areas.
- A-14. **General Vacation of Niles Boulevard Right-of-Way (ROW) Project Frontage, Conversion To Linear Park.** The applicant/developer shall seek approval of a General Vacation to purchase

at fair market-value approximately 0.73-acre of the Niles Boulevard ROW from the City of Fremont to facilitate its conversion into a linear park. The linear park shall be owned in common and maintained by the future property owner's association. The linear park shall be encumbered by an easement for the benefit of the public for its use and access. Such easement shall retain access from the public sidewalk on Niles Boulevard to the Alameda Creek Trail. The easement shall be recorded on the final map and a separate recording instrument, if deemed appropriate and necessary by the City Attorney, shall be recorded on property title to implement this condition.

- A-15. **City Indemnification.** The subdivider shall defend, indemnify, and hold harmless the City or any of its boards, commissions, agents, officers, and employees from any claim, action or proceeding against the City, its boards, commissions, agents, officers, or employees to attack, set aside, void, or annul, the approval of the project when such claim or action is brought within the time period provided for in Section 66499.37. The City shall promptly notify the subdivider of any such claim, action or proceeding and cooperate fully in the defense. Nothing contained in this condition shall prohibit the City from participating in a defense of any claim, action, or proceeding if the City bears its own attorney's fees and costs, and the City defends the action in good faith.

Special Project Conditions

- B-1. **Environmental Mitigation.** The mitigation measures adopted in the *Mitigation Monitoring and Reporting Program (MMRP), Niles Mixed-Use Project*, Exhibit "A" shall be implemented at pre-, during, and post-construction intervals as specified in the MMRP. Mitigation measures that must be implemented during- and post-construction intervals shall be noted on all construction drawings in which a permit is issued, including a preliminary grading permit.
- B-2. **ACWD Permits and Coordination.** To ensure that groundwater is protected and stormwater management system is designed to minimize pollutants, the applicant and/or developer shall coordinate and seek approval of all applicable permits required by the Alameda County Water District (ACWD) prior to commencement of any grading or development of the project. The applicant and/or developer shall closely coordinate and share its environmental remediation plan and any amendments thereto approved by the Regional Water Quality Control Board (which is the current lead regulatory agency for the remediation), ensure that the public water system extension and all appurtenances will be constructed in 'clean corridors', obtain necessary permits for drilling and well destruction, and coordinate drainage design and stormwater pollution prevention planning and implementation with ACWD. The applicant and/or developer shall also coordinate with ACWD on access and improvements along the south end of Niles Boulevard and/or planned linear park area.
- B-3. **Operations and Maintenance (O&M) Agreement.** An O&M Agreement for Stormwater Treatment shall be submitted to and accepted by the Community Services Department, Environmental Services Division during the Tentative Tract Map review process.
- B-4. **Formation of Property Owner's Association (POA) and Covenants, Conditions and Restrictions (CC&Rs).** A POA shall be formed and CC&Rs, including these imposed conditions, shall be submitted to the Community Development Department (or to the Public

Works Department during the Tentative Tract Map review process) for review and approval. The following conditions, which are applicable to all residential and commercial tenants and property owners, must be satisfied on on-going basis and shall be included in the CC&Rs created for the development:

- A POA shall be formed and shall covenant and be responsible for the maintenance of all commonly owned facilities, including the parking/circulation areas, which are not maintained by the public utility agency.
- The POA shall be required to contract with a professional management firm to handle maintenance operations and waste/recycling collection procedures. Documentation of such contract shall be submitted to the City. All commonly owned facilities shall be well-maintained in a good condition.
- Residential/commercial tenants and property owners shall agree to and comply with the parking provisions listed below. All new residential/commercial tenants at the time of lease shall receive a separate notice on bright color paper of this condition which states:
 - A. The parking of boats, campers, trailers on the site and within the garages or surface parking areas is prohibited.
 - B. In no event shall household/retail/office storage preclude the parking of vehicles in garages or surface parking areas.
 - C. Garages shall be used by tenants of the residential units for parking their cars shall not be used for storage, workshops, or other uses which would interfere with the ability to park in such spaces the number of cars for which the garages were designed to accommodate.
 - E. The POA shall inspect parking spaces and determine if a tenant is violating requirements contained in this condition.
 - F. The City has the right, but no duty, to enforce the CC&Rs, including the right to inspect the parking areas for violations of the above.
- The POA shall be responsible for the maintenance of all common areas, including the onsite stormwater treatment facility and its associated appurtenances. Landscaping shall be designed with an efficient irrigation system to reduce runoff and promote surface filtration and to minimize the use of fertilizers, herbicides, and pesticides which can contribute to urban runoff pollution.
- The POA shall be periodically provide educational materials on stormwater pollution prevention (as furnished by the City) to all residential occupants and commercial tenants.
- The POA shall be responsible for litter control and sweeping of all paved surfaces of the private street and within the development. All private storm drain systems shall be cleaned immediately before the commencement of the rainy season (October 15).
- All roof-mounted and other mechanical equipment shall be screened from view from adjacent public right-of-ways.

