

RESOLUTION NO. 12-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COSTA MESA ADOPTING THE ADDENDUM TO FEIR NO. 1050 AND AMENDMENT TO MASTER PLAN PA-02-11A FOR DEVELOPMENT OF 113-UNIT FOR-RENT RESIDENTIAL PROJECT AT 421 BERNARD STREET IN A PDC ZONE.

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Fairfield Residential Company LLC, requesting approval of the following;

- **Addendum** to Final Environmental Impact Report (FEIR) No. 1050.
- **Master plan amendment** PA-02-11A to allow construction of 113 residential units as the final phase of a 145-unit residential development approved in 2005 with the following modifications:
 - Change of the housing type for 421 Bernard site from condominiums to for-rent residential units built to condominium standards;
 - Change of unit type from townhomes to single story flats and a five-level (four-level above ground) parking structure containing 283 parking spaces in accordance with the Zoning Code requirements. The original approval included 40 additional parking spaces.
- **Minor Modification** to allow a 16-foot setback along Bernard Street and Harbor Boulevard for patios, walls, and balconies (20-foot perimeter setback required, 16-foot setback proposed).
- **Variance** from the noise standards to identify private outdoor patios/balconies as exempt from the City's Noise regulations.

WHEREAS, an amendment to the master plan is proposed to allow for development of the proposed 113 for-rent residential units and a five-level (four above grade) parking structure as the final phase of a 145-unit residential development approved in 2005;

WHEREAS, a duly noticed public hearing were held by the Planning Commission on March 26, 2012, and by City Council on April 17, 2012 with all persons provided an opportunity to speak for and against the proposed project;

WHEREAS, the addendum to FEIR was prepared and determined that, there are no new significant impacts resulting from the proposed amendment, nor are there any substantial increases in the severity of any previously identified environmental impacts.

Therefore, in accordance with Section 15164 of the State CEQA Guidelines, this Addendum to the previously certified FEIR 1050 is the appropriate environmental documentation for the project. There are no new mitigation measures that were not adopted at the time the FEIR was certified that would further reduce the project impacts;

WHEREAS, the City Council finds that the environmental review for the project was processed in accordance with the requirements of the California Environmental Quality Act (CEQA), the State CEQA Guidelines, the Council on Environmental Quality Regulations implementing the National Environmental Policy Act, and the City of Costa Mesa Environmental Guidelines, and the Addendum to FEIR No. 1050 was available for public review from March 7, 2012 to March 26, 2012;

WHEREAS, the Costa Mesa City Council finds that proposed residential project will not have a significant negative impact on the environment with the incorporation of the mitigation measures identified in the Addendum;

WHEREAS, the Costa Mesa City Council has considered responses to comments received during the public review period on the Addendum to the FEIR;

THEREFORE, BE IT RESOLVED that based on the evidence in the record, the findings contained in Exhibit "A", and subject to conditions of approvals/mitigation measures indicated in the Mitigation Monitoring Program contained in Exhibits "B" and "C", the City Council hereby approved **the Addendum to FEIR No. 1050 and Amendment to Master Plan PA-02-11A** with respect to the property described above.

PASSED AND ADOPTED this 17th day of April 2012.

Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Costa Mesa

City Attorney

EXHIBIT "A"

FINDINGS

- A. The proposed project complies with Costa Mesa Municipal Code Section 13-29(e) because:
- The proposed use is compatible and harmonious with uses on surrounding properties.
 - Safety and compatibility of the design of the parking areas, landscaping, luminaries, and other site features including functional aspects of the site development such as automobile and pedestrian circulation have been considered.
 - The project is consistent with the General Plan and Zoning approval for the original project that allowed a site specific density of 40 du/acre.
 - The planning application is for a project-specific case and does not establish a precedent for future development.
- B. The information presented substantially complies with Costa Mesa Municipal Code Section 13-29(g)(14) in that:
- a. The project complies with the City of Costa Mesa Zoning Code and meets the purpose and intent of the Residential Design Guidelines, which are intended to promote design excellence in new residential construction, with consideration being given to compatibility with the established residential community. This design review includes site planning, preservation of overall open space, landscaping, appearance, mass and scale of structures, location of windows, varied roof forms and roof plane breaks, and any other applicable design features.
 - b. The visual prominence associated with the construction of three and four-story buildings has been reduced through appropriate transitions between the three story and four story structures along Bernard Street and inclusion of balconies and offsets.
 - c. The proposed development plan and subdivision meets the broader goals of the General Plan, and the Zoning Code by exhibiting excellence in design, site planning, integration of uses and structures and protection of the integrity of neighboring development.
- C. The proposed variance to identify private outdoor patios/balconies as exempt from the City's Noise Ordinance from the exterior noise standards will not allow a use, density or intensity which is not in accordance with the general plan designation and the zoning code. The requested deviation will be subject to such conditions as will assure that the deviation authorized shall not constitute a grant of special privileges inconsistent with the limitation upon other properties in the vicinity and zone in which the property is located. Specifically, the patio walls and balconies will be designed with solid stucco walls and wrought iron accents providing privacy and partial sound attenuation without the maintenance and aesthetic impacts of a glass railing.

