



- E.1 Hearing to consider: (1) Adopting a resolution making certain findings and recommending City Council approval of E-14-6, an Initial Study/Mitigated Negative Declaration; (2) adopting a resolution recommending City Council approval of GP-14-7, a General Plan Amendment to change the land use designation from CC (Community Commercial) to HR (High Density Residential); (3) adopting a resolution recommending the City Council approve RZ-14-8, a rezoning from CC (Community Commercial) to R-1,500 (High Density Residential – 1,500); (4) adopting a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and recommend the City Council approve the attached Affordable Housing Implementation Agreement; (5) recommending the City Council approve TTM-14-11, Tentative Tract Map 8166; and (6) recommending that the City Council approve ASR-14-9, an Architectural and Site Plan Review, with Exhibit A pages 1 to 33, to construct a 85-unit residential townhome development (Integral Communities) on an approximately 4.28 acre site (APN: 901-0195-039) on the northeast corner of Cedar Boulevard and Mowry School Road – from Assistant City Manager Grindall TG (RESOLUTIONS-4)(MOTIONS-2)**

Background/Discussion – Integral Communities, Inc. has submitted an application for the development of 85 townhomes on a vacant lot located at 39850 and 39888 Cedar Boulevard (northeast corner of Cedar Boulevard and Mowry School Road). Attached is Exhibit A, pages 1 to 33.

The 4.28+/- acre site has a CC (Community Commercial) zoning and General Plan land use designation. Approval of the project would require an amendment to both designations to accommodate the residential use. It is proposed to rezone the site to R-1,500 (High Density Residential – 1,500) and change the General Plan land use designation to HR (High Density Residential). Surrounding land uses include a 2.5 acre condominium complex across the street on Cedar Boulevard (Murieta condos), the Towne Place Suites to the north, the Balentine Park office complex to the east, and the Balentine Plaza shopping center to the south. In 2007, City Council approved a retail/office complex at this site but the project was never built.

Project Description

The proposed project includes the construction of eleven three and four-story buildings, with each building containing between seven to eleven units. Dwellings would front onto both Cedar Boulevard and Mowry School Road, while the remainder of the units along the perimeter would be sited near the property line of the adjoining Balentine Park office complex. Five rows of dwellings would be centrally constructed on the interior of the site in an approximate east-west direction.

Vehicular access to the project site would be via the existing office complex driveway off of Mowry School Road. A series of private drives would provide on-site access and would serve to each homes' two-car garage. Approximately three-fourths of the dwellings would have side-by-side garages, while the remaining homes would have tandem garages. A children's tot-lot is proposed in the southeast corner of the site.

The attached townhomes would consist of two to four bedrooms, varying with five different plan types. Three and four-story dwellings would be constructed and would range from 1,486 to 2,114 square feet of living space in size. A total of ten four-story dwellings accommodating a game room and balcony on the top floor are proposed. Building elevations would reflect a Spanish design, incorporating architectural elements such as arches, balconies, ornamental iron work, an off-white and tan color exterior and terracotta roof tiles. Additional decorative features include awnings, wood trellises and stone veneer on the ground elevations.

Neighborhood Meeting

The developer held a neighborhood meeting on April 16, 2014 at the Newark Hilton Hotel. Notices of the meeting were sent to 363 property owners within a 300-foot radius of the project site, including to the Murieta condominium complex across from the project site. Thirteen members of the public attended the meeting, including various residents of the condo complex. During the meeting, the public raised questions about the project, including parking, access to the site, timing of the project, and pricing of the proposed homes. The developer explained project specifics for an approximate 45-minute meeting duration and in the end, solicited contact information from those who wished to receive future project information.

Affordable Housing

Chapter 17.18 of the Newark Municipal Code (NMC) mandates that all housing developments of five units or more make available a minimum of 15% of the total number of units to very low, low and moderate income households. Of the fifteen percent affordable units required, nine percent are to be set aside for moderate income households which earn 110% or less of the median income while six percent are to be reserved for lower income households earning 80% or less of the median income. A total of thirteen affordable units would be required to comply with the ordinance. However, the NMC also allows developers to meet the affordable housing requirement through other forms of compliance, such as land dedication, payment of in-lieu fees, or an alternative housing program. In this case, the developer proposes to meet the affordable housing requirement by providing the affordable units off-site as an alternative method of compliance. The affordable units would be provided at the SHH project site located within the Dumbarton TOD that was approved by City Council on April 24, 2014 and is also being developed by Integral Communities. In lieu of providing the required fifteen percent affordable units, the developer would provide ten percent, or nine units, for lower income households that earn 60% or less of the median income. Although fewer units would be provided, staff supports the alternative proposal as the lower income bracket would benefit persons in greater need of affordable housing.

