



**E.2 Hearing to consider P-18-5, a planned development to allow construction of a 6-unit apartment project located at 37093 Locust Street (APN 92-125-10). The subject site is a landlocked site adjacent to railroad tracks between Locust Street and Walnut Street – from Associate Planner Mangalam. *Sm* (RESOLUTION)**

**Background/Discussion** – Mr. Stanley Cherry has submitted a request to allow construction of a 6-unit apartment project located at 37093 Locust Street. The subject property is a landlocked parcel adjacent to the railroad tracks (in limited use) between Locust Street and Walnut Street. The surrounding neighborhood is a mix of single-family and multi-family residential units. The subject site is zoned Residential Low Density (RL) with a Low-Medium Density Residential General Plan land use designation. The proposed density of the development is consistent with the Newark Zoning Ordinance and General Plan.

The subject site will be accessible to Locust Street via two 20-foot wide easements – (a) northern easement, from the adjacent property located at 37073 Locust Street, which the applicant currently owns, and; (b) southern easement, on adjacent railroad property. The northern easement will be both utility and access easement for the purpose of providing connection to utilities and a public street. The southern easement was granted to the subject site after former ‘Railroad Avenue’ was abandoned by the City and taken over by the railroads. The residents will enter the property from the northern easement and exit via the southern easement. A proposed pedestrian connection to Locust Street is provided via a 4-foot sidewalk from the adjacent applicant owned property to the north. The access easement on railroad property will have a fence on its perimeter to separate the driveway from the railroad corridor for the safety of future residents using it on a daily basis.

The proposed project will consist of six, 2-story residential units in two identical buildings. The subject site along with southern access easement will add up to approximately 21,634 square feet (18,736 square feet + 2,898 square feet) of site area. The proposed buildings will be separated by an open space which will include pedestrian access to all units. Each unit having 3 bedrooms and 2 bathrooms will include approximately 1,200 square feet of living area. Six covered and nine open parking spaces will be provided for the proposed development. The garages and open parking spaces will have a 25 feet driveway in between to allow adequate access in and out of parking spaces.

The proposed development will provide private open spaces for all the units on the ground level separated by good neighbor fences. In addition, an approximately 1,500 square feet of quality landscaped common open space to the rear of the development will be provided, which will include a picnic area. There will be a provision for both long term and short term bicycle parking for the residents.

Since the site is hidden from the view of Locust Street, a directional sign to the apartment complex is proposed at the entrance of the northern easement for visitors and emergency response vehicles. Another sign stating "Do not enter – private property. Authorized vehicles only" will be installed at the intersection of southern easement and Locust Street cul-de-sac to prohibit the use by non-residents.

The building design incorporates a Victorian theme which is keeping in mind the historic nature of the Old Town. The proposed lap siding will be painted 'oatmeal' color with 'pink beige' trims around windows/doors and 'burnt charcoal' colored composition roof for contrast. Decorative gable trim, pot shelves at base of the windows and brackets under the roof eaves are additional architectural treatments proposed in the building facades.

#### Planned Development

A 'Planned Development' (PD) designation provides flexibility in the design development of the site which otherwise will not be possible through the strict application of zoning district regulations. The project requires a 'Planned Development' designation for the following reasons:

- a) Due to the landlocked nature of the lot, it does not meet the minimum 60 feet frontage on a public street per Section 17.070.30 of the Newark Zoning Ordinance.
- b) Since the vehicular access to the subject site is from Locust Street, the eastern property line is considered as the front lot line. Per Section 17.23.060.A of the Newark Zoning Ordinance, parking shall not be located within required front yard. Eight uncovered parking spaces are located in the required 20 feet front yard.

The proposed development meets the development standards including residential density, front setbacks, lot coverage and minimum landscaping requirements per Section 17.07.030 and required number of parking spaces per Section 17.23.040 of Newark Zoning Ordinance.

The findings given in the draft resolution of approval contains language that comes from the Newark Zoning Ordinance, Sections 17.12.060 ("Required findings") and are supported by application materials on file.

