



- E.2 **Hearing to consider ‘Compass Bay’, a 138-unit residential project on an approximately 9.97-acre site located at 8610 Enterprise Drive. The Planning Commission will consider recommending approval of: (1) RZ-18-17, a rezoning of an approximately 9.97- acre portion of Vesting Tentative Tract Map 8459 from Business and Technology Park (BTP) to Residential Medium Density with Form Based Code (RM-FBC) and Planned Development Overlay Districts (-PD) (APN 092-0115-005-02); (2) TTM-18-19, a Vesting Tentative Tract Map 8459; (3) P-18-20, a Planned Development Plan for a 138-unit residential project located southeast of the intersection of Hickory Street and Enterprise Drive; and (4) E-18-18, approving and recommending that the City Council approve an addendum to the Dumbarton Transit Oriented Development Specific Plan Environmental Impact Report and certifying that the previously approved EIR (state clearinghouse number 2010042012) addresses all the impacts of the proposed development - from Associate Planner Mangalam (RESOLUTIONS-4) sm**

**Background/Discussion** – TH Willow Newark Investors LLC has submitted an application to develop “Compass Bay”, a 138-unit residential development on subject property which is owned by Ashland LLC. The site was previously used as a chemical packaging and distribution facility. The project site is vacant and consists of leveled industrial pads and road embankments, and the surrounding properties are actively being developed in accordance with the Dumbarton TOD Specific Plan, that was approved in 2011. Residential units planned within the Specific Plan area east, south, and west of the project site have been constructed or are under construction. Enterprise Drive borders the project site to the north, and Hickory Street borders the project site to the west. Vacant land and industrial uses occur north/northwest of the project site, across Enterprise Drive. To the east, commercial and residential developments are under construction. To the south and west of the project site, residential developments are under construction. The surrounding land uses are characterized by existing and former industrial parcels and commercial and residential developments constructed and/or under construction such as Bayshores, Glass Bay, Lighthouse, as part of the Dumbarton TOD area.

The applicant proposes to construct 138 homes consisting of 53 detached single-family and 85 attached townhomes with a density of 14-units to an acre. The residential development would be accessible directly from Enterprise Drive and Seawind Way and would be oriented along a few internal roadways serving the neighborhood. The project includes two north/south oriented roadways, off Seawind Way and off Enterprise Drive, that would function as the main arterials through the neighborhood. Both streets provide access to two east/west oriented roadways. Fourteen courts are provided throughout the residential development.

Single-family homes: The applicant proposes to construct 53 detached single family homes. five different floor plans ranging from approximately 2,000 to 2,600 square feet are being proposed to provide diversity of styles and configurations. The project proposes three different architectural styles, Farmhouse, Craftsmen and Victorian and within those styles, there are variations in architectural elements, color and material schemes to add diversity. Plan types 1, 2, 2X and 3 are two-stories high; and Plan 3X is three-

stories high.

**Multifamily homes/Townhomes:** There will be 85 townhomes proposed in 3-plex, 4-plex, 5-plex, 6-plex and 7-plex buildings. Three different townhome floor plans ranging from approximately 1,885 square feet to 2,060 square feet. The townhome buildings will be three-stories tall and alley loaded. Different buildings will have different colors and materials scheme to add to variety.

A small park with a lawn area and playground is located to the east of the site. The proposed development would include walkways that would connect to off-site sidewalks along Enterprise Drive/Hickory Street and adjacent residential projects. The distinct feature of this proposed development is that all the homes front to major streets- Enterprise Drive, Hickory Street and Seawind Way instead of backing on them, thus enhancing pedestrian activity.

The Specific Plan requires that 2.5 on- and off-street parking spaces per unit be provided for single- and multifamily residential developments. The proposed project would construct 53 single-family residential units and 85 multi-family residential units, requiring 345 parking spaces. A total of 345 parking spaces would be provided for the residential development. Of the 350 parking spaces provided, 276 spaces would be private garage spaces and 74 spaces would be on-street surface parking. With a planned supply of 350 spaces, the proposed parking supply would meet the Specific Plan's requirements.

The proposed residential project is consistent with the objectives, policies, and vision of the Dumbarton Transit-Oriented Development Specific Plan and requires the approval of the following action to allow the construction of proposed residential project.:

**Rezoning:** The site is currently zoned as Business and Technology Park (BTP) which allows advanced technology research and development, manufacturing, and related support facilities. A residential project such as this requires rezoning to a residential district. The applicant proposes a density of 14 units per acre (138 units on a 9.68 net acres) and requires Residential Medium Density (RM) which allows residential densities from 14 to 30 units per net acre. Further, Dumbarton TOD Specific Plan included the concept of Form Based code to set guidelines for developments within the TOD to create a vibrant, thriving and special community. Thus, the site will require a rezoning of approximately 9.97- acre from Business and Technology Park (BTP) to Residential Medium Density with Form Based Code (RM-FBC). As per 17.12.050 of Newark Zoning Ordinance, a Planned Development (PD) Overlay District must be adopted for the approval of a PD Plan, which provides for greater flexibility in the design of the development.

**Vesting Tentative Tract Map:** The applicant has submitted a Vesting Tentative Tract Map 8459 to construct 138 units comprising of 53 single-family and 85 townhomes on an approximately 9.97-acre site. This will comprise of 15 parcels. The tract will comprise of following land uses: single family lots (3.33 acres), Multi-family lots (2.84 acres), Private Streets (2.36 acres), park (0.18), water quality (0.22 acres) and open space (1.04 acres). The project requires two off-street covered spaces and 0.5 guest spaces per unit, thus requiring total of 345 parking spaces. The project will provide a total of 350 spaces including 276 private garage spaces and 74 guest parking spaces.