Environmental Analysis

An Initial Study/Mitigated Negative Declaration was prepared for this project in order to identify

any potential environmental impacts that would result in implementing the project. The environmental factors analyzed were aesthetics, agricultural resources, air quality, biological and cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use planning, mineral resources, noise, population and housing, public services, recreation, transportation and circulation and utilities. The environmental study concluded that the proposed project would not have a significant adverse impact on overall environmental quality, including biological resources with adherence to the mitigation measures listed in the Initial Study. The project site is vacant and is located in an urban, developed area. Although a pond is located on the project site, the environmental analysis indicates that no wetlands have been identified and the site does not contain significant mature trees that could provide nesting habitat to birds. Additional traffic as a result of the project would have an effect on local streets and regional streets; however the impacts can be reduced to a less-than-significant level with adherence to mitigation measures. The analysis also indicates that increased air pollutant emissions would also result in a less-than-significant impact to the environment.

The review period for the IS/MND ended on April 17, 2014. Staff did not receive any letters from the public.

Attachments

Action – It is recommended that the Planning Commission 1) Adopt a resolution making certain findings and recommending City Council approval of E-14-6, an Initial Study/Mitigated Negative Declaration; (2) adopt a resolution recommending City Council approval of GP-14-7, a General Plan Amendment to change the land use designation from CC (Community Commercial) to HR (High Density Residential); (3) adopt a resolution recommending the City Council approve RZ-14-8, a rezoning from CC (Community Commercial) to R-1,500 (High Density Residential – 1,500); (4) adopt a resolution making findings supporting the use of an alternative means of compliance with the Inclusionary Housing Ordinance and recommend the City Council approve the attached Affordable Housing Implementation Agreement; (5) By motion, recommend the City Council approve TTM-14-11, Tentative Tract Map 8166; and (6) By motion, recommend that the City Council approve ASR-14-9, an Architectural and Site Plan Review, with Exhibit A, pages 1 to 33, to construct a 85-unit residential townhome development (Integral Communities) on an approximately 4.3 acre site (APN: 901-0195-039) on the northeast corner of Cedar Boulevard and Mowry School Road.

RESOLUTION NO.

RESOLUTION OF THE CITY OF NEWARK PLANNING COMMISSION MAKING CERTAIN FINDINGS AND RECOMMENDING CITY COUNCIL APPROVAL OF AN INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION FOR 85 TOWNHOME DWELLING UNITS ON AN APPROXIMATELY 4.28 ACRE PROJECT SITE

WHEREAS, the Cedar Townhomes Atrium Project ("Project"), consists of the construction of 85 townhome dwelling units on approximately 4.28 acres (APN 901-0195-039); and

WHEREAS, the entitlements requested include Tentative Tract Map 8166 (TTM-14-11), a general plan amendment, rezoning; and

WHEREAS, pursuant to the requirements of the California Environmental Quality Act (CEQA), a project level Initial Study and Mitigated Negative Declaration 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's potentially significant environmental impacts specifically relate to impacts associated with light or glare, air quality, biological resources, cultural resources, water quality, noise, and traffic; and

WHEREAS, these potentially significant impacts can be mitigated to less than significant as shown in Section 18 of the Initial Study/Mitigated Negative Declaration, and;

WHEREAS, a 20-day public review period for the Notice of Availability of the IS/MND was established beginning on March 28, 2014 and ending on April 17, 2014. Copies of the notice were transmitted, along with copies of the IS/MND, to local agencies concerned with the Project. The notice was posted with the Office of the Alameda County Clerk on March 28, 2014; and

WHEREAS, as of the date of this resolution, May 27, 2014, no comment letters have been received; and

WHEREAS, on May 27, 2014, the Planning Commission of the City of Newark conducted a duly noticed public hearing to consider the Initial Study and Mitigated Negative Declaration of environmental impact for the proposed Project, considered all public testimony, written and oral, presented at the public hearing; and received and considered the written information and recommendation of the staff report for the May 27, 2014 meeting related to the proposed Project.

NOW, THEREFORE BE IT RESOLVED by the Planning Commission of the City of Newark that it hereby recommends that City Council consider adopting the Initial Study and the Mitigation Monitoring and Reporting Program as set forth in Exhibit B to this Resolution and incorporated herein by reference, and approving the Mitigated Negative Declaration of

environmental impact for Tentative Tract Map 8166 (TTM-14-11), the general plan amendment, and rezoning, making the following findings:

1. The Initial Study and corresponding Mitigated Negative Declaration of environmental impact were released for public review 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.
3. The Planning Commission has read and considered the Initial Study and the Mitigated Negative Declaration, and the comments thereon, and has determined the Initial Study and the Mitigated Negative Declaration reflect the independent judgment of the City and were prepared in accordance with CEQA.
4. The Initial Study and the Mitigated Negative Declaration (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's 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.

