

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Newark
37101 Newark Boulevard
Newark, CA 94560

No recording fee pursuant to Government
Code Section 27383

APN: _____

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**COMMUNITY FINANCING AGREEMENT
BY AND BETWEEN THE CITY OF NEWARK AND TH WILLOW NEWARK
INVESTORS, LLC REGARDING PROVISION OF CERTAIN PUBLIC FACILITIES
AND SERVICES FOR THE DUMBARTON TOD PROJECT SPECIFIC PLAN**

This Agreement (this "**Agreement**"), dated _____, 2018, (the "**Effective Date**") is entered into by and between the City of Newark, a California municipal corporation (hereinafter "**City**") and TH Willow Newark Investors, LLC a California limited liability company ("**Developer**"). City and Developer are, from time to time, hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**." This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties.

RECITALS

A. In September, 2011, the City Council adopted the Dumbarton Transit Oriented Development ("**TOD**") Specific Plan ("**Specific Plan**"). The real property that is the subject of this Agreement is the entirety of the approximately 205-acre Specific Plan area, which is depicted on **Exhibit A** to this Agreement ("**Specific Plan Property**"), excluding certain governmental property located therein.

B. Developer is the owner of that certain parcel known as the Compass Bay parcel as more particularly depicted and legally described on **Exhibit B** to this Agreement and is referred to herein as "**Property**."

C. It is the intent of the City, through the Specific Plan, to provide a comprehensive, long-term plan that guides future development of the Specific Plan Property in concert with and in response to the needs of the marketplace. The Specific Plan establishes a policy and a regulatory framework to guide future development, including allowable land uses, development regulations, design guidelines, necessary infrastructure improvements, and an implementation plan to direct future development of the Specific Plan Property.

D. In accordance with the California Environmental Quality Act (Pub. Res. Code Sections 21000 *et seq.*) and its Guidelines (C.C.R., Title 14 Sections 15000, *et seq.*), as each is amended from time to time ("**CEQA**") (defined herein), City certified as adequate and complete

an Environmental Impact Report ("EIR") for the Specific Plan, and the development envisioned within the Specific Plan.

E. The various property owners within the Specific Plan Property may propose to plan, develop, construct, operate and maintain a mix of residential, commercial, entertainment, retail, office, recreation and related uses and structures on the Specific Plan Property, as more particularly described in the EIR (each, a "**TOD Project**").

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other consideration, the value, legality, and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1.01 Developer Obligations In order to implement the Specific Plan and to contribute to the provision of appropriate public improvements and services, the Developer hereby agrees to make the following contributions to the City related to Developer's planned TOD Project:

(1) Developer has agreed to contribute toward the estimated costs of the anticipated TOD Project-wide improvements, including the City's planning, design, right of way acquisition and construction of the Central Avenue Railroad Overcrossing. Developer's contribution shall be payable in immediately available funds by Developer to the City at the time of, or prior to, the issuance of each building permit for development of any new residential units on the Property, at the rate and in the fixed amount of Two Thousand Five Hundred Dollars (\$2,500.00) per dwelling unit (without adjustment).

(2) Developer hereby consents to the imposition, creation, or funding of a duly-established financing district (including but not limited to a Communities Facilities District pursuant to the Mello Act) on the Property to fund services or facilities, or shall arrange for an alternative permanent annuity to provide equivalent revenue. The maximum amount of the assessment, special tax, or annuity shall not exceed Two Hundred Twenty Dollars (\$220.00) per year per residential housing unit, which amount will be adjusted annually to reflect inflation, as measured by the Consumer Price Index for All Urban Consumers (CPI-U) and reported for the United States Bureau of Labor Statistics Cost of Living Index for the San Francisco-Oakland-Hayward Area.

1.02 Amendments of this Agreement.

This Agreement may be amended from time to time only upon the unanimous written consent of City and Developer.

1.03 Construction. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

1.04 Recordation. The Clerk of the City shall record, within ten (10) days after the Effective Date, a copy of this Agreement in the Official Records of the Recorder's Office of Alameda County. Developer shall be responsible for all recordation fees, if any.

1.05 Governing Law. The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California.

1.06 Entire Agreement. This Agreement may be executed in multiple originals, each of which is deemed to be an original. This Agreement, including these pages and all the exhibits (set forth below) inclusive, and all documents incorporated by reference herein, constitute the entire understanding and agreement of the Parties.

1.07 Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Developer and City. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

1.08 Successors. This Agreement is intended to run with the land and bind Developer's successors-in-interest in the Property. Upon transfer, any success-in-interest shall be deemed to have accepted the terms and conditions of this Agreement and shall be deemed the "Developer" and any transferring Developer shall be released under this Agreement for any obligations arising after the date of transfer.