**Planned Development (PD) Plan:** The project proposes the development of a previously analyzed and approved project with minor deviations from the City's Form Based Code for the TOD Specific Plan area. These deviations require the approval of a planned development plan. The specific proposed deviations are: (1) Single-family homes will be setback at minimum 4 feet from the property line in lieu of the minimum 8 feet as set in Section 17.13.040. This is still in compliance with section 17.13.050 of Newark

Zoning Ordinance, which encourages garage aprons to less than five feet; (2) Section 17.13.040.B of Newark Zoning Ordinance requires multi-family buildings to be a minimum of 30 feet from non-street property line of a detached lot. In the proposed development, townhomes do not meet this requirement and are set at a distance ranging from 8 feet to 12.8 feet; (3) Multi-family buildings should be at minimum 15 feet from non-property line of a multi-unit lot as included in Section 17.13.040.B of Newark Zoning Ordinance. One of the 3-plex building (townhomes) is setback at 10 feet from Lennar Lighthouse residential project; and (4) Multi-family buildings shall be at minimum 5 feet from on-site drive lane as per Form Based Code, however the proposed buildings are set at 4 feet with an overhang of two-feet on the second and third floor, thus only providing two-feet setback in lieu of five feet.

As per Section 17.12.060 of the Newark Zoning Ordinance, a PD Plan shall only be approved if certain findings listed below are made. The Findings given in the draft resolution of approval contains language that comes from the Newark Zoning Ordinance, is supported by application materials on file.

- a. *The proposed development is consistent with the General Plan and any applicable specific plan, including the density and intensity limitations that apply.*

The 9.97-acre Compass Bay Project site is proposed for medium density residential development. The total number of proposed housing units is 138 on 9.68 net acres of the site to achieve a density of approximately 14 housing units per acre.

Land use in the project area is regulated by the City of Newark through various plans and ordinances, including the City of Newark 2013 General Plan and the City of Newark Zoning Ordinance. Further, the Compass Bay Project is included in the Dumbarton Transit Oriented Development (TOD) Specific Plan (Specific Plan).

The City of Newark zoning designation for the site is Business and Technology Park (BTP), which is inconsistent with the proposed land uses for the Compass Bay Project. Implementation of the project would require a rezone of the project site from BTP to medium density residential for the residential development project. City approval of the rezone would resolve this conflict.

The Dumbarton TOD Specific Plan identifies the project property as medium/high-density residential, and the project is proposed for medium-density residential. However, the Specific Plan allows for an adjustment of land uses within the Specific Plan area without necessitating a Specific Plan Amendment. Additionally, the Specific Plan identifies a maximum number of units that may be developed on each parcel within the Dumbarton TOD area, and the maximum number of units allowed on APN 092-0115-005-02 is 243, which is 105 units less than the maximum number of units allowed.

- 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 residential development would be accessible directly from Enterprise Drive and Seawind Way and would be oriented along a few internal roadways serving the neighborhood. The project includes two north/south oriented roadways, "A" Street, off Seawind Way, and "C" Street, off Enterprise Drive, that would function as the main arterials through the neighborhood. Both

streets provide access to two east/west oriented roadways, “D” Way and “B” Avenue, and “C” Street provides access to an east/west oriented roadway, “E” Lane, embedded in the residential development. Fourteen courts are provided throughout the residential development and are accessible via “A” Street, “C” Street, “B” Avenue, and “E” Lane. The proposed project would not require additional modification to the roadways (e.g. re-alignment) other than already identified in the Program Environmental Impact Report (PEIR) prepared for the Dumbarton TOD Specific Plan.

New vehicular trips generated by the Compass Bay Project, in combination with other approved projects within the Specific Plan area, are below the total number of daily, a.m. peak hour, and p.m. peak hour trips that were assumed in the Specific Plan PEIR and would not conflict with the City’s operational standards as projected under those plans.

Sidewalks would be provided along at least one side of each neighborhood street and would connect to sidewalks along Enterprise Drive and Seawind Way. The residential development would include walkways and crosswalks that would connect to off-site sidewalks along Enterprise Drive and the adjacent Tract 8099 – Bridgeway Lennar project, west of the project site.

The future sidewalk and roundabout at the Enterprise Drive and Hickory Street would be constructed by the project applicant and other Dumbarton TOD developers per a pending developer agreement. Additionally, the proposed project would include the construction of the sidewalk and landscaping strip along the Hickory Street project frontage from Seawind Way to Enterprise Drive and the Seawind Way project frontage.

The project site would provide 350 parking spaces, including three for disabled persons, 276 spaces in private garage spaces, and 71 on-street parking spaces. With a planned supply of 350 spaces, the proposed parking supply would exceed the minimum parking required by Specific Plan with a surplus of 5 spaces.

The project proposes to construct 105 fewer units than allocated to the parcel in the Specific Plan and would not result in a significant increase in service demands or render the current service levels to be inadequate, as service demands for the medium-density residential land use would be similar to or less than those envisioned under the medium/high-density residential land use. Further, the applicant is required to pay development impact fees for fire protection, police protection, and schools.

- 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 project site is vacant and consists of leveled industrial pads and road embankments, and the surrounding properties are actively being developed in accordance with the Dumbarton TOD Specific Plan. Residential units planned within the Specific Plan area east, south, and west of the project site have been constructed or are under construction.

Enterprise Drive borders the project site to the north, and Hickory Street borders the project site to the west. Vacant land and industrial uses occur north/northwest of the project site, across Enterprise Drive, although a combination of residential, commercial, park and transit uses are planned for this area. To the east, commercial and residential developments are under construction. To the south and west of the project site, residential developments are under construction. The

surrounding land uses are characterized by existing and former industrial parcels and commercial and residential developments constructed or under construction as part of the Dumbarton TOD Specific Plan.

- d. *The development generally complies with applicable adopted design guidelines;*

Chapter 5 of the Dumbarton TOD Specific Plan has established design guidelines to govern development of a planned community which offers a variety of residential housing types. Several building styles are recommended to be used throughout the Plan area including Agrarian Rural/Contemporary, Farmhouse, Arts & Crafts – Prairie/ Craftsman and French Country. The proposed project would incorporate a mix of Farmhouse, Modern Prairie and Contemporary Agrarian residential units.

The site planning and layout of the Specific Plan area is encouraged to have a strong pedestrian orientation. The Circulation Design Guidelines in the Specific Plan provide recommendations for the streets and other circulation areas throughout the Plan area. The street hierarchy is intended to create a pedestrian network through and around the Plan area and into the adjacent community. The proposed residential development would be accessible directly from Enterprise Drive and Seawind Way and would be oriented along a few internal roadways serving the neighborhood. The project includes two north/south oriented roadways, “A” Street, off Seawind Way, and “C” Street, off Enterprise Drive, that would function as the main arterials through the neighborhood. Both streets provide access to two east/west oriented roadways, “D” Way and “B” Avenue, and “C” Street provides access to an east/west oriented roadway, “E” Lane, embedded in the residential development. Fourteen courts are provided throughout the residential development and are accessible via “A” Street, “C” Street, “B” Avenue, and “E” Lane. Sidewalks would be provided along at least one side of each neighborhood street and would connect to sidewalks along Enterprise Drive and Seawind Way. The residential development would include walkways and crosswalks that would connect to off-site sidewalks along Enterprise Drive and the adjacent Tract 8099 – Bridgeway Lennar project, west of the project site.