- In accordance with the approved solid waste/recycling plan, garbage, trash or recycling containers shall be collected and concealed in an area dedicated within each structure and established locations on the site, except that features approved by the City and are acceptable to the then current trash/recycling hauler may be placed at approved staging areas on the designated garbage pick-up day.
- A provision shall be included in the CC&Rs stating that the payment of the utility (e.g., water, energy) bills for all common facilities, including its maintenance, are the obligations of the POA.
- No storage of household and/or office goods, including bicycles, shall be permitted within balconies and patio areas.
- A provision shall be included in the CC&Rs stating that at the time of purchase prospective buyers are informed that there may be reoccurring special events and/or festivals in the Niles District which may result in limited access, temporary road closures and inconveniences.
- Rights of City. The CC&Rs shall include the following provision: Notwithstanding anything to the contrary in this Declaration, no amendment which deals with any of the following matters shall be effective without the prior written consent of the Director of the City's Community Development Department: (a) Any amendment, the design or purpose of which is to eliminate an obligation of the POA to maintain, manage and repair the common area or improvements thereon or to lower the standards for maintaining and repairing such common area or improvements; (b) Any amendment with regard to the fundamental purpose for which the project was created (for example, a change of the residential portion of the project from a residential use to a different use); and (c) Any amendment to sections (list applicable sections), each of which were required as a condition of approval for the project.
- Enforcement by City. The CC&Rs shall include the following provision: Notwithstanding any provision of this Declaration to the contrary, and with respect to matters within the regulatory powers of the City, the City has the right, but not any duty, to enforce the terms of this Declaration in the City's absolute discretion.
- Planned District Standards. A provision shall be included in the CC&Rs that development of the project shall be in compliance with the approved Planned District standards as approved under Planned District P-2014-338.

Project Design Conditions (Site, Building and Landscape)

Planning

Site Design

- B-1. The final selection of amenities proposed for the development (e.g., benches/seats, barbeque, shade structures, enhanced color concrete paving) shall consist of high quality materials. The

applicant's design team shall continue to work with staff to incorporate the amenities proposed for the development. The plaza areas shall consist of enhanced paving, such as interlocking pavers and/or color concrete. Color concrete surfaces shall be integral to the material applied (i.e., color not trowled in on surface). All exterior amenities shall be designed and built to meet the rigors of an urban environment.