Further elaboration for each finding is as follows:

- A. *The proposed development is consistent with the General Plan and any applicable specific plan, including the density and intensity limitations that apply;*  
The subject site is designated as Low-Medium Density Residential under the General Plan. Densities in areas with this designation range from 8.7 to 15 units per net acre. The proposed development meets the requirements of the General Plan.
- B. *Adequate transportation facilities and public services exist or will be provided in accord with the conditions of development plan approval, to serve the proposed development; and the approval of the proposed development will not result in a reduction of traffic levels of service or public services so as to be a detriment to public health, safety, or welfare;*  
The proposed northern easement is both utility and access easement for the purpose of

providing connection to utilities and vehicular connect to Locust Street. The southern access easement will provide for vehicular access easement. The proposed vehicular loop on access easements make entry/exit easy for fire trucks and garbage pickup. The proposed development will not be detriment to public health, safety or welfare.

- C. *The proposed development will not have a substantial adverse effect on surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area;*

The subject site is surrounded by a mix of single-family and multi-family residential units. Existing single-family homes are located to the east and west of the site and the site backs up to two multi-family residential structures. Across the railroad tracks is another existing multi-family development. Thus, it is compatible with the land use character of the surrounding area.

- D. *The development generally complies with applicable adopted design guidelines;*  
There are no applicable adopted guidelines for this said subject site as the site is not under any specific plan.

- E. *The proposed development is demonstratively superior to the development that could occur under the standards applicable to the underlying base district, and will achieve superior community design, environmental preservation and/or substantial public benefit.*

The subject site due to lack of street frontage on a public street will not be possible under the standards applicable to Residential Low Density zoning district and will remain vacant inviting unwanted visitors and nuisance to the site and its neighboring properties. There is a greater need of rental housing in the City and the proposed development

A community meeting was held by the applicant on Wednesday, May 2, 2018. The notice was sent to neighboring properties with 400-foot radius around the subject site and three property owners were in attendance. Percy Sanchez, owner of 37085 Locust Street expressed his concern over parking.

#### Noise and Vibration Study

An "Environmental Noise and Ground-Borne Rail Vibration Assessment" was performed by Charles M. Salter Associates, Inc., to determine if the project meets City's acceptable noise levels (interior limit of 45 LDN and exterior of 60 LDN, where LDN is the average sound level over a 24-hour period). The report concluded that if in future train activity increases, mitigation measures such as windows and doors with sound insulation ratings up to STC 40 would likely be needed, as well as higher STC exterior walls and special treatments to vents and openings will be required. In addition, 12 or 17-foot-tall noise barriers would likely be needed along the railroad right-of-way and along east and west side of the site to reduce train noise to LDN 70 or 65 dB, respectively. Keeping in mind the likelihood of increased train activity, the project is required to include extra mitigation measures (except for the sound wall) in the construction of the project as outlined in the report. However, the project is conditioned to install a sound wall/noise barrier along the railroad right-of way and along perpendicular sides of the site, when the train activity increases and noise level continuously exceeds 70 dB on a daily basis.

California Environmental Quality Act (CEQA) exemption

This project is categorically exempt from CEQA analysis under Guidelines per Section 15332, Class 32, "In-Fill Development Projects".

Recommendation

Staff believes that this project will be beneficial to the City as it will develop a vacant landlocked property into six affordable rental units and recommends the approval of the proposed development.

**Action** – The Planning Commission, hereby recommends, by Resolution and Ordinance, that the City Council approve P-18-5, a planned unit development to allow construction of a 6-unit apartment project located at 37093 Locust Street (APN 92-125-10).

**Attachments**

Exhibit A: Plan Set

Exhibit B: Environmental Noise and Ground-Borne Rail Vibration Assessment by Charles M. Salter Associates Inc. dated November 6, 2013.

RESOLUTION NO.