- 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.*

A Planned Development approval will allow for greater connectivity between the Planning Area neighborhoods and also the greater Specific Plan area. As mentioned under finding b), the proposed project would construct walkways and crosswalks that would connect to off-site sidewalks along Enterprise Drive and the adjacent Tract 8099 – Bridgeway Lennar project and Tract 8157- Lennar Lighthouse/Senior Housing. Additionally, the future sidewalk and roundabout at the Enterprise Drive and Hickory Street would be constructed by the project applicant and other Dumbarton TOD developers per the pending developer agreement. The proposed project would also include the construction of the sidewalk and landscaping strip along the Hickory Street project frontage from Seawind Way to Enterprise Drive and the Seawind Way project frontage.

The proposed project would provide community members with varied housing options. The applicant proposes to construct 53 single-family residential units, with four different floor plan options, and 85 multi-family attached townhomes, with four different floor plan options.

**Addendum to Program Environmental Impact Report (PEIR):**

The City of Newark (City) certified a Program Environmental Impact Report (PEIR) for the Dumbarton Transit Oriented Development (TOD) Specific Plan (State Clearinghouse No. 2010042012, July 2011). The State CEQA Guidelines environmental review procedures allow for the updating and use of a previously adopted PEIR for projects that are different from the previous project or the conditions under which the project was analyzed. In accordance with State CEQA Guidelines Section 15164, an Addendum has been prepared to document that the proposed project modifications do not require preparation of a subsequent EIR or negative declaration under Section 15162.

The proposed project is substantially similar to the project evaluated in the adopted 2011 PEIR. Similar to the approved project, the proposed project involves constructing medium density residential on the project site which is substantially similar to the development area analyzed in the 2011 PEIR, which involved constructing medium-high density residential. The analysis contained in the Initial Study demonstrated that there are no substantial changes proposed in the project which would result in any new significant environmental effects or a substantial increase in the severity of previously identified significant effects. There is no new information of substantial importance which was not known for the 2011 PEIR, and no new mitigation measures are necessitated by new impacts. However, the applicant will remain obligated to comply with all applicable mitigation measures and conditions of approval contained within the EIR.

**Recommendation**

The proposed project is in line with the vision of the Specific Plan by proposing to create a livable residential development designed with connectivity to existing and proposed developments in the neighborhood of 'Bayside Newark'. Thus, staff recommends approval of this proposed residential development.

**Action** – The Planning Commission, hereby, recommends by resolution, that the City Council, approve the following: (1) RZ-18-17, a rezoning of an approximately 9.97- acre portion of Vesting Tentative Tract Map 8459 from Business and Technology Park (BTP) to Residential Medium Density with Form Based Code (RM-FBC) and Planned Development Overlay Districts (-PD) (APN 092-0115-005-02); (2) TTM-18-19, a Vesting Tentative Tract Map 8459; (3) P-18-20, a Planned Development Plan for a 138-unit residential project located southeast of the intersection of Hickory Street and Enterprise Drive; and (4) E-18-18, approving and recommending city council to adopt an addendum to the Dumbarton Transit Oriented Development Specific Plan Environmental Impact Report and certifying that the previously approved EIR (state clearinghouse number 2010042012) addresses all the impacts of the proposed development.

**Attachments**

- Exhibit A: E-18-18, an addendum to the Dumbarton Transit Oriented Development Specific Plan Environmental Impact Report and certifying that the previously approved EIR (state clearinghouse number 2010042012)
- Exhibit B: Plan Set for proposed residential development

(TTM-18-19)

RESOLUTION NO.

RESOLUTION RECOMMENDING THAT THE CITY COUNCIL  
OF CITY OF NEWARK APPROVE TTM-18-19, VESTING  
TENTATIVE TRACT MAP 8459

WHEREAS, Parcel C Project Owner LLC has submitted TTM-18-19, Tentative Map 8459, to the City of Newark with subdivision and zoning variances covered by P-18-20, a planned development plan, a 138-residential project (Compass Bay) on an approximately 9.97-acre site within the Dumbarton Transit Oriented Development Specific Plan area located 8610 Enterprise Drive (APN: □092-0115-005-02).

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Newark does hereby recommend that the City Council of City of Newark approve TTM-18-19, Tentative Tract Map 8459 covered by P-18-20, as shown on Exhibit B, pages 1 through 62 and made part hereof by reference, subject to the following conditions:

- a. Approval of TTM-18-19, Vesting Tentative Map 8459 shall be effective at such time RZ-18-17, the Rezoning of the property within the boundary of the Vesting Map 8453, takes effect.
- 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. AC units shall not be placed in front or street side yard and if placed in any other location that makes it visible to public view, shall be properly screened with solid material.
- f. The project shall be subject to the environmental mitigation measures as described in the Dumbarton TOD Specific Plan Environmental Impact Report.
- g. 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.

- h. 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.
- i. 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.
- j. 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.
- k. 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.
- l. 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.
- m. Prior to the issuance of a building permit, a screening design shall be submitted to and approved by the Community Development Director. Roof equipment shall not be visible from public streets. All equipment shall be fully screened within the context of the building's architecture, as approved by the Community Development Director. Said screening design shall be maintained to the satisfaction of the Community Development Director. The building owner shall paint the roof equipment and the inside of its screening



wall within the context of the building's color scheme and maintain the painted areas to the Community Development Director's satisfaction.