The resolution was introduced at the Planning Commission's May 27, 2014 meeting by Commissioner _____, seconded by Commissioner _____, and passed as follows

AYES:

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

BERNIE NILLO, Chairperson

EXHIBIT B

**Cedar Townhomes Residential Project
Mitigation Monitoring and Reporting Program**

May 2014

Mitigation Measure	Implementing Responsibility	Monitoring Responsibility	Monitoring Schedule	Verification
<p>Mitigation Measure AES-1. The following measures shall be incorporated into project building plans:</p> <ul style="list-style-type: none"> a) Parking lot lighting shall be equipped with cut-off lenses to ensure that no light spills over onto either the adjacent streets or properties. The cut-off lenses shall be shown on the plans submitted for a building permit. b) Light levels shall meet the minimum security standards required by the Newark Police Department. c) Photometric plans shall be submitted and approved by the Newark Planning Division prior to issuance of a building permit to ensure that spillover of lights will be kept to a minimum. 	Project Developer	Newark Planning Division and Police Department	Prior to issuance of a building permit	
<p>Mitigation Measure AIR-1. The developer shall be responsible for the following measures to control fugitive dust emissions. These measures shall be included on construction and demolition plans and specifications.</p> <ul style="list-style-type: none"> a) Using water as needed to control dust and eliminate visible dust plumes. b) Covering all trucks hauling building debris, soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard. c) Sweeping daily (preferably with 	Project Developer	Newark City Engineer or Building Official	During project construction	

Mitigation Measure

Implementing Responsibility

Monitoring Responsibility

Monitoring Schedule

Verification

<p>water sweepers) all paved access roads, parking areas and staging areas at construction sites.</p> <p>d) Sweeping streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.</p> <p>e) Watering or covering of stockpiles of construction debris, soil, sand or other materials that can be blown by the wind..</p>			
<p>Mitigation Measure BIO-1. If grading activities take place on the site during the nesting season (February-August), a pre-construction survey shall be completed by a qualified biologist for nesting birds. If any birds protected under the Migratory Bird Treaty Act are found, a buffer of at least 75 feet (for passerine birds) or 200 feet (raptors) shall be established. Once young birds have fledged, construction within the buffer area can proceed.</p>	<p>Project Developer</p>	<p>Newark Planning Division</p>	<p>Prior to approval of grading permit</p>
<p>Mitigation Measure CULT-1. If buried archeological, historical, paleontological or Native America artifacts are found during project grading and construction, all work within a 50-foot wide radius of any discovery of such artifacts shall be halted. The City will then select a qualified professional to evaluate such resources and prepare a resource protection plan that complies with CEQA</p>	<p>Project Developer</p>	<p>Newark Planning Division</p>	<p>During project construction</p>

Mitigation Measure

Implementing Responsibility

Monitoring Responsibility

Monitoring Schedule

Verification

<p>standards; work shall not be restarted until the resource protection plan is fully implemented. If human remains are encountered, the County Coroner and the Newark Police Department shall be immediately notified. This requirement shall be included in grading plans and specifications.</p>				
<p>Mitigation Measure HYD-1. Prior to issuance of a grading permit, a hydrology report shall be prepared by a California registered civil engineer using Alameda County Flood Control and Water Conservation District standards documenting existing stormwater flows from the site, estimated increases in the amount of peak stormwater flows, the estimated direction of flows and the capacity of downstream drainage facilities to accommodate estimated project increases. The report shall also document increases in downstream capacity that would be needed to accommodate drainage and the project's financial contribution to downstream improvements. The report shall be approved by the City of Newark and, at the discretion of the City Engineer, the Alameda County Flood Control and Water Conservation District..</p>	<p>Project Developer</p>	<p>Newark Engineering Division</p>	<p>Prior to issuance of a grading permit</p>	
<p>Mitigation Measure NOISE-1. Noise from mechanical equipment must not exceed an L_{dn} of 58 dBA at the adjacent property lines to the north and west. For continuously operating mechanical equipment an L_{dn} of 58 dBA corresponds to an hourly average noise level of no greater than 60 dBA (L_{eq}) at</p>	<p>Project Developer</p>	<p>Newark Building Division</p>	<p>Prior to issuance of a building permit</p>	