RESOLUTION RECOMMENDING APPROVAL OF P-18-5, A  
PLANNED DEVELOPMENT TO ALLOW CONSTRUCTION OF  
A 6-UNIT APARTMENT PROJECT AT 37093 LOCUST STREET  
(APN: 92-125-10)

WHEREAS, Mr. Stanley Cherry has filed with the City of Newark an application for P-18-5, a planned development, to allow construction of a 6-unit apartment project located at 37093 Locust Street; and

PURSUANT to the Newark Zoning Ordinance Section 17.31.060, a public hearing notice was published in The Tri City Voice on May 15, 2018 and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on May 29, 2018 at the City Administration Building, 37101 Newark Boulevard, Newark, California; and

WHEREAS, pursuant to Chapter 17.12 (Planned Development Overlay District), Section 17.12.060 (Required Findings) of Newark Zoning Ordinance, the Planning Commission hereby makes the following findings:

- A. The proposed development is consistent with the General Plan and any applicable specific plan, including the density and intensity limitations that apply;
- B. Adequate transportation facilities and public services exist or will be provided in accord with the conditions of development plan approval, to serve the proposed development; and the approval of the proposed development will not result in a reduction of traffic levels of service or public services so as to be a detriment to public health, safety, or welfare;
- C. The proposed development will not have a substantial adverse effect on surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area;
- D. The development generally complies with applicable adopted design guidelines;
- E. The proposed development is demonstratively superior to the development that could occur under the standards applicable to the underlying base district, and will achieve superior community design, environmental preservation and/or substantial public benefit.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby recommends the City Council approve this application as shown on Exhibit A, pages 1 through 10, subject to compliance with the following conditions:

## Planning Division

- a. There shall be no roof-mounted equipment other than satellite dishes, other similar television or radio antennas, and solar equipment. A/C units shall not be mounted on the roof.
- b. All lighting shall be directed on-site so as not to create glare off-site, as required by the Community Development Director.
- c. Construction site trailers and buildings located on-site shall be used for office and storage purposes only, and shall not be used for living or sleeping quarters. Any vehicle or portable building brought on the site during construction shall remain graffiti free.
- d. Measures to respond to and track complaints pertaining to construction noise shall include: (1) a procedure and phone numbers for notifying the City of Newark Building Inspection Division and Newark Police Department (during regular construction hours and off-hours); and (2) a sign posted on-site pertaining to the permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours).
- e. The tenant lease agreement shall include a provision requiring that garages shall only be used for automobile parking.
- f. The site and its improvements shall be maintained in a neat and presentable condition, to the satisfaction of the Community Development Director. This shall include, but not be limited to, repainting surfaces damaged by graffiti and site clean-up. Graffiti removal/repainting and site cleanup shall occur on a continuing, as needed basis. Any vehicle or portable building brought on the site during construction shall remain graffiti free.
- g. All exterior utility pipes and meters shall be painted to match and/or complement the color of the adjoining building surface, as approved by the Community Development Director.
- h. Color elevations shall be submitted by the applicant as part of this application to be reviewed and approved by the Planning Commission and City Council. The building elevations shall reflect all architectural projections such as roof eaves, bay windows, greenhouse windows, chimneys and porches. A site plan showing the building locations with respect to property lines shall also show the projections. Said elevations shall specify exterior materials. Any minor changes shall be submitted for the review and approval of the Community Development Director to assure consistency with the approved project.
- i. Prior to the issuance of a building permit, any change to the floor plans as submitted by the applicant as part of this application shall be reviewed and approved by the Planning Commission and City Council. Any minor changes shall be submitted for the review and

approval of the Community Development Director to assure consistency with the approved project.