- n. 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.
- o. 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.
- p. There shall be no Accessory Dwelling Units (including Standard Accessory Dwelling Units or Junior Accessory Dwelling Units) allowed.
- q. There shall be no short term rentals allowed.
- r. There shall be no individual swimming pools allowed.
- s. 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.
- t. The covenants, conditions and restrictions (CC&Rs) filed for this development shall include a provision requiring that garages shall only be used for automobile parking.
- u. Prior to the issuance of a Certificate of Occupancy, roll-up garage doors with automatic garage door openers shall be provided for each unit.
- v. 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. Prior to the issuance of a building permit, details of the outdoor recreational amenities such as play structures shall be submitted to the Community Development Director for review and approval.
- w. Prior to the City Council Approval, an agreement shall be entered into which ensures construction of community identification monument signs at all the roundabouts in the TOD Specific Plan Area.
- x. Prior to the issuance of first building permit, the applicant shall pay Park Impact fees for the entire "Compass Bay" development comprising of 138 units, in effect at that time to reimburse towards the cost of construction of approximately 5-acre public park, unless otherwise specified in 'Park Agreement'.
- y. Prior to the issuance of each building permit, the applicant shall pay all other applicable Community Development Impact Fees including Public Safety; Community Services/Facilities; Transportation; Housing; Art in Public Places and Private Development; and Community Development Maintenance Fee.
- z. Prior to the issuance of the first building permit, Glass Bay Park located at 8333 Enterprise Drive (APN 092 014000500) shall be completed and open for public use.
- aa. Prior to the issuance of a building permit, the developer shall enter into an agreement with the City Council to address Community Services fiscal support of \$2,500 per unit for the Map Area specific to this project.
- bb. Prior to the transfer of title, the applicant shall provide disclosure notices to buyers of individual dwellings in the subdivisions as to all of the conditions of project approval and

environmental determination approved for this project. This information shall include, but is not limited to the anticipated commuter rail, as well as the presence of loud train horns using the railroad tracks to the north of the property.

- cc. Prior to the transfer of title for any lot in the development, the applicant shall provide disclosures notices to the buyer as to the possibility of ground borne vibration from trains using the railroad tracks on the north of the subdivision. The method of disclosure shall be subject to review and approval of Community Development Director.
- dd. Prior to occupancy, the applicant shall provide clearance for residential occupancy from Californian Regional Water Quality Board San Francisco Region.

#### Engineering Division

- ee. The project shall conform to Vesting Tentative Map – Tract 8459, sheets TM-1 through TM-7, and all conditions of approval set forth herein. Approval of the Vesting Tentative Map shall expire according to the provisions of the State Subdivision Map Act and any amendments thereto and applicable provisions of the Newark Municipal Code consistent with the State Subdivision Map Act.
- ff. The development will require approval of final tract maps filed in accordance with the State Subdivision Map Act and the City of Newark Subdivision Ordinance. The final map shall be approved prior to the issuance of any building permits.
- gg. The final map shall designate and/or dedicate emergency vehicle access ways, private vehicle access ways, open space/recreational easements, public utility easements, and other easement as may be required over the common area.
- hh. The final map and complete tract improvement plans shall be submitted to the Engineering Division for review to ensure conformance with relevant codes, policies, and other requirements of the Newark Municipal Code and City of Newark street improvement standards. Prior to approval of the final map, the applicant shall guarantee all necessary public and private street improvements and other infrastructure improvements within the subdivision and beyond the map boundary as required by the City of Newark Subdivision Ordinance. On-site common areas and all private streets in the development shall be designed and constructed to City standards and shall be included with the tract improvement plans.
- ii. The applicant shall dedicate right-of-way and install complete street improvements for Enterprise Drive, Hickory Street, Seawind Way, and Hickory/Enterprise Roundabout as shown on the Vesting Tentative Map exhibits and as described below:

#### Enterprise Drive

- i. Enterprise Drive is considered an arterial street with a traffic index of 9.0. During the final map and improvement plan review, the applicant shall submit a detailed geotechnical report providing pavement recommendations for the section between Willow Street and Hickory Street. If the report concludes that the existing pavement section between Willow Street and Hickory Street is adequate for a traffic index of 9.0, then the applicant shall provide a 0.25' thickness of pavement grind and an asphalt pavement overlay over the entire width of Enterprise Drive for that segment. If the report concludes that the existing pavement section between Willow Street and Hickory Street is deficient for a traffic index of 9.0, the project geotech engineer shall provide recommendations for pavement rehabilitation and/or replacement of structural sections on Enterprise Drive to meet the traffic index of 9.0.

If, at the time of final map approval for Tract 8459, another applicant has already provided guarantee(s) or other appropriate improvement security for the full width pavement rehabilitation and/or grind and overlay, the applicant will not be required to perform that portion of the pavement work.

- ii. The applicant shall install complete street improvements for Enterprise Drive between Willow Street and Hickory Street consistent with the improvements shown in the Dumbarton TOD Specific Plan. Improvements include, but are not limited to, installation of 2-12' travel lanes and 5' bike lanes in each direction, a 10' landscape median, curb and gutter, street lights, fire hydrants, sidewalk along the project frontage and landscaping. Installation of the complete street improvements, including any pavement rehabilitation and/or replacement of structural sections for Enterprise Drive, shall be completed prior to the first occupancy of the project.

If, at the time of final map approval for Tract 8459, another applicant has already provided guarantee(s) or other appropriate improvement security for all or a portion of the Enterprise Drive improvements, the applicant will not be required to perform the improvements guaranteed by the other applicant.

#### Hickory Street

- i. The applicant shall install sidewalk and landscaping improvements along the project frontage on Hickory Street. Sidewalk and landscaping improvements shall be completed prior to the first occupancy of the project.

#### Seawind Way

- i. The applicant shall abandon the Seawind roadway easement and dedicate the Seawind right-of-way in-fee title on the final map. The applicant shall install sidewalk and landscaping improvements along the project frontage on Seawind Way. Sidewalk and landscaping improvements shall be completed prior to the first occupancy of the project.