- B-2. The placement of trash receptacles, benches, bike racks, light bollards and other site furnishings shall be subject to further review through the building permit review process by the Community Development Department to ensure the placement and amount of site furnishings is adequate.
- B-3. All utility and fire appurtenances, meters and risers shall be concealed or screened from view by materials of a design and composition compatible with the architectural treatment of the project. Proposed utility closets shall be sufficient in size to accommodate the necessary utilities.
- B-4. The applicant shall work with PG&E on the locations of all underground transformer vaults. Transformer vaults shall be located in inconspicuous areas on the project site and not conflict with the proposed landscape design.
- B-5. Details of the good neighbor fence shall be submitted to Community Development Department for review and approval and terms of design, height and durability. The good neighbor fence shall be constructed of masonry (e.g., pre-cast concrete wall) and no greater than eight feet in height.
- B-6. All lighting, including security lighting, shall be shielded to minimize glare upon neighboring property and public right-of-way. Prior to issuance of a building permit, a photometric lighting plan shall be submitted for review and approval by the Community Development Department. Fixtures should be of a type or adequately shielded so as to prevent glare from normal viewing angles. Said plans shall include specifications of the proposed lighting fixtures and demonstrate the adequate shielding of lighting fixtures to minimize glare or light spillage offsite.
- B-7. Building Height Reduction (Three-stories to Two-Stories). The building heights of the two rows of units closest to the adjacent existing single-family homes on 3rd Street shall be reduced from 35 feet to no greater than 28 feet. *A total of 12 units shall be reduced from three-stories to two-stories and no greater than 28 feet in height, which shall include the two end units adjacent to "New Street" within each of Lots 6, 12, 13, 14, 15, and 16, as identified in Vesting Tentative Tract Map No. 8205 and the diagram attached herewith.*
- B-8. Limited Application of Metal Paneling. The applicant shall work with staff to reduce the application of the metal paneling proposed for the townhomes.
- B-9. Eliminate Upper Floor Windows Facing Adjoining Neighborhood. Upper windows located at the southwesterly end of the townhomes rows directly facing the adjacent single-family neighborhood shall be eliminated, with the exception of clerestory or small obscured glass windows for the units closest to and facing the adjacent single-family neighborhood.

Landscape Design

- B-10. Landscape construction documents, including a photometric plan, shall be submitted with the subdivision improvement plans for review and approval, indicating full details regarding: (1) paving materials and textures of walkways and paved pedestrian areas; (2) lighting of walkways and pedestrian areas with low intensity non-glare type fixtures; (3) design and detail for landscape of all common areas and pedestrian paseos; and (4) landscaping of open space and the linear park. The landscape design shall meet all nine of the required Bay-Friendly Basic Practices. As part of the landscape plans the applicant shall submit:
- a. A Layout Plan to illustrate the design of all hardscape elements including walls, fences, gates, landscape structural elements, decorative landscape features, light locations, at grade or above grade utility boxes and vaults, walkways and decorative pavement.
 - b. A Planting Plan utilizing a plant palette heavy in water-conserving plants. Of the total quantity of plants, a minimum 75 percent shall be California native, Mediterranean, or climate-adapted plants, per Bay Friendly Basic Practice. All shrubs, groundcover, and vines are minimum 1 gallon size, with a minimum 40 percent of all shrubs and groundcover 5 gallon or larger.
 - c. Irrigation Plan utilizing low flow, durable, approved irrigation equipment that complies with the Water Efficient Landscape Ordinance (WELO) and Bay-Friendly requirements.
 - d. Construction details of raised planters, bioretention areas or other stormwater treatment landscape areas, walkways, paths, benches, walls, fences, planting details, irrigation details, and other architectural or landscape structural features as appropriate to the project.
- B-11. Plans shall be coordinated between all disciplines to utilize matching project plan orientation and layout, north orientation, and scales to the greatest extent possible.
- B-12. The design team shall coordinate the placement of utilities to:
- a) Locate and screen above-ground utilities (backflow preventers, irrigation controllers, gas/electrical meters, cable boxes, transformers, etc.) from view;
 - b) Maximize the space available for trees where possible.
- B-13. All above-ground utilities, including irrigation backflow preventers, irrigation controllers, fire service backflow preventers, cable or other service boxes, etc. shall be screened with a continuous evergreen (non-seasonal) hedge, minimum 5-gallon size, and 3-foot minimum height. Fire backflow preventers shall be painted black or olive green.
- B-14. Utilities lines and boxes shall be coordinated and located so as to not prohibit the placement of trees as shown on the Entitlement Plans. Conflicting proposed utility lines shall be relocated or placed under or directly adjacent to the driveway area if necessary.
- B-15. All street trees shall be a minimum 24-inch box size with the final tree selection coordinated and approved by the City Landscape Architect. City of Fremont Standard Detail for street tree planting (LSD-1) shall be included in the plan set.
- B-16. The health and well-being of off-site trees and trees which straddle property lines shall not be

affected by construction activities. All off-site or neighboring trees in danger of damage from construction activities shall be protected per the City of Fremont standard details for Tree Protection, LSD-9 and (where approved) LSD-10. The developer shall be responsible for any damage to neighboring trees, including decline.