- j. Prior to the issuance of a building permit, the roof material as submitted by the applicant as part of this application shall be reviewed and approved by the Community Development Director. All roof material shall consist of fire retardant shake roof, concrete tile, or a roof of similar noncombustible material. Mansard roofs with the above material may be used to screen tar and gravel roofs. All roofs shall be of Class C fire resistant construction or better. Composition shingles shall be Presidential-style or of comparable quality, subject to the review and approval of the Community Development Director.
- k. Prior to the issuance of a building permit, the project shall be submitted for the review and approval of Republic Services and the Community Development Director, in that order. The appropriate garbage, refuse and recycling service shall be approved prior to the issuance of a Certificate of Occupancy, as required by the Community Development Director. No refuse, garbage or recycling shall be stored outdoors except within the approved trash and recycling containers.
- l. Prior to issuance of a grading permit, the applicant shall hire a qualified biologist to: (1) determine if occupied Burrowing Owl habitat(s) exist on the site, and (2) implement a plan to protect the owls and to excavate the site around any active burrows using hand tools to assure that the owls are not buried during grading in the event Burrowing Owl habitat(s) is found on the site. The occupied Burrowing Owl habitat(s), if found, shall not be disturbed during the nesting season. The Burrowing Owl study shall be conducted not more than 30 days prior to the time site grading activities will commence.
- m. During project construction, if historic, archeological or Native American materials or artifacts are identified, work within a 50-foot radius of such find shall cease and the City shall retain the services of a qualified archeologist and/or paleontologist to assess the significance of the find. If such find is determined to be significant by the archeologist and/or paleontologist, a resource protection plan conforming to CEQA Section 15064.5 shall be prepared by the archeologist and/or paleontologist and approved by the Community Development Director. The plan may include, but would not be limited to, removal of resources or similar actions. Project work may be resumed in compliance with such plan. If human remains are encountered, the County Coroner shall be contacted immediately and the provisions of State law carried out.
- n. There shall be no Accessory Dwelling Units (including Standard Accessory Dwelling Units or Junior Accessory Dwelling Units) allowed.
- o. Prior to their installation, mailbox locations and designs shall be approved by the Community Development Director and Newark Postmaster, in that order. The mailbox compartments of centralized mailboxes shall identify the individual dwelling units with permanent, easily legible lettering.

- p. Prior to the issuance of a Certificate of Occupancy, roll-up garage doors with automatic garage door openers shall be provided for each unit.
- q. Prior to final inspection and utility release for each unit, the applicant shall pre-wire each unit for satellite and cable television connections, as required by the Community Development Director. The exterior connections for the pre-wire shall be made to the roof and not on the side elevation walls of the units.
- r. Prior to the issuance of a sign permit, all signs, other than those referring to construction, sale, or future use of this site, shall be submitted for the review and approval of the Community Development Director.
- s. Prior to the issuance of a building permit, any proposed fence details shall be submitted for the review and approval of the Community Development Director. This shall also include the proposed fence along the perimeter of southern easement on railroad property.
- t. Prior to the issuance of a Certificate of Occupancy, the parking areas, aisles and access drives shall be installed and striped as shown on the approved site plan. Guest parking spaces shall be clearly marked as reserved for guests, as approved by the Community Development Director.
- u. Parking lot cleaning with sweeping or vacuum equipment shall not be permitted between 7:00 p.m. and 7:00 a.m.
- v. The developer shall pay all impacts fees in effect at the time of issuance of a Building Permit. All fees, with the exception of the Community Development Maintenance Fee, are based on the site's net square footage increase.
- w. The applicant shall carry out mitigation measures as outlined in the "Environmental Noise and Ground-Borne Rail Vibration Assessment" related to building improvements.
- x. When the train activity increases and noise level continuously exceeds 70 dB on a daily basis, the applicant shall install a sound wall/noise barrier along the railroad right-of way and along perpendicular sides of the site.

#### Engineering Division

- y. Required frontage improvements on Locust Street shall include, but are not limited to: removal of existing non-compatible driveway at the cul-de-sac and construction of new replacement curb, gutter and sidewalk; construction of new City Standard accessible driveway; street trees; landscaping and irrigation; utility connections; and storm drain improvements.
- z. The project will be required to seal all trench cut joints and existing cracks in Locust Street



and apply a slurry seal over the entire width of the road from the existing storm drain manhole connection up to and including the entire cul-de-sac to the satisfaction of the City Engineer. Depending on the scope of improvements, a full width grind and overlay of the affected area may be required.