City of Newark

Mitigation Monitoring and Reporting Program
Cedar Townhome Project

Mitigation Measure

Implementing Responsibility

Monitoring Responsibility

Monitoring Schedule

Verification

<p>the property line during daytime hours (7 am – 10 pm). If mechanical equipment operates continuously during the night (10 pm – 7 am), the equipment must not exceed an hourly average noise level of 52 dBA (L_{eq}) at the property line during both daytime and nighttime hours.</p>	<p>Project Developer</p>	<p>Newark Building Division</p>	<p>Prior to issuance of a building permit</p>	
<p>Mitigation Measure NOISE-2. The design of the project buildings should incorporate measures such as sound-rated windows to achieve an interior L_{dn} of 45 dBA or less. The required design features should be determined through a site-specific noise study that takes into account the future noise exposure at the various building facades and the project floor plans and elevations consistent with General Plan Action EH-7.A.</p>	<p>Project Developer</p>	<p>Newark Building Division</p>	<p>Prior to issuance of a building permit</p>	
<p>Mitigation Measure NOISE-3. To reduce daytime noise impacts due to construction, the project sponsor shall require the project to implement the following measures:</p> <ul style="list-style-type: none"> a. Equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures and acoustically-attenuating shields or shrouds, wherever feasible) b. Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project 	<p>Project Developer</p>	<p>Newark Building Division</p>	<p>During project construction</p>	

Mitigation Measure

Implementing Responsibility

Monitoring Responsibility

Monitoring Schedule

Verification

<p>construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. However, where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible, and this could achieve a reduction of 5 dBA. Quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible.</p> <p>c. Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible.</p> <p>d. Monitor the effectiveness of noise attenuation measures by taking noise measurements to the extent there are persistent and on-going complaints.</p> <p>Mitigation Measure NOISE-4. Prior to the issuance of building permit, along with the submission of construction documents, the project sponsor shall submit to the City Building Department a list of measures to respond to and track complaints pertaining to construction noise. These measures shall include:</p>				
<p>Project Developer</p>	<p>Newark Building Division</p>	<p>Prior to issuance of a building permit</p>		

Mitigation Measure Implementing Responsibility Monitoring Responsibility Monitoring Schedule Verification

<p>a. A procedure for notifying the City Building Division staff and Newark Police Department;</p> <p>b. A plan for posting signs on-site pertaining to permitted construction days and hours and complaint procedures and who to notify in the event of a problem;</p> <p>c. A listing of telephone numbers (during regular construction hours and off-hours);</p> <p>d. The designation of an on-site construction complaint manager for the project;</p> <p>e. Notification of neighbors within 300 feet of the project construction area at least 30 days in advance of pile-driving and/or other extreme noise-generating activities about the estimated duration of the activity; and</p> <p>f. A preconstruction meeting shall be held with the job inspectors and the general contractor/on-site project manager to confirm that noise mitigation and practices (including construction hours, neighborhood notification, posted signs, etc.) are completed.</p>				
<p>Mitigation Measure TRAF-1. The final design of the project shall incorporate the following features.</p> <p>a) Install stop-sign control for southbound traffic exiting the existing driveway at Mowry School Road. Re-stripe the outbound travel lane for one (1) shared left-through lane and one (1) right-turn lane. (If possible, install stop-sign for</p>	Project Developer	Newark Engineering and Planning Divisions	Prior to issuance of building permit; included in project improvement p	

Mitigation Measure

Implementing Responsibility

Monitoring Schedule

Verification

<p>northbound traffic at existing Balentine Plaza Center driveway directly opposite project driveway). Install painted directional flow arrows on the Mowry School Road driveway indicating north and south traffic flows;</p> <p>b) Trim hedge/foliage on raised median dividing the Mowry School Road driveway to improve vehicle sight distance and continue this maintenance into the future;</p> <p>c) At the internal median break on the Mowry School Road main driveway, install stop-sign controls for both the new eastbound (outbound) movement from the proposed project driveway and existing westbound movement from current office parking lot. In addition, the project driveway connecting to the mid-block driveway (from Mowry School Road) should be re-aligned to the existing median break to prevent inbound left-turn conflicts. Multi-Way-Stop-Control (MWSC) should be installed where the east-west project driveway intersects the project's internal north-south drive aisle;</p> <p>d) Install stop-sign control for all internal east-west drive aisles;</p> <p>e) Limit vehicle access at the proposed secondary project driveway at Mowry School Road (35-40 feet east of Cedar Boulevard) to emergency vehicles only inbound/outbound to prevent left-turn conflicts on Mowry School Road.</p>				
--	--	--	--	--

RESOLUTION NO.

RESOLUTION RECOMMENDING CITY COUNCIL
APPROVAL OF AN AMENDMENT TO THE LAND USE
ELEMENT OF THE GENERAL PLAN

WHEREAS, in response to the application filed by Integral Communities for a 85-unit residential townhome-style subdivision on the northeast corner of Cedar Boulevard and Mowry School Road (APN: 901-0195-039), the City of Newark has prepared the proposed amendment to the Newark General Plan (GP-14-7) to change the land use designation of the subject property within the boundaries of Vesting Tentative Tract Map 8166 from CC (Community Commercial) to HR (High Density Residential); and

WHEREAS, the proposed amendment would implement Policy LU-1.2 of Chapter 3, Land Use, of the Newark General Plan adopted December 12, 2013 by facilitating development on vacant land, thereby creating new neighborhoods along the Greater NewPark Mall area; and