- B-17. Stationing of street trees, irrigation water meters, and irrigation sleeves shall be included on the Plan and Profile sheets.
- B-18. All protected trees approved for removal shall be mitigated on site pursuant to the Tree Preservation Ordinance. Mitigation is calculated after the property's baseline tree requirement has been established. Eight specimen trees shall be 48-inch box or larger. Trees which cannot be mitigated on site may be mitigated with an in-lieu fee, payable at the time of Demolition Permit or Grading Permit issuance. The amount of the fee shall equal the per-unit cost to the City for a 24-inch box tree as established by the City's last award of a contract following a competitive bid for such work. The current per-unit cost is \$387 per tree. The tree exhibit on Sheet TM9, Exhibit "E," show 47 protected trees to be removed. To mitigate for the removal of the 47 trees, eight 48-inch box trees shall be install and the applicant/developer shall pay the mitigation fee for the remaining 39 trees (i.e., $\$387 \times 39 = \$15,093$).
- B-19. All tree planting areas shall be free of all utility structures and other built features, consistent with the spacing requirements defined in Landscape Standard Details (LSDs) 5 and 6.
- B-20. The location of all proposed trees shall be coordinated with existing trees to complement rather than compete with the existing trees.
- B-21. All irrigation valve boxes, fire hydrants, or any other play obstructions shall be excluded from lawn areas.
- B-22. All plants and trees shall be minimally sized as follows: trees to be 15-gallon or larger, except that eight specimen trees must be 48-inch box and street trees which must be 24-inch box, and 40 percent of all shrubs must be 5-gallon or larger, all other shrubs and groundcover must be 1-gallon or larger.
- B-23. For trees located in bioretention areas (if any), a detail shall be included illustrating the tree root ball planted on a native or recompacted soil pedestal. The detail shall show the finish grade of the root ball 1-inch above the surrounding finish grade to avoid water logging and/or planting on rock.
- B-24. A City-approved arborist may be necessary to assist the design team and City staff during the preparation of construction documents and during construction to preserve the existing trees if any are to remain and neighboring trees if any. Any arboricultural expenses incurred shall be the responsibility of the developer.
- B-25. Protective Fence/Landscape Barrier. A protective barrier, such as a low open fence, hedge, or other landscape treatment, shall be installed along the north side of the proposed linear park to provide a safety buffer from the railroad corridor.

- B-26. Historical Importance Signage. Signage on-site shall be installed on-site at appropriate location approved by the Community Development Department to describe the site's historical importance in the development of the local community.
- B-27. Early Construction of Good Neighbor Masonry Wall. A good neighbor pre-cast masonry wall along the project boundary shared with the existing single-family neighborhood to the southwest shall be installed and completed at the start of the development in the first phase.
- B-28. Optimize Guest Parking. The applicant shall work with the Community Development Department on the possibility of dispersing guest parking spaces within the internal street system for the townhomes.
- B-29. The applicant shall work with Community Development Department to reduce the overall project density and to modify and refine the site plan to provide additional on-site parking.
- B-30. The applicant shall work with the Public Works Department to include a northbound left-turn pocket lane on Niles Boulevard at the new intersection of Street A and Niles Boulevard if the Public Works Department determines that adequate right-of-way will accommodate a left-turn pocket lane (companion Condition of H17 of VTTM No. 8205).

Building Design

- B-31. A final color and material palette for the project (including all siding, trim, roofing, and entry doors) shall be submitted to the City's Community Development Department as part of the building permit application submittal for review and approval by the Planning Manager or his/her designee.
- B-32. Prior to issuance of a building permit, the applicant shall submit a cross-section drawing, showing how all rooftop equipment is to be screened from view (including dimensions, materials, colors, etc.) to the satisfaction of the Planning Manager or his/her designee. Roof-mounted equipment, including but not limited to air conditioners, fans, vents, antennas, and dishes should be set back from the roof edge and placed behind a parapet wall or in an enclosure, so they are not visible to the public. Screening for equipment should be integrated into the building and roof design by the use of compatible materials, colors and forms.
- B-33. The two onsite parking spaces within the motorcourt of the CRAFTS building designated for the one-bedroom units shall be covered. The design of cover shall be consistent with the architectural treatment of the main buildings, subject to review and approval by Community Development Department.