- aa. Prior to the issuance of a Certificate of Occupancy, any and all damage to public improvements as a result of construction activity associated with this project shall be repaired to the satisfaction of the City Engineer.
- bb. Prior to the issuance of building permits, a Public Utility Easement (PUE), Sanitary Sewer Easement (SSE) and Private Water Line Easement (PWLE) shall be established over the common driveway shared with 37073 Locust Street. The PUE, SSE and PWLE dedication statements are to recite that the easements are available for, but not limited to, the installation, access and maintenance of sanitary sewers, water, electrical and communication facilities.
- cc. Prior to the issuance of building permits, the Applicant shall establish an Emergency Vehicle Access Easement (EVAE) over the clear pavement width of all driveways and drive aisles on the project site and neighboring 37073 Locust Street. Easement geometry shall be subject to the approval of the City Engineer and Fire Marshall.
- dd. Prior to the issuance of building permits, the Applicant shall establish a Private Access Easement or Ingress/Egress Easement over the full width of the shared driveway on 37073 Locust Street for the benefit of the project parcel. Easement geometry and language shall be subject to approval of the City Engineer.
- ee. Prior to the issuance of building permits, the Applicant shall obtain easement rights over the adjoining property at 37073 Locust Street for the proposed pedestrian connection to Locust Street. Easement geometry and language shall be subject to approval of the City Engineer.
- ff. Prior to the issuance of building permits, the Applicant shall obtain easement rights over the adjoining property at 37073 Locust Street for storm drain system conveyance and the proposed overland drainage release path. Easement geometry and language shall be subject to approval of the City Engineer.
- gg. The Applicant shall be responsible for the removal, replacement and/or repair of all existing concrete surfaces on the adjoining property at 37073 Locust Street required to provide an ADA accessible pedestrian connection from Locust Street to the project site. The Applicant shall also be responsible for the removal, replacement and/or repair of all existing concrete surfaces on the adjoining property at 37073 Locust Street within the shared driveway access.
- hh. A paved all-weather roadway, meeting the requirements of the Alameda County Fire Department (ACFD), shall be constructed within the San Mateo County Transit District

(SamTrans) railroad right-of-way adjacent to the project site to allow emergency response and other vehicles to leave the project site and exit on to the Locust Street cul-de-sac. Roadway geometry shall be subject to the approval of the City Engineer and Fire Marshall.

- ii. Prior to the issuance of any building permits, the applicant shall obtain formal approval from the San Mateo County Transit District (SamTrans) for all work within the access easement over the SamTrans railroad right-of-way that benefits the project site. This approval shall include resolution of any and all contractual obligations with SamTrans and clear indication that the easement is permanent.
- jj. A sign post, to which is attached a sign having an area of at least fifteen inches by twenty-one inches, shall be installed at or near the Locust Street cul-de-sac driveway. The sign shall state in clearly legible letters at least four inches in height "Do Not Enter. Private Property. Authorized Vehicles Only"
- kk. The project shall be designed to include appropriate source control and site design measures in accordance with Provision C.3 of the Municipal Regional Stormwater NPDES Permit (MRP), Order R2-2015-0049, revised November 19, 2015, issued to the City of Newark by the Regional Water Quality Control Board, San Francisco Bay Region.
- ll. The Preliminary Stormwater Management Plan, Sheet C3 of the Planned Unit Development package, prepared by Sterling Consultants dated April 24, 2018 is approved in concept only. The final Stormwater Management Plan is subject to City Engineer review and approval prior to approval of the Building Permit Plans. Approval is subject to the Applicant providing the necessary plans, details, and calculations that demonstrate the plan complies with Provision C.3 of the Municipal Regional Stormwater NPDES Permit (MRP), Order R2-2015-0049, revised November 19, 2015, issued by the San Francisco Bay Regional Water Quality Control Board.
- mm. In accordance with Provision C.10 of the Regional Water Quality Control Board's Municipal Regional Permit, storm drain inlet filters shall be installed in all on-site and adjacent off-site storm drain inlets. The storm drain inlet filters shall meet the full trash capture requirements of the San Francisco Bay Regional Water Quality Control Board and shall comply with maintenance and performance requirements of the Mosquito Abatement District. Alternative full trash capture devices such as hydrodynamic separators or pipe screens that meet the requirements of the Regional Water Quality Control Board and Mosquito Abatement District may also be used if approved by the City Engineer.
- nn. All stormwater treatment measures and full trash capture devices are subject to review and approval by the Alameda County Mosquito Abatement District. The Applicant shall modify the grading, drainage, stormwater treatment or full trash capture design as necessary to satisfy any imposed requirements from the District.
- oo. Applicant shall enter into an Agreement with the City of Newark that guarantees the property owner's perpetual maintenance obligation for all stormwater treatment and trash