- D. The design of the residential project, complies with all applicable Residential Design Guidelines adopted by the City of Costa Mesa:
- a. Consideration is given to the effect of the proposed units, on the light, air and privacy of adjacent properties.
 - b. Building facades and projections add interest and variety to the streetscape along Bernard Street and Harbor Boulevard.
 - c. Street-facing elevations incorporate enhanced detailing and varied use of materials.
 - d. Variation in roof orientation and pitch provides visual interest.
 - e. Architectural projections provide visual focus and emphasize design of entryways and windows.
- E. The open space perimeter setback in the Planned Development Commercial zone is intended to feature quality landscape materials and structures which visually enhance and complement the development. As conditioned, the proposed wall and fencing plan is incorporated as part of the master plan submittal and is found to be consistent with the intent of the open space perimeter setback. The 20-foot wide, open space perimeter setback is required along Bernard Street and Harbor Boulevard. A diverse landscape palette containing a variety of trees, shrubs, and groundcover is located in the landscape setback area. The Master Plan features setbacks for wall and fencing (10 feet along Harbor Boulevard and 8 feet along Bernard Street). While these structures will functionally provide for security and privacy of the residents along these frontages, the walls and fencing are well-integrated with the design for privacy and security purposes. The walls feature a six-foot high masonry wall with stucco finish along Harbor Boulevard and the commercial property to the south, tubular fencing along the alley and the parking structure, and a combination of tubular fencing and solid wall along Bernard Street. Additionally, there is adequate landscape area visible from the public street to create an aesthetically pleasing, landscaped frontage for the project.
- F. Shadow conditions were analyzed for the project at 9:00 AM, noon, and 3:00 PM for each of the three days (June 21, September 23, and December 21) that showed minimal shade/shadow effects from the proposed project on existing single-family residential homes along Bernard. Therefore, consistent with the findings of FEIR 1050, shade and shadow impacts associated with the proposed project are considered less than significant and no mitigation is required.
- G. The discharge of sewage from this subdivision into the public sewer system will not violate the requirements of the California Regional Water Quality Control Board pursuant to Division 7 (commencing with Section 13000 of the Water Code).
- H. The project has been reviewed for compliance with the California Environmental Quality Act (CEQA), the CEQA Guidelines, and the City's environmental procedures.
- I. Mitigation Measures from the Addendum have been included as conditions of approval. If any of these conditions are removed, the Planning Commission must make a finding that the project will not result in significant environmental impacts, that the condition(s) are within the responsibility and jurisdiction of another public agency, or that specific economic, social, or other considerations make the mitigation measures infeasible.

- J. The information presented substantially complies with Costa Mesa Municipal Code Section 13-29(g)(6) in that:
- a. The improvement will not be materially detrimental to the health, safety and general welfare of persons residing or working within the immediate vicinity of the project or to property and improvements within the neighborhood.
 - b. With a minor modification to reduce the landscape setback along Bernard Street, the proposed development is considered compatible with the neighboring condominiums and residential uses with regard to privacy (20-foot setback required; 16-foot setback proposed).
 - c. The improvement is compatible and enhances the architecture and design of the existing and anticipated development in the vicinity.
- K. The project is consistent with Chapter XII, Article 3, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code in that the development project's traffic impacts will be mitigated (a) at all affected intersections (b) by the payment of traffic impact fees. A total of \$175,761 in traffic mitigation fees were submitted with the initial phase of development that will satisfy this requirement.

EXHIBIT "B"

CONDITIONS OF APPROVAL

- Plng.
1. The conditions of approval for Amendment to Master Plan PA-02-11 shall be blueprinted on the face of the site plan as part of the plan check submittal package.
 2. Address assignment shall be requested from the Planning Division prior to submittal of working drawings for plan check. The approved address of individual units, suites, buildings, etc, shall be blueprinted on the site plan and on all floor plans in the working drawings.
 3. Prior to issuance of first occupancy permit, applicant shall provide a tenant Notice for review/approval to the Development Services Director. It will serve as written notice of the then-existing noise environment and commercial operations of neighboring properties. Prospective tenants must sign a disclosure to acknowledge that they have read and understand the existing land use conditions. The disclosure notice shall be kept on file by the facility operator and shall be approved in form and substance by the City Attorney's office prior to use. For example, the disclosure can be an exhibit within the lease agreement.
 4. Design of the perimeter wall along the south side shall incorporate landscape elements to soften the appearance of the block wall and incorporate materials, color, and texture that will be compatible with the surrounding community.
 5. No exterior roof access ladders, roof drain scuppers, or roof drain downspouts are permitted. This condition relates to visually prominent features of scuppers or downspouts that not only detract from the architecture but may be spilling water from overhead without an integrated gutter system which would typically channel the rainwater from the scupper/downspout to the ground. An integrated downspout/gutter system which is painted to match the building colors would comply with the condition. This condition shall be completed under the direction of the Planning Division.
 6. Development shall comply with all requirements of Article 1, Chapter 5, (and Article 2, Chapter V) and Article 9, Chapter 5 of Title 13 of the Costa Mesa Municipal Code relating to development standards for multi-family residential projects, except as modified herein and on approved project plans.
 7. Prior to issuance of grading permits, developer shall identify to the Development Services Director a construction relations officer to act as a community liaison concerning on-site activity, including resolution of issues related to dust generation from grading/paving activities.
 8. Prior to issuance of grading permits, developer shall submit for review and approval a Construction Management Plan. This plan features methods to minimize disruption to the neighboring residential uses to the fullest extent that is reasonable and practicable. The plan shall include construction parking and vehicle access and specifying staging areas and delivery and hauling truck routes. The plan should mitigate disruption to residents and also businesses during construction.

The truck route plan shall preclude truck routes through residential areas and major truck traffic during peak hours. The total truck trips to the site shall not exceed 200 trucks per day (i.e., 100 truck trips to the site plus 100 truck trips from the site) unless approved by the Development Services Director or Transportation Services Manager.

9. The subject property's ultimate finished grade level may not be filled/raised in excess of 30 inches above the finished grade of any abutting property. If additional fill dirt is needed to provide acceptable on-site storm water flow to a public street, an alternative means of accommodating that drainage shall be approved by the City's Building Official prior to issuance of any grading or

building permits. Such alternatives may include subsurface tie-in to public storm water facilities, subsurface drainage collection systems and/or sumps with mechanical pump discharge in-lieu of gravity flow. If mechanical pump method is determined appropriate, said mechanical pump(s) shall continuously be maintained in working order. In any case, development of subject property shall preserve or improve the existing pattern of drainage on abutting properties. Applicant is advised that recordation of a drainage easement across the private street may be required to fulfill this requirement. This requirement is not applicable to the residential pad adjacent to Harbor Boulevard with an existing finish grade over 30 inches in height.