Hickory/Enterprise Roundabout

- i. The applicant shall dedicate and construct the ultimate configuration of the Hickory/Enterprise roundabout as shown on the Vesting Tentative Map exhibits. The right-of-way dedication shall be granted to and accepted by the City or an executed Agreement from FMC ensuring future right-of-way dedication shall be provided prior to the Final Map approval. The Hickory/Enterprise roundabout improvements shall be completed prior to the first occupancy of the project.
- jj. The applicant shall repair and/or replace any public and private improvements damaged as a result of construction activity to the satisfaction of the City Engineer.
- kk. A signpost with a sign having an area of at least 15-inches by 21-inches shall be installed at or near each private street entrance. The name of each private street shall be placed on this sign in clearly legible 4-inch letters. The signs shall have painted, in at least 1-inch letters, "Private Property. Not dedicated for public use."
- ll. The connection between private streets and public street shall be by a City of Newark standard driveway or a City-approved modified driveway.
- mm. Prior to the issuance of the initial grading or any building permits for this project, the applicant shall submit a Storm Water Pollution Prevention Plan for the review and approval of the City Engineer. The plan shall include sufficient details to show how storm water quality will be protected during both: (1) the construction phase of the project and (2) the post-construction, operational phase of the project. The construction phase plan shall include Best Management Practices from the California Storm Water Quality Best Management Practices Handbook for Construction Activities. The specific storm water pollution prevention measures to be maintained by the contractor shall be printed on the plans. The operational phase plan shall include Best Management Practices appropriate to the uses conducted on the site to effectively prohibit the entry of pollutants into storm water runoff from this site including, but not limited to, trash and litter control, pavement sweeping, periodic storm water inlet cleaning, landscape controls for fertilizer and pesticide applications, labeling of storm water inlets with a permanent thermoplastic stencil with the wording "No Dumping - Drains to Bay," and other applicable practices.
- nn. The project must be designed to include appropriate source control, site design, and stormwater treatment measures to prevent stormwater runoff pollutant discharges and increases in runoff flows from the site 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. Examples of source control and site design requirements include but are not limited to: properly designed trash storage areas, sanitary sewer connections for all non-stormwater discharges, minimization of impervious surfaces, and treatment of all runoff with Low Impact Development (LID) treatment measures. A properly engineered and maintained biotreatment system will only be allowed if it is infeasible to implement

other LID measures such as harvesting and re-use, infiltration, or evapotranspiration. The stormwater treatment design shall be completed by a licensed civil engineer with sufficient experience in stormwater quality analysis and design. The design is subject to review by the Regional Water Quality Control Board. The applicant shall modify the site design to satisfy all elements of Provision C.3 of the MRP. The use of treatment controls for runoff requires the submittal of a Stormwater Treatment Measures Maintenance Agreement prior to the issuance of any Certificates of Occupancy.

- oo. All stormwater treatment measures are subject to review and approval by the Alameda County Mosquito Abatement District. The applicant shall modify the grading and drainage and stormwater treatment design as necessary to satisfy any imposed requirements from the District.
- pp. 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.
- qq. Prior to approval of the final map, 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. The applicant shall incorporate the program into the required Storm Water Pollution Prevention Plan and Storm Water Treatment Measures Maintenance Agreement.
- rr. 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 applicant 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 applicant'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 the final map(s). The calculations shall show that the City and County freeboard requirements will be satisfied.

- ss. 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. A grading permit is required by the Building Inspection Division prior to starting site grading work.

- tt. 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 public and private streets. 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.
- uu. Prior to the final map approval or early subdivision grading approval for the project, whichever comes first, the applicant shall submit a supplemental geotechnical report or a design-level geotechnical report further evaluating the liquefaction-induced ground-surface disruption and liquefaction-induced settlement potential. The report shall be reviewed and approved by the City selected peer review consultant. The review fee shall be paid by the applicant per the City's Master Fee Schedule.
- vv. The type of mitigation measures and/or ground improvement addressing ground-surface disruption potential and/or seismic-induced settlement shall be subject to review and approval by the City Engineer.
- ww. Prior to final map approval, the applicant shall apply for and receive approval of a conditional letter of map revision based on fill (CLOMR-F) from the Federal Emergency Management Agency. The CLOMR-F shall be based upon the grading plan for the project and shall conclude that lots proposed to have structures for human occupancy will be removed from the special flood hazard area.
- xx. Prior to occupancy of any buildings within the special flood hazard area, the applicant shall apply for and receive approval of a letter of map revision based on fill (LOMR-F) from the Federal Emergency Management Agency. The LOMR-F shall be based upon the as-built grades of the building pads and shall determine that the pads are no longer within the special flood hazard area.
- yy. The Preliminary Utility Plan includes a water supply system and sanitary sewer system layout that are subject to review and approval by Alameda County Water District (ACWD) and Union Sanitary District (USD), respectively. Any necessary site and utility design changes necessary to satisfy ACWD and USD design requirements shall be the applicant's responsibility.
- zz. As a benefited property within the Dumbarton TOD for the waterline extension on Willow Street, the applicant shall pay its pro-rata benefit cost as outlined in the Waterline

Agreement prior to final map approval. If the applicant pays its pro-rata benefit cost based on the waterline extension estimated cost, the applicant shall pay a supplemental reimbursement for the difference between actual cost and estimate cost after receipt of the actual cost is provided.

- aaa. All existing overhead utilities within the development and along the fronting street rights-of-way to the centerline of the street shall be undergrounded to the nearest riser beyond the development's limits in accordance with the City of Newark Subdivision Standards. Undergrounding shall include all existing and proposed service drops.
- bbb. Any proposed utility connections and/or underground work within structurally sound street pavement must be bored or jacked. Open street cuts will not be permitted unless a pavement overlay is proposed for the disturbed area as directed by the City Engineer.
- ccc. All new utilities including, but not limited to, electric, telephone and cable television services shall be provided underground for all buildings in the development in accordance with the City of Newark Subdivision Standards. Electrical transformers shall be installed in underground vaults with an appropriate public utility easement or within the public right-of-way.
- ddd. Dry utility boxes, with the exception of street light boxes, shall not be placed in the landscape planter strips adjacent to the roadway.
- eee. The joint trench plan shall be submitted by the applicant with the first tract improvement plan check and approved prior to final map approval.
- fff. The applicant shall request Pacific, Gas & Electric Co. to commence with the design of the underground utility improvements for the proposed development immediately following approval of the tentative map.
- ggg. Street lighting for public and private streets shall have sufficient power and spacing to provide a minimum maintained foot-candle level of 0.12.
- hhh. Prior to issuance of a Certificate of Occupancy or release of utilities for any building, vehicle access ways and parking facilities serving said building 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 plans.
- iii. Prior to issuance of a Certificate of Occupancy or release of utilities for each dwelling unit, the on-site drive aisles and uncovered parking facilities shall be installed 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.