WHEREAS, the proposed amendment is consistent with existing goals, policies and objectives contained in the Newark General Plan with respect to the promotion of balanced land use; and

WHEREAS, an Initial Study and Mitigated Negative Declaration (E-14-6) have been prepared for this project in accord with the California Environmental Quality Act and circulated for a 20-day review period to all surrounding jurisdictions, public agencies, and interested individuals; and

WHEREAS, the Planning Commission has read, reviewed, and considered the information contained in the Initial Study and Mitigated Negative Declaration and conducted a public hearing on the proposed amendment to the Newark General Plan for the subject property as shown on Exhibit A, and discussed, evaluated, analyzed, reviewed, and considered the information presented in said hearing; and

WHEREAS, the Planning Commission did review and use their independent judgment to consider the Mitigated Negative Declaration at the public hearing; and

WHEREAS, based upon the finding that approval of the project will not have a significant effect on the environment, the Planning Commission adopted a Mitigated Negative Declaration; and

WHEREAS, pursuant to California Government Code Sections 6061 and Section 65353, a public hearing notice was published in The Argus on May 16, 2014, and the Planning Commission held a public hearing on said application at 7:30 p.m. on May 27, 2014 at the City Administration Building, 37101 Newark Boulevard, Newark, California.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Newark hereby recommends the City Council approve General Plan Amendment, GP-14-7, with Exhibit A, based on a review of the Initial Study and Mitigated Negative Declaration, staff report, staff presentation, and public comments received, with the finding that the proposed amendment is consistent with all other goals and policies of the Newark General Plan.

This resolution was introduced at the Planning Commission's May 27, 2014, meeting by Commissioner _____, seconded by _____, and passed as follows:

AYES:

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

BERNIE NILLO, Chairperson



VICINITY MAP
NOT TO SCALE

GENERAL NOTES:

1. OWNER: CROWN SALTATIVE LLC, 65 LINDSEY COURT, CONTRACT # 2014-0156-002
2. REVIEWER: JONATHAN G. BISHOP, CIVIL ENGINEER, 10000 S. 10TH AVE., SUITE 100, DENVER, CO 80231, (303) 751-3300
3. EXISTING: EXISTING LOTS 1-10, PARCELS A-F, AND EXISTING DRIVEWAYS AND UTILITY LINES.
4. EXISTING USE: RESIDENTIAL SINGLE-FAMILY.
5. EXISTING ZONING: R-1.5.
6. EXISTING RECORDS: 1981-1982, 1983-1984, 1985-1986, 1987-1988, 1989-1990, 1991-1992, 1993-1994, 1995-1996, 1997-1998, 1999-2000, 2001-2002, 2003-2004, 2005-2006, 2007-2008, 2009-2010, 2011-2012, 2013-2014, 2015-2016, 2017-2018, 2019-2020, 2021-2022, 2023-2024, 2025-2026, 2027-2028, 2029-2030, 2031-2032, 2033-2034, 2035-2036, 2037-2038, 2039-2040, 2041-2042, 2043-2044, 2045-2046, 2047-2048, 2049-2050, 2051-2052, 2053-2054, 2055-2056, 2057-2058, 2059-2060, 2061-2062, 2063-2064, 2065-2066, 2067-2068, 2069-2070, 2071-2072, 2073-2074, 2075-2076, 2077-2078, 2079-2080, 2081-2082, 2083-2084, 2085-2086, 2087-2088, 2089-2090, 2091-2092, 2093-2094, 2095-2096, 2097-2098, 2099-2100, 2101-2102, 2103-2104, 2105-2106, 2107-2108, 2109-2110, 2111-2112, 2113-2114, 2115-2116, 2117-2118, 2119-2120, 2121-2122, 2123-2124, 2125-2126, 2127-2128, 2129-2130, 2131-2132, 2133-2134, 2135-2136, 2137-2138, 2139-2140, 2141-2142, 2143-2144, 2145-2146, 2147-2148, 2149-2150, 2151-2152, 2153-2154, 2155-2156, 2157-2158, 2159-2160, 2161-2162, 2163-2164, 2165-2166, 2167-2168, 2169-2170, 2171-2172, 2173-2174, 2175-2176, 2177-2178, 2179-2180, 2181-2182, 2183-2184, 2185-2186, 2187-2188, 2189-2190, 2191-2192, 2193-2194, 2195-2196, 2197-2198, 2199-2200, 2201-2202, 2203-2204, 2205-2206, 2207-2208, 2209-2210, 2211-2212, 2213-2214, 2215-2216, 2217-2218, 2219-2220, 2221-2222, 2223-2224, 2225-2226, 2227-2228, 2229-2230, 2231-2232, 2233-2234, 2235-2236, 2237-2238, 2239-2240, 2241-2242, 2243-2244, 2245-2246, 2247-2248, 2249-2250, 2251-2252, 2253-2254, 2255-2256, 2257-2258, 2259-2260, 2261-2262, 2263-2264, 2265-2266, 2267-2268, 2269-2270, 2271-2272, 2273-2274, 2275-2276, 2277-2278, 2279-2280, 2281-2282, 2283-2284, 2285-2286, 2287-2288, 2289-2290, 2291-2292, 2293-2294, 2295-2296, 2297-2298, 2299-2300, 2301-2302, 2303-2304, 2305-2306, 2307-2308, 2309-2310, 2311-2312, 2313-2314, 2315-2316, 2317-2318, 2319-2320, 2321-2322, 2323-2324, 2325-2326, 2327-2328, 2329-2330, 2331-2332, 2333-2334, 2335-2336, 2337-2338, 2339-2340, 2341-2342, 2343-2344, 2345-2346, 2347-2348, 2349-2350, 2351-2352, 2353-2354, 2355-2356, 2357-2358, 2359-2360, 2361-2362, 2363-2364, 2365-2366, 2367-2368, 2369-2370, 2371-2372, 2373-2374, 2375-2376, 2377-2378, 2379-2380, 2381-2382, 2383-2384, 2385-2386, 2387-2388, 2389-2390, 2391-2392, 2393-2394, 2395-2396, 2397-2398, 2399-2400, 2401-2402, 2403-2404, 2405-2406, 2407-2408, 2409-2410, 2411-2412, 2413-2414, 2415-2416, 2417-2418, 2419-2420, 2421-2422, 2423-2424, 2425-2426, 2427-2428, 2429-2430, 2431-2432, 2433-2434, 2435-2436, 2437-2438, 2439-2440, 2441-2442, 2443-2444, 2445-2446, 2447-2448, 2449-2450, 2451-2452, 2453-2454, 2455-2456, 2457-2458, 2459-2460, 2461-2462, 2463-2464, 2465-2466, 2467-2468, 2469-2470, 2471-2472, 2473-2474, 2475-2476, 2477-2478, 2479-2480, 2481-2482, 2483-2484, 2485-2486, 2487-2488, 2489-2490, 2491-2492, 2493-2494, 2495-2496, 2497-2498, 2499-2500, 2501-2502, 2503-2504, 2505-2506, 2507-2508, 2509-2510, 2511-2512, 2513-2514, 2515-2516, 2517-2518, 2519-2520, 2521-2522, 2523-2524, 2525-2526, 2527-2528, 2529-2530, 2531-2532, 2533-2534, 2535-2536, 2537-2538, 2539-2540, 2541-2542, 2543-2544, 2545-2546, 2547-2548, 2549-2550, 2551-2552, 2553-2554, 2555-2556, 2557-2558, 2559-2560, 2561-2562, 2563-2564, 2565-2566, 2567-2568, 2569-2570, 