10. The applicant shall contact the Planning Division to arrange a Planning inspection of the site prior to the release of occupancy/utilities. This inspection is to confirm that the conditions of approval and code requirements have been satisfied.
11. No modification(s) of the approved building elevations including, but not limited to, changes that increase the building height, removal of building articulation, or a change of the finish material(s), shall be made during construction without prior Planning Division written approval. Failure to obtain prior Planning Division approval of the modification could result in the requirement of the applicant to (re)process the modification through a discretionary review process or a variance, or in the requirement to modify the construction to reflect the approved plans.
12. Transformers, backflow preventers, and any other approved above-ground utility improvement shall be located outside of the required street setback area and shall be screened upon view, under direction of Planning staff. Any deviation from this requirement shall be subject to review and approval of the Development Services Director.
13. Landscaping along Harbor Boulevard and Bernard Street shall be integrated with the wall and fencing design and project entry monuments. A minimum of 10-foot and 8-foot wide landscaping shall be provided along Harbor Boulevard and Bernard Street respectively for installation of trees and planting outside the project's perimeter wall and fencing. The maximum height of 6 feet shall be consistently applied to all perimeter walls and fences with the exception of accent pilasters and monument signs. Wall and fencing along Bernard Street shall be a combination tubular fencing and stucco finish masonry wall to allow for visibility of on-site landscaping.
14. Street trees in the landscape parkway shall be selected from Appendix D of the Streetscape and Median Development Standards and appropriately sized and spaced (e.g. 15-gallon size planted at 30' on centers), or as determined by the Development Services Director once the determination of parkway size is made. The final landscape concept plan shall indicate the design and material of these areas, and the landscape/hardscape plan shall be approved by the Planning Division prior to issuance of building permits.
15. Prior to issuance of building permits, the building plans shall demonstrate that all residences are equipped with a mechanical ventilation system that will properly filter the indoor air. The ventilation system can be a component of the air conditioning system, with the distinction being that clean, ventilated air flow does not necessarily need coolant. The ventilation system shall be effective with all doors and windows closed. |
16. Applicant shall provide proof of establishment of a homeowners association prior to release of any utilities prior to selling any of the units as condominiums.
17. In the event that archeological resources are unearthed during project subsurface activities, all earth-disturbing work within a 100-ft radius shall be temporarily suspended or redirected until an archeologist has evaluated the nature and significance of the find.

18. In the event that paleontological resources are unearthed during subsurface construction activities, all earth-disturbing work within a 100-ft radius of the find shall be temporarily suspended or redirected until a paleontologist has evaluated the nature and significance of the find.
19. Design, grading, and construction shall be performed in accordance with the requirements of the California Building Code applicable at the time of grading permit issuance as well as the appropriate local grading regulations, and the recommendations of the project geotechnical consultant as summarized in a final written report, subject to review by the City of Costa Mesa Building official prior to issuance of grading permits.
20. Prior to issuance of building permits, developer shall contact the U.S. Postal Service with regard to location and design of mail delivery facilities. Such facilities shall be shown on the site plan, landscape plan, and/or floor plan.
21. If the project is constructed in phases, the perimeter wall, landscaping along the frontages, and irrigation shall be installed prior to completion of the first phase.
22. All construction contractors shall comply with South Coast Air Quality Management District (SCAQMD) regulations, including Rule 403, Fugitive Dust. All grading (regardless of acreage) shall apply best available control measures for fugitive dust in accordance with Rule 403. To ensure that the project is in full compliance with applicable SCAQMD dust regulations and that there is no nuisance impact off the site, the contractor would implement each of the following:
 - a. Moisten soil not more than 15 minutes prior to moving soil or conduct whatever watering is necessary to prevent visible dust emissions from exceeding 100 feet in any direction.
 - b. Apply chemical stabilizers to disturbed surface areas (completed grading areas) within five days of completing grading or apply dust suppressants or vegetation sufficient to maintain a stabilized surface.
 - c. Water excavated soil piles hourly or cover with temporary coverings.
 - d. Water exposed surfaces at least twice a day under calm conditions. Water as often as needed on windy days when winds are less than 25 miles per hour or during very dry weather in order to maintain a surface crust and prevent the release of visible emissions from the construction site.
 - e. Wash mud-covered tires and under-carriages of trucks leaving construction sites.
 - f. Provide for street sweeping, as needed, on adjacent roadways to remove dirt dropped by construction vehicles or mud which would otherwise be carried off by trucks departing project sites.
 - g. Securely cover loads with a tight fitting tarp on any truck leaving the construction sites to dispose of debris.
 - h. Cease grading during period when winds exceed 25 miles per hour.Turn equipment off when not in use for more than five minutes.
23. The proposed project would be subject to all applicable regulations of the City's General Plan, zoning ordinance, and all requirements and enactments of Federal, County, City authorities, and any other governmental entities, and all such requirements and enactments would, by reference, become conditions of project implementation.
24. Construction of structural BMPs as required by the NPDES Stormwater Permit issued to the project site by the County of Orange/City of Costa Mesa to capture urban runoff contaminants from developed areas prior to discharge to

on-site storm drain facilities.