Engineering

- C-1. A minimum six-foot wide public service easement shall be dedicated along the Niles Boulevard

frontage of the project site. Project entry and monument signs and walls shall not be located within the public service easement.

- C-2. Prior to issuance of a permit for land disturbance greater than one acre, the developer shall file a Notice of Intent with the State of California Water Resources Control Board and receive the State assigned WDID number. The developer shall provide a copy of the Storm Water Pollution Prevention Plan (SWPPP) for City review and maintain a copy on the job site.
- C-3. The applicant shall submit a detailed geotechnical report. The report shall include recommendations regarding pavement sections. The project plans shall be designed in accordance with the required geotechnical report. Grading shall be supervised by an engineer registered in the State of California to do such work.
- C-4. The Project Geotechnical Engineer shall be retained to review and approve the final grading plans and specifications prior to permit issuance.
- C-5. The project storm drain system shall conform to City standards and shall be subject to review and approval of the City Engineer and the Alameda County Flood Control and Water Conservation District. Drainage calculations shall be submitted with the grading and drainage plans for the project.
- C-6. Proposed curb elevations for the street system shall not be less than 1.25 feet above the hydraulic grade line (design water surface) and at no point should the curb grade be below the energy grade line. On-site grades are to be a minimum of 0.75 feet above the hydraulic grade line.
- C-7. All new utility service connections, including electrical and communications, shall be installed underground. Electrical transformers shall be installed in underground vaults within an appropriate utility easement or public service easement.
- C-8. 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.
- C-9. The developer shall obtain required permits from Union Pacific Rail Road (UPRR) and Alameda County Flood Control (ACFC) for work in their respective right-of-.

Fire Prevention

- D-1. Prior to issuance of building or grading permits for site development (whichever comes first), remediation work to remove known contaminants or Recognized Environmental Conditions (RECs) at the subject property shall be implemented to the satisfaction of the Regional Water Quality Control Board (RWQCB) and the City of Fremont Community Development

Department. Completion of the remediation work and procurement of an appropriate closure document or certification in written form from RWQCB evidencing its determination that the remediation work has been satisfactorily completed and without further conditions or obligations shall be submitted to the City of Fremont Community Development Department.

Environmental Services - Solid Waste

- E-1. Applicant shall provide closure documentation for soil remediation to the Environmental Services Division, including manifest(s) that document final disposition of contaminated soil.
- E-2. Weekly garbage, recycling and organics collection services shall be required for all residential and commercial properties, and are provided exclusively by Republic Services.
- E-3. An 18 feet by 19 feet trash enclosure shall be constructed to contain three 4-cubic yard bins for garbage, recycling and organics for the restaurant, community center and the CRAFT units. Trash enclosure design and construction are described in the *Waste Handling Guidelines* document. Final dimensions of gates shall be review and approved during building permit review.
- E-4. Trash enclosures for food service facilities must comply with requirements from the City of Fremont, the Union Sanitary District and the Alameda County Health Department. The trash enclosure must have a roof, a drain with a connection to the sanitary sewer, a two compartment sump or grease interceptor, and hot running water.
- E-5. The distance between the top edge of the wall and the roof of the trash enclosure is to be enclosed with acceptable fencing. A maximum opening or gap distance of 6 inches for any enclosure opening shall not be exceeded.
- E-6. Townhomes: three carts must be provided in the garages for all units to accommodate organics service in addition to garbage and recycling. A minimum of 27 square feet of storage space is required in the garage for three garbage, recycling and organics carts. The minimum storage area for garbage and recycling carts is in addition to the storage area required by other City departments, required parking or other designated areas. If sufficient garage space is not available, residents must have unrestricted access to the same amount of exterior storage in a common area so that the carts remain hidden from public view.
- E-7. Applicant must ensure there is sufficient room for garbage trucks to turn around or drive through on the drive paths. The maximum safe backup distance is 150 feet unobstructed. Any outstanding safety concerns to be addressed during building permit review.
- E-8. This project will generate debris that must be recycled. All debris must be removed from the site by the City's only approved hauler, Republic Services, using their debris box service. No other entity is authorized to collect or transport material that has been generated or accumulated in Fremont. There is an exception for debris boxes containing only soil, concrete or asphalt. Alternately, the contractor may remove debris from the premises and haul the material to an approved facility, using their own employees, equipment and vehicles, as an incidental part of a

total service offered by that contractor. Contractors who self-haul debris must deliver the material to an approved facility and submit the receipts to the City on a monthly basis.