2571-2572, 2573-2574, 2575-2576, 2577-2578, 2579-2580, 2581-2582, 2583-2584, 2585-2586, 2587-2588, 2589-2590, 2591-2592, 2593-2594, 2595-2596, 2597-2598, 2599-2600, 2601-2602, 2603-2604, 2605-2606, 2607-2608, 2609-2610, 2611-2612, 2613-2614, 2615-2616, 2617-2618, 2619-2620, 2621-2622, 2623-2624, 2625-2626, 2627-2628, 2629-2630, 2631-2632, 2633-2634, 2635-2636, 2637-2638, 2639-2640, 2641-2642, 2643-2644, 2645-2646, 2647-2648, 2649-2650, 2651-2652, 2653-2654, 2655-2656, 2657-2658, 2659-2660, 2661-2662, 2663-2664, 2665-2666, 2667-2668, 2669-2670, 2671-2672, 2673-2674, 2675-2676, 2677-2678, 2679-2680, 2681-2682, 2683-2684, 2685-2686, 2687-2688, 2689-2690, 2691-2692, 2693-2694, 2695-2696, 2697-2698, 2699-2700, 2701-2702, 2703-2704, 2705-2706, 2707-2708, 2709-2710, 2711-2712, 2713-2714, 2715-2716, 2717-2718, 2719-2720, 2721-2722, 2723-2724, 2725-2726, 2727-2728, 2729-2730, 2731-2732, 2733-2734, 2735-2736, 2737-2738, 2739-2740, 2741-2742, 2743-2744, 2745-2746, 2747-2748, 2749-2750, 2751-2752, 2753-2754, 2755-2756, 2757-2758, 2759-2760, 2761-2762, 2763-2764, 2765-2766, 2767-2768, 2769-2770, 2771-2772, 2773-2774, 2775-2776, 2777-2778, 2779-2780, 2781-2782, 2783-2784, 2785-2786, 2787-2788, 2789-2790, 2791-2792, 2793-2794, 2795-2796, 2797-2798, 2799-2800, 2801-2802, 2803-2804, 2805-2806, 2807-2808, 2809-2810, 2811-2812, 2813-2814, 2815-2816, 2817-2818, 2819-2820, 2821-2822, 2823-2824, 2825-2826, 2827-2828, 2829-2830, 2831-2832, 2833-2834, 2835-2836, 2837-2838, 2839-2840, 2841-2842, 2843-2844, 2845-2846, 2847-2848, 2849-2850, 2851-2852, 2853-2854, 2855-2856, 2857-2858, 2859-2860, 2861-2862, 2863-2864, 2865-2866, 2867-2868, 2869-2870, 2871-2872, 2873-2874, 2875-2876, 2877-2878, 2879-2880, 2881-2882, 2883-2884, 2885-2886, 2887-2888, 2889-2890, 2891-2892, 2893-2894, 2895-2896, 2897-2898, 2899-2900, 2901-2902, 2903-2904, 2905-2906, 2907-2908, 2909-2910, 2911-2912, 2913-2914, 2915-2916, 2917-2918, 2919-2920, 2921-2922, 2923-2924, 2925-2926, 2927-2928, 2929-2930, 2931-2932, 2933-2934, 2935-2936, 2937-2938, 2939-2940, 2941-2942, 2943-2944, 2945-2946, 2947-2948, 2949-2950, 2951-2952, 2953-2954, 2955-2956, 2957-2958, 2959-2960, 2961-2962, 2963-2964, 2965-2966, 2967-2968, 2969-2970, 2971-2972, 2973-2974, 2975-2976, 2977-2978, 2979-2980, 2981-2982, 2983-2984, 2985-2986, 2987-2988, 2989-2990, 2991-2992, 2993-2994, 2995-2996, 2997-2998, 2999-3000, 3001-3002, 3003-3004, 3005-3006, 3007-3008, 3009-3010, 3011-3012, 3013-3014, 3015-3016, 3017-3018, 3019-3020, 3021-3022, 3023-3024, 3025-3026, 3027-3028, 3029-3030, 3031-3032, 3033-3034, 3035-3036, 3037-3038, 3039-3040, 3041-3042, 3043-3044, 3045-3046, 3047-3048, 3049-3050, 3051-3052, 3053-3054, 3055-3056, 3057-3058, 3059-3060, 3061-3062, 3063-3064, 3065-3066, 3067-3068, 3069-3070, 3071-3072, 3073-3074, 3075-3076, 3077-3078, 3079-3080, 3081-3082, 3083-3084, 3085-3086, 3087-3088, 3089-3090, 3091-3092, 3093-3094, 3095-3096, 3097-3098, 3099-3100, 3101-3102, 3103-3104, 3105-3106, 3107-3108, 3109-3110, 3111-3112, 3113-3114, 3115-3116, 3117-3118, 3119-3120, 3121-3122, 3123-3124, 3125-3126, 3127-3128, 3129-3130, 3131-3132, 3133-3134, 3135-3136, 3137-3138, 3139-3140, 3141-3142, 3143-3144, 3145-3146, 3147-3148, 3149-3150, 3151-3152, 3153-3154, 3155-3156, 3157-3158, 3159-3160, 3161-3162, 3163-3164, 3165-3166, 3167-3168, 3169-3170, 3171-3172, 3173-3174, 3175-3176, 3177-3178, 3179-3180, 3181-3182, 3183-3184, 3185-3186, 3187-3188, 3189-3190, 3191-3192, 3193-3194, 3195-3196, 3197-3198, 3199-3200, 3201-3202, 3203-3204, 3205-3206, 3207-3208, 3209-3210, 3211-3212, 3213-3214, 3215-3216, 3217-3218, 3219-3220, 3221-3222, 3223-3224, 3225-3226, 