25. Prior to issuance of a grading permit, the applicant shall develop a Storm Water Pollution Prevention Plan (SWPPP) that contains structural and non-structural BMPs that comply with NPDES Program requirements. BMPs shall be implemented as required by the NPDES Permit issued to the site.
26. Prior to issuance of a grading permit, the applicant shall obtain an NPDES Permit. Applicable BMP provisions shall be incorporated into the NPDES Permit.
27. Compliance with California Building Code provisions and standard subdivision engineering requirements, as specified in the City's conditions of approval will satisfactorily address geotechnical issues related to seismic hazards.
28. The proposed 113-unit development shall be designed to comply with all applicable geological and seismic safety requirements of the California Building Code and mitigation as defined in the Public Resources Code Section 2693(c). Verification of such compliance will be confirmed during the City's plan review and building permit issuance processes.
29. Grading and foundation plans, including foundation loads, shall be reviewed by a registered soils engineer, and approved by the City of Costa Mesa Building Safety Division.
30. All grading and earthwork shall be performed under the observation of a registered geotechnical engineer and engineering geologist in accordance with the recommendations contained within the Leighton and Associates reports, dated October 2, 2006 and May 24, 2011, and in accordance with the General Earthwork and Grading Specifications included in the reports by Leighton and Associates.
31. Prior to approval of each grading plan by the City of Costa Mesa, the property owner/developer shall submit a soils and geological report for the area to be graded, based on proposed grading and prepared by registered soils engineer and approved by the City of Costa Mesa Building Safety Division.
32. Prior to issuance of each building permit by the City of Costa Mesa, the property owner/developer shall submit for review and approval by the City of Costa Mesa Building Safety Division, a detailed foundation design information for the subject building(s), prepared by a registered civil or structural engineer, based on recommendations by a geotechnical engineer.
33. Prior to issuance of each building permit by the City of Costa Mesa, the property owner/developer shall submit plans showing that the proposed structure has been analyzed by a registered civil or structural engineer for earthquake loading and designed according to the most recent standards in the California Building Code adopted by the City of Costa Mesa.
34. Additional geotechnical review of plans shall be performed upon completion of the following: Grading and Precise Grading Plans; Foundation Plans; and Shoring Plans.
35. Geotechnical observation and testing shall be conducted during the following stages:
 - Upon completion of clearing and grubbing.
 - During all phases of grading, including removals, fill operations, over excavation, temporary slope excavation, and installation of shoring and dewatering systems.
 - During fill placement.
 - When any unusual conditions are encountered.
36. Concrete, in contact with the on-site earth materials, shall be designed in accordance with the negligible category for exposure to sulfate containing solutions of Table 19-A-4 of the 1997 Uniform Building Code.
37. Should dewatering be required for the discharge of perched groundwater during excavation for site improvements, the applicant shall acquire either a National

Pollutant Discharge Elimination System (NPDES) permit for the discharge of wastes to surface waters or a Waste Discharge Requirements (WDR) permit for the discharge of wastes to land, as required, from the Santa Ana Regional Water Quality Control Board and provide evidence of permit issuance to the Costa Mesa Building Safety Division prior to initiating any such discharge.

38. Mesa Consolidated's Water Efficiency Specialist shall be consulted with during landscape planning to ensure that appropriate water conservation measures are used.
39. The project shall comply with the project design features, conditions, and mitigation measures of Final Environmental Impact Report No. 1050, unless modified by this resolution and the Addendum dated March 2012 prepared for this project, as listed in the attached Mitigation Measure Monitoring Program.
- PA-2-11 40. The private vehicular access from Bernard Street shall be accessible to emergency vehicles through a Knox Box or other method appropriate by Planning Division.
- PA-2-11 41. Light standards located on the top level of the parking structure shall be a maximum of 20 feet in height, located and oriented such that they do not interfere with the quiet enjoyment of nearby residences.
- PA-2-11 42. The applicant is required to disclose commercial uses at 1901 Newport Plaza, including all night-time activities, to all prospective buyers. This notice shall be reviewed and approved by the Planning Division and City Attorney's office.
- PA-2-11 43. Applicant shall contact AT&T Broadband at 200 Paularino, Costa Mesa, (888.255.5789) prior to issuance of building permits to arrange for pre-wiring for future cable communication service.
- PA-2-11 44. Any lighting under the control of the applicant shall be directed in such a manner so as to not unreasonably interfere with the quiet enjoyment of nearby residences. This condition does not apply to on-site amenities during their operating hours.
- PA-2-11 45. The project site is subject to and encumbered by specific inclusionary affordable housing obligations and covenants that are referenced in that certain Memorandum of Affordable Housing Agreement ("AHA") recorded in the Official Records, County of Orange, against the project site ("Covenants"), which Covenants run with the land and require the developer/owner of the project site to provide either on-site or off-site the required inclusionary affordable housing units as a condition to development of the project site. As the developer/owner's current application to the City for a land use entitlement on the project site proposes a rental housing development, which is different than the previously approved land use entitlement for an ownership housing development; thus, the developer/owner cannot satisfy and fulfill the Covenants of record. The AHA and Covenants provide, in part, that in the event the developer/owner fails to provide the required affordable housing units on-site as a part of the development of the project site pursuant to the AHA to the satisfaction of the City's Development Services Director, then the developer/owner is responsible legally and financially for the entire affordable housing obligation, which legal obligation was triggered by entitlement and development of residential units on the project site.

This land use entitlement is *conditionally effective* and is expressly and intentionally subject to the developer/owner negotiating and reaching agreement with and entering into a contract or contracts with the City of Costa Mesa and the Costa Mesa Housing Authority acting as successor housing agency as to the assets and functions of the dissolved Costa Mesa Redevelopment Agency ("CMHA"), which contract(s) shall set forth specific amendments to and modifications of the Covenants and the agreements that established such Covenants, and/or the provisions under which such Covenants and agreements may be terminated and released, including without

limitation the AHA and that certain Settlement Agreement (Plaza Residential Project-1901 Newport Boulevard) entered into among the developer/owner's predecessor-in-interest to the project site, and the City, and the dissolved Agency (of which the CMHA is successor-in-interest) (together, "Amended Covenants").

By consenting to and accepting the conditions of approval of this land use entitlement, developer/owner expressly acknowledges that this land use entitlement for a rental housing development on the project site is *conditionally effective* and understands that the Development Services Department and City Building Official shall not have authority to issue any building, development, or other permit relating to the development of the project site or otherwise under this land use entitlement unless and until such Amended Covenants are duly considered, approved, and executed by and among the developer/owner, the City and CMHA and that such Amended Covenants (or a memorandum thereof) are recorded against the project site. Developer/owner expressly and knowingly assumes all risks that such Amended Covenants will be successfully negotiated and approved and acknowledges that nothing in this condition of approval or this land use entitlement is intended or shall be construed to prejudice, preapprove, or otherwise determine in advance the decision making and exercise of discretion regarding approval of the Amended Covenants by the City of Costa Mesa and the Costa Mesa Housing Authority. Developer/owner is informed that the AHA, the existing Covenants, and the Amended Covenants may be subject to Assembly Bill x1 26 that added Parts 1.8 and 1.85 to Division 24 of the California Health and Safety Code and other applicable laws and regulations, including future laws and regulations related thereto, and potential review thereof may occur by the Department of Finance, State Controller's Office, County of Orange Auditor-Controller, and/or the Oversight Board to the Successor Agency of the Costa Mesa Redevelopment Agency.