- E-9. If a company other than Republic Services provides debris box service for hauling certain separated recyclable materials (only soil, asphalt or concrete), each load must not contain more than 10 percent garbage or other non-recyclable material by weight or volume.
- E-10. Alameda County law requires that all plant debris be separated and recycled. Plant and tree debris must be separated from other demolition debris, and chipped for reuse or delivered to an approved facility.
- E-11. A 100 percent of the asphalt and concrete must be reused or recycled, and 50 percent of the remaining debris generated from the project must be reused or recycled.
- E-12. Contaminated or hazardous material is exempt from the recycling requirement. However, applicant must submit copies of the manifest to the Environmental Services Division for all hazardous materials removed.
- E-13. In order to receive final permit approval, applicant must save all receipts from disposal and recycling to turn in at the completion of the project. All disposal and recycling receipts must officially list Fremont as the city of origin to be counted toward the diversion requirement.
- E-14. Within thirty days of completion of the work, and prior to the final inspection, the applicant must file a *Debris Disposal & Diversion Report* documenting actual tons of debris recycled, along with all disposal receipts or weight tags from the project. Failure to comply with the Waste Handling Plan or provide accurate, acceptable documentation may result in a penalty of \$1,000 per ton not recycled.

During Construction (Conditions that must be satisfied on an on-going basis)

- F-1. Construction hours shall be limited in accordance with the Fremont Municipal Code, and notes to this effect shall be placed on the cover sheet of the construction plans and on an all-weather notice board (format and content specified by City) conspicuously placed adjacent to the most visible right of way for the duration of the construction activity as follows:
 - a. Monday-Friday, 7 a.m. to 7 p.m.
 - b. Saturdays and Holidays, 9 a.m. to 6 p.m.
 - c. Sundays, no construction activity allowed

Requirements to be Completed Prior to Request for Final Inspection

- G-1. All ground mounted equipment such as transformers, electrical meters, cable boxes, junction boxes, fire riser, irrigation controllers and HVAC equipment shall be located out of view from a public street to the satisfaction of the Planning Manager or his/her designee. Equipment shall be placed underground or adequately screened through the use of landscaping or masonry walls. Roof access ladders should be contained within the building and where this cannot be achieved, they shall be designed as an integral part of the building on a rear or side elevation and screened

from view.

- G-2. Backflow preventers shall be painted a forest or olive green color to blend into adjoining landscape or screened with low walls to the satisfaction of the Planning Manager or his/her designee.

TENTATIVE MAP CONDITIONS OF APPROVAL:

- H-1. The project shall conform to Exhibit "A" (Vesting Tentative Map Tract Map 8205 Henkel/Shuckl Cannery), all conditions of approval set forth herein, and the conditions of approval of Planned District P-2014-338.
- H-2. Approval of this Vesting Tentative Map shall be effective only after City Council approval of an ordinance approving Planned District P-2014-338, and such ordinance going into effect, and adoption of a mitigated negative declaration under CEQA.
- H-3. Approval of this Vesting Tentative Map shall expire according to the provisions of the State Subdivision Map Act and any amendments thereto and applicable provisions of the Fremont Municipal Code consistent with the State Subdivision Map Act. This tentative map shall expire twenty-four (24) months after the date of tentative map approval unless tentative map extensions are approved in accordance with the Subdivision Map Act.
- H-4. This Vesting Tentative Map may employ multiple phased Final Maps, which shall be prepared in accordance with state and local laws. Prior to the approval of a phased Final Map creating a lot for development of a residential structure, the subdivider shall improve or agree to improve, in accordance with the Subdivision Ordinance, all streets, thoroughfares, public ways, utilities, and easements, in the subdivision and adjacent thereto as required to serve said lot.
- H-5. The final map and subdivision improvement plans shall be submitted to the Engineering Division for review to insure conformance with relevant codes, policies, and other requirements of the Fremont Municipal Code.
- H-6. The subdivider shall provide a mylar copy and an electronic copy (in PDF format) of the map after the map is recorded. The subdivider shall provide an electronic copy (in PDF format) of the subdivision improvement plan record drawings prior to City Engineer approval and acceptance of the constructed subdivision improvements.
- H-7. The subdivision improvement plans shall include storm water treatment plans and calculations that comply with Planned District P-2014-338 and that identify Best Management Practices (BMPs) appropriate to the uses conducted on-site to effectively prohibit the entry of pollutants into storm water runoff.
- H-8. The provided Storm Water Control Plan is approved in concept only. Final approval is subject to the developer providing the necessary plans, details, and calculations that demonstrate the plan complies with the Municipal Regional Municipal Stormwater Permit, subject to City Engineer approval prior to recording the final map.