capture measures installed as part of the project. Said Agreement is required pursuant to Provision C.3 of the Municipal Regional Stormwater NPDES Permit, Order No. R2-2015-0049. Said permit requires the City to provide verification and assurance that all treatment measure and trash capture devices will be properly operated and maintained. The Agreement shall be recorded against the property and shall run with the land.

- pp. "No Dumping - Drains to Bay" thermoplastic stencils shall be placed on all on-site and adjacent off-site storm drain inlets.
- qq. The Applicant shall submit detailed grading and drainage plans for review and approval by the City Engineer and the Alameda County Flood Control and Water Conservation District. These plans must be based upon a City benchmark and need to include pad and finish floor elevations of each proposed structure, proposed on-site property grades, proposed elevations at property line, and sufficient elevations on all adjacent properties to show existing drainage patterns. All on-site pavement shall drain at a minimum of one percent. The developer shall ensure that all upstream drainage is not blocked and that no ponding is created by this development. Any construction necessary to ensure this shall be the developer's responsibility.

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

- rr. Where a grade differential of more than a 1-foot is created along the boundary lot lines between the proposed development and adjacent property, the Applicant shall install a masonry retaining wall unless a slope easement is approved by the City Engineer. Said retaining wall shall be subject to review and approval of the City Engineer.
- ss. The applicant shall submit a detailed soils report prepared by a qualified engineer, registered with the State of California. The report shall address in-situ and import soils in accordance with the City of Newark Grading and Excavation Ordinance, Chapter 15.50. The report shall include recommendations regarding pavement sections for all driveways and parking areas. Grading operations shall be in accordance with recommendations contained in the soils report and shall be completed under the supervision of an engineer registered in the State of California to do such work.
- tt. The Project Geotechnical Engineer shall be retained to review all final grading plans and specifications. The Project Geotechnical Engineer shall approve all grading plans prior to City approval and issuance of grading permits.
- uu. The project site is located in a Seismic Hazard Zone for Earthquake Induced Liquefaction according to maps released by the State of California. A geotechnical report will need to be prepared with the construction documents and is subject to review and approval by a City selected peer review consultant. The applicant shall pay for all costs related to the

required peer review. Construction documents shall conform to the recommendations of seismic hazard report.

- vv. The project geotechnical report shall analyze the suitability of constructing bioretention areas directly adjacent to or in close proximity to building foundations. In such instances, the adjacent bioretention treatment soil and drain rock cannot be compacted and would be continuously saturated. If necessary, recommendations regarding the special design of building foundations adjacent to bioretention areas shall be discussed and reflected in the project construction documents.
- ww. Prior to approval of Building Permits, the Applicant's engineer shall submit a pavement maintenance program for the drive aisles and parking areas for the review and approval of the City Engineer.
- xx. Prior to issuance of a Certificate of Occupancy or release of utilities for any building, vehicle access ways and parking facilities serving said buildings shall be paved in accordance with the recommendation of a licensed engineer based on a Traffic Index of 5.0 and striped as shown on the approved site plan. All on-site uncovered parking facilities and drive aisles shall be drained at a minimum slope of 1.0% for asphalt surfaces and 0.3% for Portland cement concrete surfaces.
- yy. All utilities including, but not limited to, electric, telephone and cable television services shall be provided underground for the proposed buildings in the development.
- zz. The developer shall ensure that a water vehicle for dust control operations is kept readily available at all times during construction at the City Engineer's direction.