- PA-2-11 46. Developer shall defend, indemnify, and hold harmless the City, its elected and appointed officials, agents, officers and employees from any claim, action, or proceeding (collectively referred to as "proceeding") brought against the City, its elected and appointed officials, agents, officers or employees arising out of (1) City's approval of the project, including but not limited to any proceeding under the California Environmental Quality Act. The indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and cost of suit, attorney's fees, and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the applicant, the City and/or the parties initiating or bringing such proceeding. This indemnity provision shall include the applicant's obligation to indemnify the City for all the City's costs, fees, and damages that the City incurs in enforcing the indemnification provisions set forth in this section.
- Bldg. 47. Submit grading plans including a hydrology report and soils report.
48. Water conservation measures, as required by the State of California, shall be incorporated into building plans for the project. These may include, but are not limited to, the following:
- Health and Safety Code Section 17921.3 which requires low-flush toilets and urinals in all new construction;
 - Title 24, California Administrative Code Sections 2-5352(l) and (j) which require insulation of water-heating systems and pipe insulation to reduce water used before hot water reaches equipment or fixtures; and,
- Government Code Section 7800 which specifies that lavatories in all public

- facilities be equipped with self-closing faucets.
49. Structures on the site shall be required to meet the Energy Building Regulations adopted by the California Energy Commission (Title 24). Meeting these specifications would conserve non-renewable natural resources to levels acceptable to the State.
50. Provide an erosion control plan.
- Eng. 51. Submit for approval by the Engineering Division plans that show the repair/repavement of the alley adjacent to the property per City standards from Harbor Boulevard to the project boundary.
52. Dedicate ingress-egress easement for emergency and public security vehicle purposes along the alley.
53. Submit required cash deposit or surety bond to guarantee construction of off-site street improvements at time of permit per Section 15-32, C.C.M.M.C. and as approved by City Engineer. Cash deposit or surety bond amount to be determined by City Engineer.
54. Comply with previous conditions of approval for PA-02-11 as applicable.
55. Construction Access Permit and deposit of \$1500 will be required by City of Costa Mesa, Engineering Division prior to start of any on-site work, necessary during construction for street sweeping and to guarantee replacement costs in case of damage to existing public improvements
56. Maintain the public Right-of-Way in a "wet-down" condition to prevent excessive dust and remove any spillage from the public Right-of-Way by sweeping or sprinkling.
57. Haul routes must be approved by the City of Costa Mesa, Transportation & Engineering Division.
58. If necessary submit subdivision application and comply with conditions of approval and code requirements.
59. Applicant/Developer is hereby advised that no removal of trees from the public right-of-way will be permitted without specific approval from the Parks and Recreation Commission and compliance with mitigation measures as determined by the Commission to relocate the trees and/or to compensate the City for the loss of trees from the public right-of-way. Conditions of the Commission must be incorporated onto the plans prior to plan approval. The approval process may take up to three months, therefore, the applicant/developer is advised to identify all tree affected by the proposed project and make timely application to the Parks and Recreation Commission to avoid possible delays
60. Obtain a permit from the City of Costa Mesa, Engineering Division, at the time of development and then construct P.C.C. driveway approach per City of Costa Mesa Standards as shown on the Offsite Plan. Location and dimensions are subject to the approval of the Transportation Services Manager. ADA compliance required for all new driveway approaches.
61. Obtain a permit from the City of Costa Mesa, Engineering Division, at the time of development and then remove any existing driveways and/or curb depressions that will not be used and replace with full height curb and sidewalk at applicant's expense.
- PA-2-11 62. Private on-site drainage facilities and parkway culverts or drains will not be maintained by the City of Costa Mesa; they shall be maintained by the owner or developer of the property. Private lateral connections to City storm drains will require a hold harmless agreement prior to issuance of permit.
- PA-2-11 63. Applicant shall ensure that the project is compliant with the American Disability Act (ADA) for the entire property frontage within the public right-of-way,
- PA-2-11 64. The setback area shall maximize the landscape area in order to minimize the

runoff to the public system. The runoff from all parking areas shall be directed to a landscape area to provide groundwater recharge and pollutant removal during dry periods and lower duration storms. All landscape areas shall retain the irrigation water and lower duration storms within their boundaries. The City Engineer recommends the use of evapotranspiration irrigation equipment to minimize the irrigation water use and irrigation runoff.

- Fire 65. A Fire Alarm system with public address capabilities shall be required.
66. A portion of Bernard Street east of the "project entrance" will be designated as a Fire Lane (no parking).
67. All buildings will require a Combined Fire Sprinkler and Standpipe system. All stairs will be equipped with class I standpipes.
68. Provide (5) class A fire hydrants: a) 3 along alley, b) 1 additional on Bernard, c) 1 additional on the arterial access road (19th thru Bernard).
69. Vehicular access must be provided and maintained serviceable throughout construction to all required fire hydrants. Additional fire hydrants must be provided in the alley serving the interior units subject to approval by Fire Prevention Division.
70. The five-level parking structure must be equipped with automatic fire sprinklers.
- PA-2-11 71. Applicant shall obtain approval from the Fire Department for the proposed fencing to ensure that fire department access gates are located at specific intervals with Fire Department Knox Boxes to the satisfaction of the Fire Marshal.
- Trans. PA-2-11 72. Prior to issuance of building permits, the applicant shall submit to the Transportation Services Division the detailed operation of all gates (residential and commercial). This gate plan shall also include how visitors will gain access to residential visitor parking. The site plan shall indicate sufficient drive aisle width at the gated entrance in from Bernard to allow for visitor call box or other method of contact with residents while not obstructing the residents' personal access.
- PA-2-11 73. Condition related to traffic signal was deleted.
- Utilities 74. Prior to the issuance of a connection permit, the applicant shall pay the applicable water connection fees.
75. Prior to issuance of building permits, a letter shall be obtained from the Costa Mesa Sanitary District and the Orange County Sanitation District verifying that there is sufficient capacity in the receiving trunk lines to serve the project.
76. The applicant shall comply with guidelines provided by Southern California Edison Company with respect to easement restrictions, construction guidelines, and potential amendments to right-of-way in the areas of any existing Southern California Edison Company easements.
77. Prior to the issuance of building permits, the project applicant shall pay the applicable connection fees charged to new development by the Mesa Consolidated Water District.