1.09 Exhibits. The following exhibits are attached to this Agreement and are hereby incorporated herein by this reference for all purposes as if set forth herein in full:

Exhibit A Depiction of Specific Plan Property

Exhibit B Legal Description of the Compass Bay parcel.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first hereinabove written.

"City":

CITY OF NEWARK,
a municipal corporation

By: _____
Alan L. Nagy, Mayor City of Newark

“Developer”:

TH Willow Newark investors, LLC,

By: _____
Name: _____
Its:

Exhibit A

Legal Description

205-acre Dumbarton TOD Specific Plan area

Exhibit B

Legal Description of Compass Bay parcel

LEGAL DESCRIPTION

Real property in the City of Newark , County of Alameda, State of California, described as follows:

BEING ALL OF THAT CERTAIN PARCEL OF LAND GRANTED TO ASHLAND CHEMICAL, INC. BY DEED RECORDED SEPTEMBER 18, 1990, IN SERIES NUMBER 90-249087 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, ALSO BEING ALL OF PARCEL ONE, AS SAID PARCEL ONE IS SHOWN AND SO DESIGNATED ON PARCEL MAP 940, RECORDED AUGUST 22, 1972 IN BOOK 76 OF MAPS AT PAGE 21 IN SAID OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

BEGINNING AT THE SOUTHEASTERN CORNER OF SAID PARCEL ONE;

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE SOUTHERN LINE OF SAID PARCEL ONE, SOUTH 67°47'24" WEST (THE BEARING OF SAID SOUTHERN LINE BEING TAKEN AS SOUTH 67°47'24" WEST FOR THE PURPOSE OF MAKING THIS DESCRIPTION) 289.82 FEET TO THE SOUTHWESTERN CORNER OF SAID PARCEL ONE;

THENCE, FROM SAID SOUTHWESTERN CORNER, ALONG THE WESTERN LINE OF SAID PARCEL ONE, THE FOLLOWING TWO (2) COURSES:

1) NORTH 21°48'56" WEST 771.47 FEET, AND

2) ALONG THE ARC OF A TANGENT 20.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 90°05'41", AN ARC DISTANCE OF 31.45 FEET TO A POINT ON THE NORTHWESTERN LINE OF SAID PARCEL ONE;

THENCE, ALONG SAID NORTHWESTERN LINE, NORTH 68°16'45" EAST 734.86 FEET TO THE NORTHEASTERN CORNER OF SAID PARCEL ONE;

THENCE, FROM SAID NORTHEASTERN CORNER, ALONG THE EASTERN LINE OF SAID PARCEL ONE, THE FOLLOWING TWELVE (12) COURSES:

1) SOUTH 21°48'29" EAST 366.25 FEET,

2) SOUTH 51°13'21" WEST 22.95 FEET,

3) SOUTH 52°51'51" WEST 142.23 FEET,

4) SOUTH 49°58'25" WEST 59.44 FEET,

5) SOUTH 41°47'15" WEST 59.55 FEET,

6) SOUTH 33°21'48" WEST 49.92 FEET,

7) SOUTH 26°32'10" WEST 50.26 FEET,

8) SOUTH 18°43'05" WEST 50.10 FEET,

9) SOUTH 11°07'45" WEST 50.15 FEET,

10) SOUTH 04°00'56" WEST 50.21 FEET,

11) SOUTH 03°15'37" EAST 50.03 FEET, AND

12) SOUTH 10°19'26" EAST 100.01 FEET TO SAID POINT OF BEGINNING.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL OF LAND:

BEGINNING AT THE SOUTHEASTERN CORNER OF SAID PARCEL ONE;

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE SOUTHERN LINE OF SAID PARCEL ONE, SOUTH 67°47'24" WEST (THE BEARING OF SAID SOUTHERN LINE BEING TAKEN AS SOUTH 67°47'24" WEST FOR THE PURPOSE OF MAKING THIS DESCRIPTION) 289.82 FEET TO THE SOUTHWESTERN CORNER OF SAID PARCEL ONE;

THENCE, FROM SAID SOUTHWESTERN CORNER, ALONG THE WESTERN LINE OF SAID PARCEL ONE, NORTH 21°48'56" WEST 49.23 FEET;

THENCE, LEAVING SAID WESTERN LINE, NORTH 68°12'11" EAST 299.40 FEET TO A POINT ON THE EASTERN LINE OF SAID PARCEL ONE;

THENCE, ALONG SAID EASTERN LINE, SOUTH 10°19'26" EAST 48.10 FEET TO SAID POINT OF BEGINNING.

THIS LEGAL DESCRIPTION IS MADE PURSUANT TO THAT CERTAIN LOT LINE ADJUSTMENT RECORDED SEPTEMBER 18, 2013 AS INSTRUMENT NO. 2013310648 OF OFFICIAL RECORDS.