- H-9. The developer shall dedicate public right-of-way and install street improvements for Niles Boulevard across the project frontage to the satisfaction of the City Engineer. The street improvements shall include, but not be limited to new diagonal parking and the realignment of curb, gutter and sidewalk as shown on the approved Tentative Map plans and as approved by the City Engineer.
- H-10. The developer shall dedicate public right-of-way and provide complete street improvements for the internal Street A with a right-of-way of 40.5 feet and a pavement width of 34 feet to the satisfaction of the City Engineer. The street improvements shall include, but not be limited to two 10-foot travel lanes, curb, gutter, sidewalk on one side, parallel parking, curb bulb-outs and street trees as shown on the approved tentative map plans and as approved by the City Engineer.
- H-11. Common area subdivision improvements, private streets, and all other subdivision improvements owned or maintained by the property owners association are subject to review and approval by the City Engineer prior to final map approval. Such improvements include, but are not limited to: the gateway palm court, the linear park/trailhead, the gateway green, corner plaza, and the paseo walkways and landscaping. The developer shall bond for these improvements in accordance with FMC 17.20.290.
- H-12. Above ground architectural and building features that project over proposed property lines shall be permitted on townhouse and/or condominium units by easement recorded on the final map. Such features include, but are not limited to, eaves, bay windows, balconies, porches, landings, and stairways. The details of these easements, including dimensions and descriptions, shall be included on the final map. Foundations for townhouse units must be contained within the individual lot.
- H-13. The streetlight plan and joint trench plan shall be submitted by the applicant with the first subdivision plan check for the street improvement plans and final map. The final streetlight plan and joint trench plan shall be completed prior to final map approval.
- H-14. The developer shall request P.G.&E. to commence with the design of the utility underground work for the proposed development after City Council approval of Tentative Tract Map 8205.
- H-15. Any development on the newly created lots will be subject to Citywide Development Impact Fees. These fees may include fees for fire protection, capital facilities, park facilities, and traffic impact. The fees shall be calculated at the rate in effect at the time of building permit issuance. The fees will be collected prior to building permit issuance.
- H-16. The developer or Property Owners Association shall execute a Maintenance Agreement with the City of Fremont. The Maintenance Agreement shall require the property owners association to provide for the maintenance, cleaning, and general upkeep of any decorative/enhance pavement within the public right of way.
- H-17. The applicant shall work with the Public Works Department to include a northbound left-turn pocket lane on Niles Boulevard at the new intersection of Street A and Niles Boulevard if the Public Works Department determines that adequate right-of-way will accommodate a left-turn pocket lane (companion Condition of B-30).

SUBDIVIDER PLEASE NOTE: The fees, dedications, reservations and/or other exactions imposed on this project are those listed in the foregoing conditions of this tentative tract map approval. The subdivider is hereby notified that the 90-day period in which the subdivider may protest these fees, dedications, reservations and other exactions pursuant to Government Code Section 66020(a) begins on the date of approval of this tentative tract map. If the subdivider fails to file a protest within this 90-day period complying with all the requirements of Government Code Section 66020, the subdivider will be legally barred from later challenging such actions.