CODE REQUIREMENTS (Master Plan Amendment PA-02-11)

The following list of federal, state and local laws applicable to the project has been compiled by staff for the applicant's reference. Any reference to "City" pertains to the City of Costa Mesa.

- Plng.
1. All contractors and subcontractors must have valid business licenses to do business in the City of Costa Mesa. Final inspections, final occupancy and utility releases will not be granted until all such licenses have been obtained.
 2. Approval of the planning application is valid for one (1) year from the effective date of this approval and will expire at the end of that period unless applicant establishes the use by obtaining building permits for the authorized construction and initiates construction. If the applicant is unable to establish the use/obtain building permits within the one-year time period, the applicant may request an extension of time. The Planning Division must receive a written request for the time extension prior to the expiration of the planning application.
 3. Trash enclosure or other acceptable means of trash disposal shall be provided. Design of trash enclosure(s) shall conform to City standards. Standard drawings are available from the Planning Division.
 4. All on-site utility services shall be installed underground.
 5. Installation of all new utility meters shall be performed in a manner so as to obscure the installation from view from any place off the property. The installation shall be in a manner acceptable to the public utility and shall be in the form of a vault, wall cabinet, or wall box under the direction of the Planning Division.
 6. Any mechanical equipment such as air-conditioning equipment and duct work shall be screened from view in a manner approved by the Planning Division.
 7. Two (2) sets of detailed landscape and irrigation plans, which meet the requirements set forth in Costa Mesa Municipal Code Sections 13-101 through 13-108 and the City's Water Efficient Landscape Guidelines, shall be required as part of the project plan check review and approval process. Plans shall be forwarded to the Planning Division for final approval prior to issuance of building permits.
 8. Landscaping and irrigation shall be installed in accordance with the approved plans prior to final inspection or occupancy clearance.
 9. Two (2) sets of landscape and irrigation plans, approved by the Planning Division, shall be attached to two of the final building plan sets.
 10. If present and/or projected exterior noise exceeds 60 CNEL, California Noise Insulation Standards, Title 25, California Code of Regulations require a maximum interior noise level of 45 CNEL for residential structures. If required interior noise levels are achieved by requiring that windows be unopenable or closed, the design for the structure must also specify the means that will be employed to provide ventilation, and cooling if necessary, to provide a habitable interior environment.
 11. The City of Costa Mesa has adopted a Noise Ordinance that exempts control of construction activities during the hours between 7 a.m. and 7 p.m. Mondays through Fridays, 9:00 AM to 6:00 PM on Saturdays. Construction activities are prohibited on Sunday and federal holidays. All noise generating construction activities should be limited to these hours.
- Bldg.
12. Prior to or concurrent with the submittal of plans for plan check, the applicant shall prepare and submit documentation for compliance with the State Water Resources Control Board (SWRCB) Water Quality Order 99-08-DWQ; National Pollutant Discharge Elimination System (NPDES) Permit No. CAS000002 for Storm Water Discharges Associated with Construction Activity (General Permit); the California Regional Water Quality Control Board (RWQCB) Santa Ana

Region Order No. R8-2002-0010 and NPDES Permit No. CAS618030; and, the City of Costa Mesa Ordinance No. 97-20 for compliance with NPDES Permit for the City of Costa Mesa. Such documentation shall include a Water Quality Management Plan (WQMP) identifying and detailing the implementation of the applicable Best Management Practices (BMPs).

13. Comply with the requirements of the 2010 California Residential Code, California Electrical code, California Mechanical code, California Plumbing code, and 2010 California Energy Code (or the applicable adopted California Residential code, California Electrical code, California Mechanical code California Plumbing Code, and California Energy Code at the time of plan submittal) and California Code of Regulations also known as the California Building Standards Code, as amended by the City of Costa Mesa.
14. The project applicant shall contact the Southern California Air Quality Management District (SCAQMD) at 800-288-7664 for potential additional conditions of development or required permits by SCAQMD.
15. Submit a soils report for the projects, Recommendation of the Soils Report shall be printed on the architectural and grading plans.
16. Submit a grading plan and hydrology report.
17. Submit an erosion controls plan with the grading submittal.
18. Provide an automatic fire sprinkler system according to NFPA 13D.
19. Street addresses shall be visible from the public street and may be displayed either on the front door, on the fascia adjacent to the main entrance, or on another prominent location. When the property has alley access, address numerals shall be displayed in a prominent location visible from the alley. Numerals shall be a minimum six (6) inches in height with not less than one-half-inch stroke and shall contrast sharply with the background.

