

Park Land Dedication Condition for 133-149 Fairchild Drive

PARK LAND DEDICATION: Dedicate in fee 11,782 square feet of public park land in accordance with Chapter 41 of the City Code for the development (53 residential units total for both phases) prior to the issuance of the final map. The City shall reimburse the applicant for the Park Land Dedication fees paid for the first phase of the development (18 units) once the final map has recorded with the park land dedication.

Prior to the approval of the final map, the applicant shall: (1) provide a written report to disclose all known hazardous materials and contaminants on the park site to the City; (2) provide written approval by the Environmental Protection Agency (EPA) for the use of the site as a public park; (3) prepare and provide funding to the City to implement a Site Management Plan (SMP) with specific protocols for the park construction, operation, and ongoing maintenance that must be reviewed and approved by the EPA. The applicant shall pay a deposit based on a cost estimate prepared by the engineer of the SMP and as approved by the City for implementation of measures identified in the SMP prior to the approval of the final map; (4) be responsible for removing or remediating hazardous material and contaminants found on the site, including any hazardous materials and contaminants found during construction of the park improvements, so that the site is suitable for use as an open space park site; and (5) agree to protect, indemnify, and hold harmless City, its directors, officers, employees, and agents, from and against any environmental liability related to applicant's actions at the property, and any and all claims, demands, judgments, settlements, damages, actions, causes of action, injuries, administrative orders, consent agreements, and orders, liabilities, losses, penalties, and costs, including, but not limited to, any clean-up costs, remediation costs, and response costs, and all expenses of any kind whatsoever, including reasonable attorneys' fees and expenses, including, but not limited to, those arising out of loss of life; injury to persons, property, or business; or damage to natural resources in connection with the activities of applicant, its predecessors-in-interest, third parties who have trespassed on the premises, or parties in a contractual relationship with applicant and any of them, the foregoing being collectively referred to as "claims" which:

- a. Arise out of the actual, alleged, or threatened mitigation, spill, leaching, pouring, emptying, injection, discharge, dispersal, release, storage, treatment, generation, or disposal of escape of any hazardous substances onto or from the premises; or
- b. Actually or allegedly arise out of or in connection with the premises, the use, specification, or inclusion of any product, material, or process containing hazardous substances, the failure to detect the existence or proportion of hazardous substances in the soil, air, surface water, or groundwater, or the performance of or failure to perform the abatement of any hazardous substances source or the replacement or removal of any soil, water, surface water, or groundwater containing any hazardous substances; or
- c. Arise out of the breach of any covenant, warranty, or representation contained in any statement or other information given by applicant to City in connection with environmental matters; or
- d. Arise out of any enforcement or remedial action or any judicial or administrative action brought pursuant to any environmental law.

Applicant, its successors, and assigns, shall bear, pay, and discharge when and as the same become due and payable, any and all such judgments or claims for damages, penalties, or otherwise against City, as provided in this section, shall hold City harmless for those judgments or claims, and shall assume the burden and expense of defending all suits, administrative proceedings, and negotiations