- jjj. The applicant shall incorporate a Homeowner's Association consisting of all property owners of lands in the development at the time of incorporation and in the future for the purpose of maintaining the association's property, common drive aisles, parking facilities, stormwater treatment facilities, and landscaping, including landscaping in adjacent public rights-of-way, and for paying for security lighting, any common garbage collection services, any security patrol services, if provided, and other functions of a Homeowner's Association. All common areas within the development shall be owned and maintained by the Homeowner's Association. Each property owner shall automatically become a member of the association and shall be subject to a proportionate share of the maintenance expenses. The Homeowner's Association shall be incorporated prior to the sale of any individual lots and/or prior to acceptance of tract improvements, whichever occurs first.
- kkk. Prior to City Council approval of the final map(s), the bylaws governing the property owners' association(s) and any declaration of covenants, conditions and restrictions (CC&Rs) filed for this development shall be reviewed and approved by the City Council at its discretion after mandatory review and recommendations by the City Attorney. Said covenants, conditions and restrictions shall be prominently displayed in the project sales office at all times. Approval of the covenants, conditions and restrictions shall not make the City a party to enforcement of same. The CC&Rs shall apply equally to both owners and renters. The CC&Rs shall be written to require renters to comply with the regulations of the CC&Rs, and a copy of the CC&Rs shall be given to each renter. The CC&Rs shall be written to allow less than a majority of owners to have pavement or landscape maintenance done and the cost thereof assessed to all owners in the project. The CC&Rs shall include a pavement maintenance program for on-site pavement.
- lll. The Homeowner's Association CC&Rs shall prohibit the on-site parking of non-self-propelled recreational vehicles, including boats, and any self-propelled recreational vehicles not used for transportation unless separate storage facilities are provided. The CC&Rs shall regulate the provision of any on-site parking of self-propelled recreational vehicles used for transportation.
- mmm. The applicant shall also assist the Homeowner's Association by having a management consultant firm review the maintenance and operating functions of the association. The management consulting firm shall be responsible to prepare a written report with recommendations to the association for managing the association's obligations and setting initial monthly assessment costs for each lot in the development. Membership and assessment cost shall be mandatory for all property owners of property in the development and shall run with the land. The applicant shall pay all costs of incorporation and initial management review and reports.
- nnn. The Homeowner's Association shall be responsible for trash and litter control and sweeping of all private streets within the development. All private storm drain systems and all associated trash capture devices shall be cleaned on a regularly scheduled basis as detailed in the required Stormwater Treatment Measures Maintenance Agreement.

ooo. The Homeowner's Association shall be required to contract with a professional management firm to handle all necessary maintenance operations. Documentation of such contract shall be submitted to the City of Newark. All commonly owned facilities shall be properly maintained in a manner consistent with the CC&Rs and project requirements.

ppp. The following language shall be included in the CC&Rs:

Rights of City: Notwithstanding anything to the contrary in this Master Declaration, no amendment hereto which deals with any of the following matters shall be effective without the prior written consent of the Director of the City's Community Development Department, such consent not to be unreasonably withheld: (i) Any amendment, the design or purpose of which is to eliminate an obligation of the Association to maintain, manage and repair the Master Common Property all Improvements therein or to lower the standards for maintaining and repairing such Master Common Property and Improvements; (ii) Any amendment with regard to the fundamental purpose for which the Project was created (e.g., a change from residential use to a different use);(iii) Any amendment to Sections....(list sections required by condition of approval), and all defined terms therein, each of which were required as a condition of approval for the Project.(note: will need to define "Project.")

Enforcement by City: If the Association or any Owner (as the case may be) fails to Maintain the Common Area or any Improvement, or if the Association fails to enforce any of the provisions, listed in Section XXX (Rights of City), the City, as an intended third party beneficiary of the provisions of this Master Declaration, shall have the right, but not the duty, to compel performance of such provisions in any manner provided by law or in equity and in any manner provided in this Master Declaration.

qqq. The applicant shall ensure that a water vehicle for dust control operations and a pick-up or vacuum type street sweeper to remove tracked dirt and debris from adjacent streets is kept readily available at all times during construction at the City Engineer's direction.

rrr. The applicant shall implement the following measures for the duration of all construction activity to minimize air quality impacts:

1. Watering should be used to control dust generation during demolition of structures and break-up of pavement.
2. All trucks hauling demolition debris from the site shall be covered.
3. Dust-proof chutes shall be used to load debris into trucks whenever feasible. Watering should be used to control dust generation during transport and handling of recycled materials.
4. All active construction areas shall be watered at least twice daily and more often during windy periods; active areas adjacent to the existing land uses shall be kept damp at all times or shall be treated with non-toxic stabilizers or dust palliatives.

5. All trucks hauling soil, sand, and other loose materials shall be covered or require all trucks to maintain at least 2 feet of freeboard.
6. All unpaved access roads, parking areas, and staging areas at construction sites shall be paved, watered three times daily, or treated with (non-toxic) soil stabilizers.
7. All paved access roads, parking areas, and staging areas at construction sites shall be swept daily with water sweepers; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality.
8. Limit traffic speeds on unpaved roads to 15 mph.
9. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
10. Replant vegetation in disturbed areas as quickly as possible.
11. Minimize idling time (5 minutes maximum).
12. Maintain properly tuned equipment.

These measures shall be incorporated into the grading specifications as well as the best management practices of the storm water pollution prevention plan, and shall be implemented to the satisfaction of the City Engineer.

- sss. The applicant shall enter into a Landscape Maintenance Agreement to ensure the perpetual maintenance of all common front yard, side yard, back-up area landscaping, and adjacent roadway planter strips within the development by the Homeowner's Association. This agreement shall run with the land and be binding upon all future owners or assigns. Any and all necessary easements shall be dedicated over individual lots to allow for the perpetual access and maintenance of landscaping. The full extent of landscape maintenance shall be determined with the future landscape improvements plans and detailed in said agreement. Landscaping by the City at the expense of the Homeowner's Association in these areas will only occur in the event the City Council deems the Homeowner's Association maintenance to be inadequate. Project perimeter walls and adjoining landscaped areas shall be included in a dedicated landscape easement to guarantee adequate maintenance of the walls.

The City of Newark shall be provided with subordinate agreements to ensure that the position of the landscaping maintenance lien shall be superior to any liens or encumbrances other than taxes.