Fire

SPECIAL DISTRICT REQUIREMENTS (Master Plan Amendment PA-02-11)

The requirements of the following special districts are hereby forwarded to the applicant:

- | | |
|--------|---|
| Sani | <ol style="list-style-type: none">1. Applicant will be required to construct sewers to serve this project, at his own expense, meeting the approval of the Costa Mesa Sanitary District.2. County Sanitation District fees, fixture fees, inspection fees, and sewer permit are required prior to installation of sewer. To receive credit for buildings to be demolished, call (714) 754-5307.3. Applicant shall submit a plan showing sewer improvements that meets the District Engineer's approval to the Building Division as part of the plans submitted for plan check.4. The applicant is required to contact the Costa Mesa Sanitary District at (714) 754-5307 to arrange final sign-off prior to certificate of occupancy being released.5. Unless an off-site trash hauler is being used, applicant shall contact the Costa Mesa Sanitary District at (714) 754-5043 to pay trash collection program fees and arrange for service for all new residences. Residences using bin or dumpster services are exempt from this requirement. |
| AQMD | <ol style="list-style-type: none">6. Applicant shall contact Costa Mesa Sanitary District at (949) 654-8400 for any additional district requirements. |
| School | <ol style="list-style-type: none">7. Pay applicable Newport Mesa Unified School District fees to the Building Division prior is issuance of building permits.8. Prior to issuance of a building permit, the project applicant shall pay developer fees to the Newport-Mesa Unified School District pursuant to the requirements established in SB 50. The amount of fees to be paid will be determined based on the established State formula for determining construction costs. |
| State | <ol style="list-style-type: none">9. Comply with the requirements of the California Department of Food and Agriculture (CDFA) to determine if red imported fire ants (RIFA) exist on the property prior to any soil movement or excavation. Call CDFA at (714) 708-1910 for information. |

EXHIBIT "C"

MITIGATION MONITORING PROGRAM (PA-11-06, TTM 17423)

AIR QUALITY

- AQ-1 During construction activities, the contractor shall implement the following measures to reduce construction equipment emissions.
- a. Maintain construction equipment engines by keeping them tuned.
 - b. Use low sulfur fuel for stationary construction equipment. This is required by SCAQMD Rules 431.1 and 431.2.
 - c. Use existing power sources (i.e., power poles) when feasible. This measure would minimize the use of higher polluting gas or diesel generators.
 - d. Configure construction parking to minimize traffic interference.
 - e. Minimize obstruction of through-traffic lanes. When feasible, construction should be planned so that lane closures on existing streets are kept to a minimum.
 - f. Schedule construction operations affecting traffic for off-peak hours.
 - g. Develop a traffic plan to minimize traffic flow interference from construction activities (the plan may include advance public notice of routing, use of public transportation and satellite parking areas with a shuttle service).

CULTURAL RESOURCES

- CR-1 An Orange County-certified archaeologist shall be retained at the expense of the project applicant to attend pre-grade meetings and to monitor earth moving activities, including clearing, excavation, and grading of site. The archaeologist shall carefully inspect the property to assess the potential for significant prehistoric or historic remains. If a site or resource is uncovered, then a subsurface evaluation may be needed to assess the resource. Further subsurface investigation may be needed if the site or resource is determined to be unique/important for its prehistoric information.
- CR-2 During construction activities, the archaeologist shall have the authority to temporarily divert or redirect grading to allow time to evaluate any exposed prehistoric or historic material. In accordance with Public Resources Code 5097.94, if human remains are found, the Orange County coroner must be notified within 24 hours of the discovery. If the coroner determines that the remains are not recent, the coroner will notify the Native American Heritage Commission in Sacramento to determine the most likely descendent for the area. The designated Native American representative would then determine, in consultation with the property owner, the disposition of the human remains.
- CR-3 A final survey and monitoring report, including an itemized inventory and pertinent field data, shall be sent to the property owner and filed with the

South Central Coastal Information Center at the University of California, Fullerton.

- CR-4 Any recovered prehistoric and historic artifacts shall be offered, on a first right of refusal basis, to a repository with a retrievable collection system and an educational and research interest in the materials such as the Fowler Museum of Cultural History (UCLA) and California State University, Fullerton.
- CR-5 An Orange County-certified paleontologist shall be retained at the expense of the project applicant to attend pre-grade meetings to discuss the monitoring, collecting, and safety procedures for the project, and shall supervise the monitoring of earthmoving activities, including clearing, excavation, and grading of site. Particular attention shall be paid to areas of the site where excavations below three feet would occur. The paleontologist shall carefully inspect these areas to assess the potential for significant fossil localities. The paleontologist shall tailor the monitoring schedule to the lithologies present, the rate of fossil recovery, the numbers of spreads working simultaneously, and the cubic foot amounts of rock being excavated or disturbed. Monitoring shall occur under the supervision of an Orange County-certified paleontologist.
- CR-6 The paleontological monitor shall have the authority to temporarily divert or redirect grading to allow time to evaluate any exposed fossil material.
- CR-7 During monitoring, any scientifically significant specimens shall be properly salvaged after evaluation by, and under the supervision of, the paleontologist. Screening of sediments shall routinely be conducted during monitoring under the supervision of the paleontologist to sample significant small vertebrate remains. During fossil salvage, contextual stratigraphic data shall also be collected. This would include lithologic descriptions, localities plotted on a USGS 7.5' Series topographic quadrangle, photographs, and field notes.
- CR-8 Specimens shall be prepared to the point of identification, identified, and curated on a long-term loan basis in a suitable repository that has a retrievable storage system. Fees for curation shall be the responsibility of the applicant.
- CR-9 A final report shall be prepared at the end of earth moving activities, and shall include an itemized inventory of recovered fossils and appropriate stratigraphic and locality data. This report shall be sent to the City of Costa Mesa to signify the end of mitigation. Another copy shall accompany any recovered fossils, along with field logs and photographs, to the designated repository.

NOISE

- NOI-1 The project applicant shall submit detailed plans for all the parking structures prior to the issuance of a building permit for the residential structures. Said plans shall be accompanied by an acoustical study prepared by a qualified acoustical City-approved expert to the satisfaction of the City of Costa Mesa Planning Division. The acoustical study shall demonstrate that all feasible

sound attenuation in compliance with Costa Mesa Municipal Code (Chapter XIII Noise Control) has been incorporated into parking structure design, including but not limited to brushed driving surfaces (textured), limited openings oriented toward sensitive noise sources, etc.