APN: 092-0115-005-02

ASSESSOR'S MAP 92

Code Area Nos. 11-010
11-019
11-039

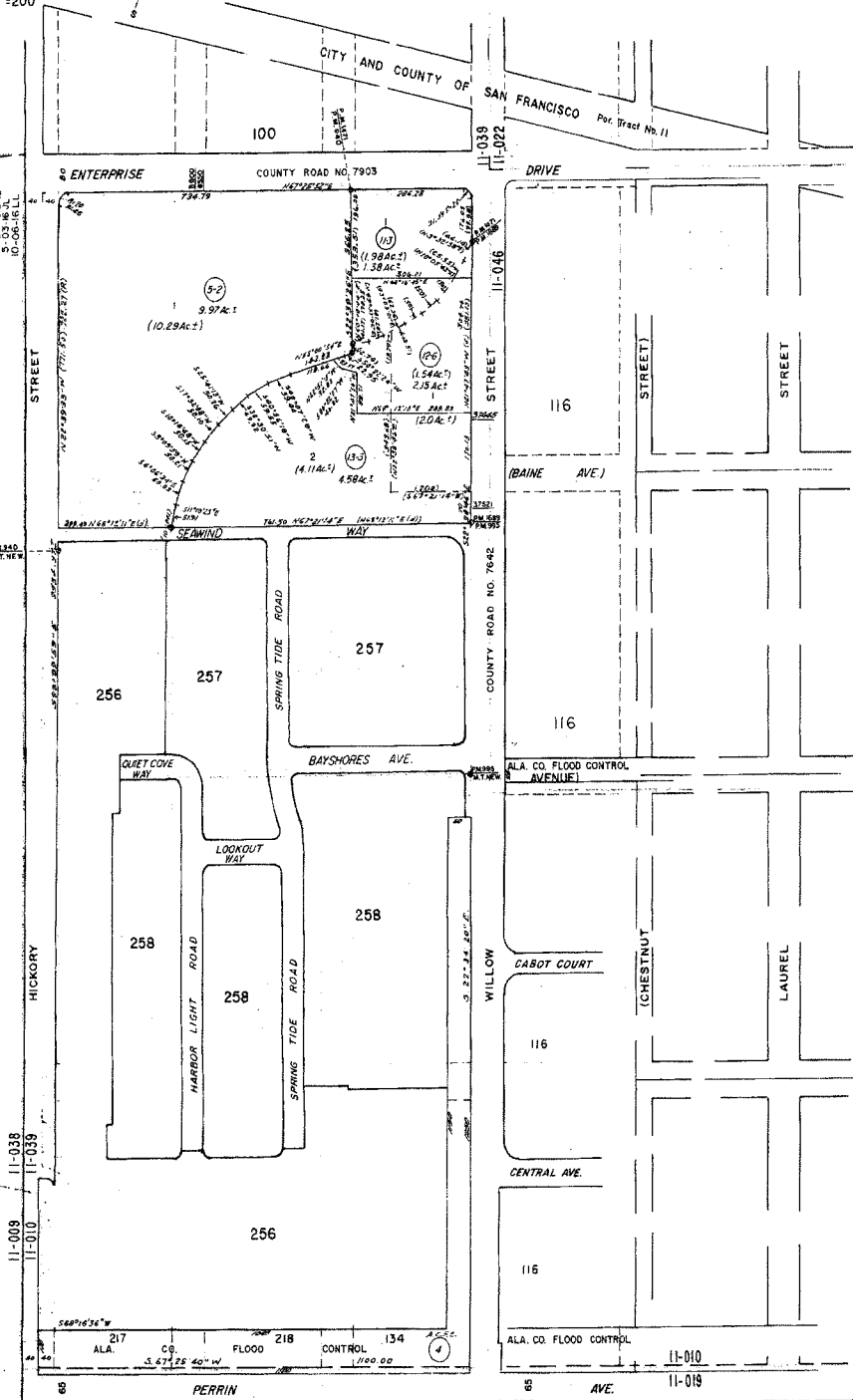
115

MAP OF THE
TOWN OF NEWARK (Bk. 17 Pg. 10)
P.M. 940 (Bk. 76 Pg. 21) P.M. 995 (Bk. 76 Pg. 65)
P.M. 1689 (Bk. 87 Pg. 68) P.M. 1471 (Bk. 84 Pg. 23)

Scale: 1"=200'

Drawn: 12-4-56 H.L.
Rev. 6-23-75 W.M.
6-30-75
5-15-76
1-24-80
3-05-81
8-06-81

BOOK 537



11-009
11-010
11-038
11-039

ALA. 217
ALA. CO. FLOOD CONTROL 218
ALA. 134

BOOK 537

11-010
11-019
11-018