- ttt. Prior to the approval of the final map, the applicant shall petition the City Council to participate in an active Landscaping and Lighting District for the perpetual maintenance of median landscaping and lighting systems on Enterprise Drive, roundabout landscaping, any public stormwater treatment and storm drain delivery systems including trash capture devices, all public street trees, and all street lighting systems. Maintenance activities will be performed by the City of Newark or its contractors through the Landscaping and Lighting District. All property owners within the tentative map boundary shall be assessed annually in accordance with requirements established with the Landscaping and Lighting District. The applicant shall deposit sufficient funds for the City to hire a consultant to

prepare the Engineer's Report, which shall be approved by the City Council. Prior to issuance of a Certificate of Occupancy, the City Council shall adopt a resolution for the annexation into an assessment district. The applicant shall record an indenture advising all prospective property owners in the project that their properties are included in a Landscaping and Lighting District for maintenance of landscaping, lighting, and related improvements installed as part of the project.

- uuu. Prior to Final Map approval, street names shall be reviewed, approved, and shown on the Final Map. The street names shall be unique and in keeping with the theme of the development. A unique street name is defined as one which does not duplicate or is similar (i.e. such as in pronunciation or spelling) to any existing/reserved street names located in the Cities of Newark, Fremont, and Union City.
- vvv. During the final phases of the Final Map review and prior to Building Permit submittal for the individual lots, including submittals for the construction of model homes, subdivision site addresses shall be reviewed and issued.
- www. The applicant shall provide digital submittals of final maps and improvement plans in a format approved by the City prior to Final Map approval. The CAD work must be prepared consistent with the City of Fremont Digital Submittal Requirements.
- xxx. The applicant shall provide electronic copies and one mylar set of as-built tract improvement plans prior to tract acceptance.

#### Landscape Division

- yyy. All maintenance of common areas, common area facilities, site frontage areas, and all red curbing within the development shall be maintained by the required homeowner's association. The applicant shall enter into a Landscape Maintenance Agreement prior to approval of the final map. The agreement shall run with the land and be binding to the homeowners association as successors.
- zzz. The applicant shall retain a licensed landscape architect to prepare working drawings for all frontage area and common area landscape improvements in accordance with City of Newark requirement and the State of California Model Water Efficient Landscape Ordinance. The landscape plans shall be included with the first tract improvement plan set. The landscape plans shall be concurrently approved with the tract improvement plans and Final Map.
- aaaa. The applicant shall implement Bay Friendly Landscaping Practices in accordance with Newark Municipal Code, Chapter 15.44.080. Prior to the approval of the final map, the applicant shall provide sufficient information to detail the environmentally-conscious landscape practices to be used on the project.

- bbbb. All street trees shall be a minimum of 24-inch box specimens. All plant replacements shall be an equal or better standard than originally approved subject to approval by the City Engineer.
- cccc. Landscaping and irrigation systems shall be installed on Enterprise Drive and the roundabouts prior to the first occupancy of the project.
- dddd. Prior to the release of utilities or issuance of any Certificate of Occupancy, all landscaping and irrigation systems on the lot and the lot frontage areas shall be complete. Cash deposit to guarantee remainder of the work can be accepted subject to the City Engineer approval.
- eeee. Stormwater treatment facilities and associated infrastructure shall be installed and operational prior to the first occupancy of the project. A certification by a licensed civil engineer and/or licensed landscape architect certifying that the stormwater treatment facilities and associated infrastructure were installed and are operating properly shall be submitted to the City and approved by the City Engineer.

#### Building Division

- ffff. 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.
- gggg. Each building shall be equipped with a fully automatic fire sprinkler system.
- hhhh. 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

- iiii. All the homes shall be equipped with automatic fire sprinkler system.
- jjjj. The proposed trees shall not impede into fire access roads and in case of any event where it does, the applicant shall work with County fire to relocate any trees that impede the fire access roads.
- kkkk. Since building 69 will be over 30 feet high at least one of the required access routes shall be located within a minimum of 15 feet and a maximum of 30 feet to one entire side of the building. The designated fire access route on Enterprise Drive shall be between 15 feet to

30 feet of building 69.

General

llll. 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.

mmmm. If any condition of this Vesting Tentative Tract Map 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.

nnnn. 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.

oooo. 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.

pppp. 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 August 28, 2018 meeting by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and passed as follows:

AYES:

NOES:

ABSENT:

s/Terrence Grindall  
TERRENCE GRINDALL, Secretary

s/William Fitts  
WILLIAM FITTS, Chairperson

RESOLUTION NO.

RESOLUTION RECOMMENDING THAT THE CITY COUNCIL OF CITY OF NEWARK APPROVE P-18-20, A PLANNED DEVELOPMENT PLAN TO ALLOW CONSTRUCTION OF A 138-UNIT RESIDENTIAL PROJECT ON A 9.97-ACRE SITE LOCATED AT 8610 ENTERPRISE DRIVE (APN 092-0115-005-02)

WHEREAS, TH Willow Newark Investors LLC has filed with the City of Newark an application for a Planned Development Plan for a 138-unit residential project on a site located at 8610 Enterprise Drive; and

PURSUANT to the Newark Zoning Ordinance Section 17.31.060, a public hearing notice was published in The Tri City Voice on August 14, 2018 and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on August 28, 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 B, pages 1 through 62, subject to compliance with the following conditions:

Planning Division

- a. All applicable conditions listed in Planning Commission Resolution No. \_\_\_\_\_, dated \_\_\_\_\_, 2018, recommending approval of TTM-18-19, a Vesting Tentative Map for a 138-unit residential development (Compass Bay) on a 9.97-acre site located at 8610 Enterprise Drive.
- b. If any condition of this Planned Development Plan 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.

This Resolution was introduced at the Planning Commission's August 28, 2018 meeting by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and passed as follows:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
TERRENCE GRINDALL, Secretary

\_\_\_\_\_  
WILLIAM FITTS, Chairperson

RESOLUTION NO.