- NO1-2 ~~Prior to the issuance of building permits for the residential structure, a detailed exterior acoustical engineering study shall be prepared by a qualified acoustical engineer and the Applicant shall submitted final project plans to the City of Costa Mesa to determine showing the final heights and locations of noise barriers required to meet the City's noise standards for exterior private residential living areas. Both the City's 65 CNEL exterior noise standard and the Costa Mesa Noise Ordinance (Municipal Code Chapter XIII Noise Control) standards shall be addressed. The 65 CNEL noise standard shall be addressed for exterior residential living areas exposed to noise levels in excess of 65 CNEL as shown in Exhibit 3.7-4. Exhibits 3.7-5 and 3.7-6 12 shows preliminary locations and heights of barriers that will be required to meet the standards based on preliminary calculations, including a minimum 6-foot high patio wall and 5-foot-high balcony enclosures (as applicable) along Bernard Street and Harbor Boulevard. The acoustical engineering study shall finalize these barrier heights and locations based on precise grading and final building plans. To be effective, noise barriers will be required to have a surface density of at least 3.5 pounds per square foot, and have no openings or cracks. They may be a solid wall, an earthen berm, or a combination of the two. They may be constructed of wood studs with stucco exterior, any masonry material, or a material that is less visually intrusive such as 1/4-inch plate glass or 5/8-inch plexiglass. The acoustical engineering study, including calculations, final site plans shall be submitted to the City of Costa Mesa prior to the issuance of a precise grading permit. The applicant shall implement the recommendations of the acoustical engineering study into the project's plans prior to the issuance of a precise grading permit for free standing noise barriers and a building permit for barriers incorporated into the buildings. (this mitigation measure if applicable incase the variance for noise mitigation is not approved)~~

PUBLIC SERVICES

- PUB-1 Prior to the initiation of vertical construction, a construction security service shall be established at the construction site. Initially, the service shall ensure that no unauthorized entry is made into the construction area. For the duration of each phase of construction, the project applicant shall provide sufficient on-site security personnel during non-work hours to patrol all areas of construction and prohibit unauthorized entry. Evidence of compliance with these requirements is subject to periodic site inspections by City staff.

UTILITIES AND SERVICES

- UTIL-1 All sewer flows originating from the residential portion of the project site shall be connected to the Costa Mesa Sanitary District's sewer system at a manhole locations approved by the District.

- UTIL-2 In accordance with the requirements of AB 939, construction contractors shall reuse construction forms where practicable or applicable, attempt to balance soils on the site, minimize over cutting of lumber and polyvinyl chloride (PVC) piping where feasible, and reuse landscape containers to the extent feasible.
- UTIL-3 Recycling bins for glass, metals, paper, wood, plastic, green waste, and cardboard shall be placed on the construction sites for use by construction workers.
- UTIL-4 In construction specifications and bid packages, require building materials made of recycled materials, to the extent feasible and economically practical.
- UTIL-5 Prior to the initiation of demolition and construction activities, the project applicant shall prepare a waste reduction plan for acceptance by the City of Costa Mesa. The waste reduction plan shall be included in all construction bid packages. During the term of the demolition and construction, the goal is to recycle or divert 50 percent of construction and demolition wastes and keep records thereof in tonnage or in other measures deemed acceptable to the City of Costa Mesa. To the maximum extent feasible, on-site separation of scrap wood and clean green waste shall occur to permit chipping and mulching for soil enhancement of land cover purposes.

RESOLUTION NO. 12-

A RESOLUTION OF THE CITY COUNCIL TO DENY AMENDMENT TO MASTER PLAN (PA-02-11A) FOR 113-UNIT FOR-RENT RESIDENTIAL PROJECT LOCATED AT 421 BERNARD STREET

THE CITY COUNCIL OF THE CITY OF COSTA MESA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, an application was filed by Fairfield Residential Company LLC, requesting approval of the following;

- **Addendum** to Final Environmental Impact Report (FEIR) No. 1050.
- **Master plan amendment** PA-02-11A to allow construction of 113 residential units as the final phase of a 145-unit residential development approved in 2005 with the following modifications:
 - Change of the housing type for 421 Bernard site from condominiums to for-rent residential units built to condominium standards;
 - Change of unit type from townhomes to single story flats and a five-level (four-level above ground) parking structure containing 283 parking spaces in accordance with the Zoning Code requirements. The original approval included 40 additional parking spaces.
- **Minor Modification** to allow a 16-foot setback along Bernard Street and Harbor Boulevard for patios, walls, and balconies (20-foot perimeter setback required, 16-foot setback proposed).
- **Variance** from the noise standards to identify private outdoor patios/balconies as exempt from the City's Noise regulations.

WHEREAS, a duly noticed public hearing were held by the Planning Commission on March 26, 2012, and by City Council on April 17, 2012 with all persons provided an opportunity to speak for and against the proposed project;

BE IT RESOLVED that, Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out;

BE IT FURTHER RESOLVED that, based on the evidence in the record and the findings contained in Exhibit "A, the City Council hereby **DENIES** Planning Amendment to Master Plan PA-02-11A with respect to the property described above.

PASSED AND ADOPTED this 17th day of April 2012.

Mayor of the City of Costa Mesa

ATTEST:

APPROVED AS TO FORM:

City Clerk of the City of Costa Mesa

City Attorney

EXHIBIT "A"

FINDINGS – DENIAL

- The proposed project does not comply with Costa Mesa Municipal Code Section 13-29(e) because:
 1. A compatible and harmonious relationship does not exist between the proposed use and existing buildings, site development, and uses on surrounding properties.
 2. The proposed project does not comply with the performance standards as prescribed in the Zoning Code.
 3. The proposed project is not consistent with the General Plan or Zoning Code.
- Granting the amendment to master plan for development of 113 for-rent units will be materially detrimental to the health, safety and general welfare of the public or otherwise injurious to property or improvements within the immediate neighborhood.
- The Costa Mesa City Council has denied Amendment to Planning Application PA-02-11A, Pursuant to Public Resources Code Section 21080(b)(5) and CEQA Guidelines Section 15270(a), CEQA does not apply to this project because it has been rejected and will not be carried out.
- The project is exempt from Chapter IX, Article 11, Transportation System Management, of Title 13 of the Costa Mesa Municipal Code.