#### Landscape Division

- aaa. Prior to the issuance of a building permit, the developer shall enter into a Landscape Maintenance Agreement to ensure the perpetual maintenance of all landscaping along the property frontage and on the project site. This agreement shall run with the land and be binding upon all future owners or assigns.
- bbb. The developer shall retain a licensed landscape architect to prepare working drawings for both off-site and on-site landscape plans in accordance with City of Newark requirements, the approved Conceptual Landscape Plan, and the State of California Model Water Efficient Landscape Ordinance. The associated Landscape Documentation Package must be approved by the City Engineer prior to the issuance of a building permit.
- ccc. The developer shall implement Bay Friendly Landscaping Practices in accordance with Newark Municipal Code, Chapter 15.44.080. Prior to the issuance of a building permit, the developer shall provide sufficient information to detail the environmentally-conscious landscape practices to be used on the project.

- ddd. The plant species identified for any proposed biotreatment measures are subject to final approval of the City Engineer.
- eee. Prior to installation by the developer, plant species, location, container size, quality, and quantity of all landscaping plants and materials shall be reviewed and approved by the City Engineer. All plant replacements shall be to an equal or better standard than originally approved subject to approval by the City Engineer.
- fff. Prior to the release of utilities or issuance of any Certificate of Occupancy, all landscaping and irrigation systems shall be completed or guaranteed by a cash deposit deposited with the City in an amount to cover the remainder of the work.
- ggg. Prior to issuance of Certificate of Occupancy or release of utilities, the developer shall guarantee all trees for a period of 6 months and all other plantings and landscape for 60 days after completion thereof. The developer shall insure that the landscape shall be installed properly and maintained to follow standard horticultural practices. All plant replacements shall be to an equal or better standard than originally approved subject to approval of the City Engineer.

Building Division

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

Fire Division

- lll. The building shall be provided with a NFPA 13 fire sprinkler system. Per discussion and confirmation with the Owner, the fire sprinkler system will be designed per Ordinary Hazard Group I density.
- mmm. An on-site fire hydrant will be required.

### Police Division

- nnn. The development shall comply with Chapter 15.06, Security Code, of the Newark Municipal Code and Section 5.10 of the California Fire Code for radio reception.
- ooo. Prior to building being occupied security cameras should be installed for both interior and exterior of the building.

### General

- ppp. This Planned Development shall be given a public hearing before the City Council for the Council's review and approval.
- qqq. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission and City Council review and, if so decided, said changes shall be submitted for the Commission's and Council's review and decision. The applicant shall pay the prevailing fee for each additional separate submittal of project exhibits requiring Planning Commission and/or City Council review and approval.
- rrr. If any condition of this Planned Development be declared invalid or unenforceable by a court of competent jurisdiction, this planned unit development and conditional use permit shall terminate and be of no force and effect, at the election of the City Council on motion.
- sss. The applicant hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.
- ttt. In the event that any person should bring an action to attack, set aside, void or annul the City's approval of this project, the applicant shall defend, indemnify and hold harmless the City and/or its agents, officers and employees from any claim, action, or proceeding against the City and/or its agents, officers and employees with counsel selected by the applicant (which shall be the same counsel used by applicant) and reasonably approved by the City. Applicant's obligation to defend, indemnify and hold harmless the City and/or its agents, officers and employees shall be subject to the City's compliance with Government Code Section 66474.9.
- uuu. The Conditions of Project Approval set forth herein may include certain fees, dedication

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

This Resolution was introduced at the Planning Commission's May 29, 2018 meeting by Commissioner

AYES:

NOES:

ABSENT:

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TERRENCE GRINDALL, Secretary

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William Fitts, Chairperson