PRIVATE STREET CONDITIONS OF APPROVAL:

H-18. The applicant shall install complete street improvements for the internal private streets as shown on the tentative map to the satisfaction of the City Engineer.

H-19. The private street names are subject to modification prior to final map approval.

H-20. A Private Vehicle Access Way (PVAW) and a Public Utility Easement (PUE) are to be established over the entire private street right-of-way. The PUE dedication statement on the final map is to recite that the PUE is available for, but not limited to, the installation, access and maintenance of sanitary and storm sewers, water, electrical and communication facilities.

H-21. The developer shall dedicate emergency vehicle access easements (EVAE) over the clear pavement width on private streets within the subdivision. The easement geometry shall be subject to the approval of the City Engineer.

H-22. Fire hydrants are to be located along the private street as determined by the Fremont Fire Department.

H-23. Deed restrictions are to be recorded concurrently with the final map to create a mandatory Property Owner's Association or any other mechanism acceptable to the City for those lots with private street frontage which is to covenant and be responsible for the following:

- a. Maintenance of the facilities in the private street which are not maintained by a public utility agency. Facility maintenance includes utility work resulting from trench backfill failure.
- b. Payment of the water and private street lighting (maintenance and energy) bills.
- c. Maintenance, repair, replacement and removal of blockages in all building sewers. Maintenance of the building sewers includes repair of any trench failures and/or trench surface material failures.
- d. Maintenance and "knock-down" repair of fire hydrants and water facilities along the private street is to be done by the utility agency at the expense of the Property Owner's Association. The Property Owner's Association is to be responsible for repainting any fire hydrants along the private street.

H-24. Each buyer is to sign an acknowledgment that he/she has read the constitution and bylaws of the Home Owner's Association and the conditions, covenants and restrictions applying to the development.

- H-25. Private street grading and drainage shall be done according to public street standards, subject to review and approval by the City Engineer prior to final map approval.
- H-26. The private street pavement shall be designed on the basis of a traffic index using predicted traffic generation and a thirty-year pavement design life. In no case shall the traffic index be less than 5.5. Asphalt concrete surfacing to be treated with a seal coat of the type and amount required by the City Engineer. Pavement design sections shall be subject to approval of the City Engineer.
- H-27. Safety lighting is to be provided on the private street. Lights shall utilize "vandal resistant" enclosures and shall have sufficient power and spacing to provide a minimum maintained foot-candle level of 0.12.
- H-28. A signpost, to which is attached a sign having an area of at least fifteen inches by twenty-one inches, is to be installed at or near the private street entrance. The name of the private street is to be placed on this sign in clearly legible four-inch letters. The sign is to have painted, in at least one-inch letters, "Private Property. Not dedicated for public use."
- H-29. Developer is to provide a complete set of construction plans to the Property Owner's Association at the time of its formation.
- H-30. On-site private streets are to be posted for "No Parking," except in those areas designed to accommodate on-street parking, as shown on the tentative map and planned district site plan.
- H-31. The connection between the private vehicle access way and the public street is to be by a standard driveway.
- H-32. Approval of Private Street (PLN2014-00338) shall become effective upon final map approval.

PRELIMINARY GRADING PLAN CONDITIONS OF APPROVAL:

- H-33. Approval of this Preliminary Grading Plan shall run concurrent with the approval and subsequent extensions of tentative map 8205. Approval of this Preliminary Grading Plan shall terminate upon the expiration of tentative map 8205.
- H-34. Approval of this Preliminary Grading Plan does not extend to the final detailed design approval necessary to be accomplished in connection with the development plans.
- H-35. The applicant may be allowed grading deviation up to a maximum of one foot (plus or minus) between the preliminary grading plan and the final grading plan. Deviation over one foot may be referred to the Planning Commission, subject to approval of the City Engineer.
- H-36. Prior to demolition, excavation and grading on any portion of the project site, all underground obstructions (i.e., debris, septic tanks, fuel tanks, barrels, chemical waste) shall be identified and removed pursuant to Federal, State and local regulations and subject to the review and approval by the City's Hazardous Materials Division. Excavations shall be properly backfilled using structural fill, subject to the review and approval of the City Engineer.

END OF CONDITIONS

APPLICANT PLEASE NOTE:

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