RESOLUTION RECOMMENDING THAT THE CITY COUNCIL OF CITY OF NEWARK APPROVE THE AMENDMENT OF TITLE 17 OF THE NEWARK MUNICIPAL CODE BEING THE CITY OF NEWARK ZONING ORDINANCE BY CHANGING THE ZONING OF A SPECIFIED AREA IN THE CITY OF NEWARK

WHEREAS, TH Willow Newark LLC has made an application to the Planning Commission of the City of Newark to consider the amendment (RZ-18-17) to Title 17 (Zoning) of the Newark Zoning Ordinance and the Official Zoning Map, by rezoning property described as follows:

From Business and Technology Park BTP to Residential Medium Density-Form Based Code (RM-FBC) and Planned Development Overlay District (-PD) for all that portion of real property shown on Vesting Tentative Map 8459 in the City of Newark, County of Alameda, State of California as shown on Exhibit B, attached hereto and incorporated by reference.

PURSUANT to Newark Zoning Ordinance Section 17.39.050.C, a public hearing notice was published in the Tri-City Voice on August 14, 2018, and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on August 28, 2018 at the City Administration Building, 37101 Newark Boulevard, Newark, California.

NOW, THEREFORE, the Planning Commission, based on the evidence and oral and written testimony presented at public hearings, and based on the EIR, and the Addendum, and the Planning Commission's staff report with attachments, does resolve:

- a. That the Planning Commission recommends that the Newark City Council amend Title 17 (Zoning) of the Newark Zoning Ordinance and Section 17.03.020 "Zoning Map" thereof, being the City of Newark Zoning Ordinance and Official Zoning Map, by rezoning property shown on Vesting Tentative Tract Map 8459 from BTP (Business and Technology Park) to RM-FBC (Residential Medium Density-Form Based Codes) and Planned Development Overlay District (-PD); and
- b. That the Planning Commission has reviewed said zoning and finds it consistent and compatible with the objective, policies, general land uses, and the programs of Newark's General Plan, necessary and desirable to achieve the purposes of the ordinance and proper,

fair, and for the best interest of the health, safety, and general welfare of the City of Newark; and

- d. That a copy of the minutes be forwarded to the City Council as a summary of the hearing.

This resolution was introduced at the Planning Commission's August 28, 2018, meeting by \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and passed as follows:

AYES:

NOES:

ABSENT:

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TERRENCE GRINDALL, Secretary

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WILLIAM FITTS, Chairperson



RESOLUTION NO.

A RESOLUTION APPROVING AND RECOMMENDING THAT THE CITY COUNCIL APPROVE AN ADDENDUM TO THE DUMBARTON TRANSIT ORIENTED DEVELOPMENT SPECIFIC PLAN ENVIRONMENTAL IMPACT REPORT AND CERTIFYING THAT THE PREVIOUSLY APPROVED EIR (STATE CLEARINGHOUSE NUMBER 2010042012) ADDRESSES ALL THE IMPACTS OF THE PROPOSED 'COMPASS BAY' DEVELOPMENT (138-RESIDENTIAL UNITS)

WHEREAS, the City of Newark certified the Dumbarton Transit-Oriented Development Specific Plan Environmental Impact Report (State Clearinghouse Number 2010042012) (Specific Plan EIR), adopted a statement of overriding considerations for the significant and unavoidable impacts identified therein, and approved a mitigation monitoring and reporting program on September 8, 2011; and

WHEREAS, the proposed rezoning (RZ-18-17), Planned Development Plan (P-18-20), Vesting Tract Map (TTM-18-19) concerning the development of property within Dumbarton Transit-Oriented Development Specific Plan, and the proposed development is within the residential density limit analyzed by the Environmental Impact Report (State Clearinghouse Number 2010042012) for the (State Clearinghouse Number 2010042012); and

WHEREAS, pursuant to the requirements of the California Environmental Quality Act (CEQA), an initial study and an Addendum to the Dumbarton Transit Oriented Development (TOD) Specific Plan Program Environmental Impact Report (PEIR) (SCH No. 2010042012) has been prepared for the Project, pursuant to Section 15070 *et seq.* of the CEQA Guidelines, to analyze and mitigate the Project's potentially significant environmental impacts; and

WHEREAS, through this study, it has been determined that the Project does not result in any new significant impacts and the conclusions in the 2011 Environmental Impact Report remain unchanged; and

WHEREAS, on August 28, 2018 the Planning Commission of the City of Newark conducted a duly noticed meeting to consider the Initial Study and Addendum of environmental impacts for the proposed Project, considered all public testimony, written and oral, presented at the meeting; and received and considered the written information and recommendation of the staff report for the August 28, 2018 meeting related to the proposed Project.

NOW, THEREFORE, the Planning Commission finds and resolves the following:

1. The Initial Study and corresponding Addendum of environmental impacts and said mitigation measures contained within the same would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur; and
2. There is no substantial evidence in light of the whole record before the City of Newark that the project may have a significant effect on the environment; and
3. The Planning Commission has read and considered the Initial Study and the Addendum and the comments thereon, and has determined the Initial Study and the Addendum reflect the independent judgment of the City and were prepared in accordance with CEQA; and
4. The Initial Study and the Addendum (including any revisions developed under 14 C.C.R § 15070(b)), all documents referenced in the same, and the record of proceedings on which the Planning Commission decision is based is are located at City Hall for the City of Newark, located at 37101 Newark Blvd, California, and is available for public review.

NOW, THEREFORE, based on the evidence and oral and written testimony presented at the public meeting, and based on all the information contained in the Community Development Department's files on the project, the Planning Commission approve and recommends that the City Council of City of Newark adopt an addendum to the Dumbarton Transit Oriented Development Specific Plan Environmental Impact Report and certifying that the previously approved EIR addresses all the impacts of the proposed 'Compass Bay' development (138 residential units). The Planning Commission certifies in accordance with CEQA guidelines that:

1. The Initial Study/Addendum was prepared in compliance with CEQA and CEQA guidelines;
2. The Planning Commission has reviewed and considered the information contained in the Initial Study/Addendum prior to approving the project;
3. The Initial Study/Addendum adequately describe the project, its environmental impacts, reasonable alternatives and appropriate mitigation measures; and
4. The Initial Study/Addendum reflect the independent judgment and analysis of the Planning Commission.

This Resolution was introduced at the Planning Commission's August 28, 2018 meeting by , seconded by , and passed as follows:

AYES:

NOES:

ABSENT:

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TERRENCE GRINDALL, Secretary

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William Fitts, Chairperson