3227-3228, 3229-3230, 3231-3232, 3233-3234, 3235-3236, 3237-3238, 3239-3240, 3241-3242, 3243-3244, 3245-3246, 3247-3248, 3249-3250, 3251-3252, 3253-3254, 3255-3256, 3257-3258, 3259-3260, 3261-3262, 3263-3264, 3265-3266, 3267-3268, 3269-3270, 3271-3272, 3273-3274, 3275-3276, 3277-3278, 3279-3280, 3281-3282, 3283-3284, 3285-3286, 3287-3288, 3289-3290, 3291-3292, 3293-3294, 3295-3296, 3297-3298, 3299-3300, 3301-3302, 3303-3304, 3305-3306, 3307-3308, 3309-3310, 3311-3312, 3313-3314, 3315-3316, 3317-3318, 3319-3320, 3321-3322, 3323-3324, 3325-3326, 3327-3328, 3329-3330, 3331-3332, 3333-3334, 3335-3336, 3337-3338, 3339-3340, 3341-3342, 3343-3344, 3345-3346, 3347-3348, 3349-3350, 3351-3352, 3353-3354, 3355-3356, 3357-3358, 3359-3360, 3361-3362, 3363-3364, 3365-3366, 3367-3368, 3369-3370, 3371-3372, 3373-3374, 3375-3376, 3377-3378, 3379-3380, 3381-3382, 3383-3384, 3385-3386, 3387-3388, 3389-3390, 3391-3392, 3393-3394, 3395-3396, 3397-3398, 3399-3400, 3401-3402, 3403-3404, 3405-3406, 3407-3408, 3409-3410, 3411-3412, 3413-3414, 3415-3416, 3417-3418, 3419-3420, 3421-3422, 3423-3424, 3425-3426, 3427-3428, 3429-3430, 3431-3432, 3433-3434, 3435-3436, 3437-3438, 3439-3440, 3441-3442, 3443-3444, 3445-3446, 3447-3448, 3449-3450, 3451-3452, 3453-3454, 3455-3456, 3457-3458, 3459-3460, 3461-3462, 3463-3464, 3465-3466, 3467-3468, 3469-3470, 3471-3472, 3473-3474, 3475-3476, 3477-3478, 3479-3480, 3481-3482, 3483-3484, 3485-3486, 3487-3488, 3489-3490, 3491-3492, 3493-3494, 3495-3496, 3497-3498, 3499-3500, 3501-3502, 3503-3504, 3505-3506, 3507-3508, 3509-3510, 3511-3512, 3513-3514, 3515-3516, 3517-3518, 3519-3520, 3521-3522, 3523-3524, 3525-3526, 3527-3528, 3529-3530, 3531-3532, 3533-3534, 3535-3536, 3537-3538, 3539-3540, 3541-3542, 3543-3544, 3545-3546, 3547-3548, 3549-3550, 3551-3552, 3553-3554, 3555-3556, 3557-3558, 3559-3560, 3561-3562, 3563-3564, 3565-3566, 3567-3568, 3569-3570, 3571-3572, 3573-3574, 3575-3576, 3577-3578, 3579-3580, 3581-3582, 3583-3584, 3585-3586, 3587-3588, 3589-3590, 3591-3592, 3593-3594, 3595-3596, 3597-3598, 3599-3600, 3601-3602, 3603-3604, 3605-3606, 3607-3608, 3609-3610, 3611-3612, 3613-3614, 3615-3616, 3617-3618, 3619-3620, 3621-3622, 3623-3624, 3625-3626, 3627-3628, 3629-3630, 3631-3632, 3633-3634, 3635-3636, 3637-3638, 3639-3640, 3641-3642, 3643-3644, 3645-3646, 3647-3648, 3649-3650, 3651-3652, 3653-3654, 3655-3656, 3657-3658, 3659-3660, 3661-3662, 3663-3664, 3665-3666, 3667-3668, 3669-3670, 3671-3672, 3673-3674, 3675-3676, 3677-3678, 3679-3680, 3681-3682, 3683-3684, 3685-3686, 3687-3688, 3689-3690, 3691-3692, 3693-3694, 3695-3696, 3697-3698, 3699-3700, 3701-3702, 3703-3704, 3705-3706, 3707-3708, 3709-3710, 3711-3712, 3713-3714, 3715-3716, 3717-3718, 3719-3720, 3721-3722, 3723-3724, 3725-3726, 3727-3728, 3729-3730, 3731-3732, 3733-3734, 3735-3736, 3737-3738, 3739-3740, 3741-3742, 3743-3744, 3745-3746, 3747-3748, 3749-3750, 3751-3752, 3753-3754, 3755-3756, 3757-3758, 3759-3760, 3761-3762, 3763-3764, 3765-3766, 3767-3768, 3769-3770, 3771-3772, 3773-3774, 3775-3776, 3777-3778, 3779-3780, 3781-3782, 3783-3784, 3785-3786, 3787-3788, 3789-3790, 3791-3792, 3793-3794, 3795-3796, 3797-3798, 3799-3800, 3801-3802, 3803-3804, 3805-3806, 3807-3808, 3809-3810, 3811-3812, 3813-3814, 3815-3816, 3817-3818, 3819-3820, 3821-3822, 3823-3824, 3825-3826, 3827-3828, 3829-3830, 3831-3832, 3833-3834, 3835-3836, 3837-3838, 3839-3840, 3841-3842, 3843-3844, 3845-3846, 3847-3848, 3849-3850, 3851-3852, 3853-3854, 3855-3856, 3857-3858, 3859-3860, 3861-3862, 3863-3864, 3865-3866, 3867-3868, 3869-3870, 3871-3872, 3873-3874, 3875-3876, 3877-3878, 3879-3880, 3881-3882, 3883-3884, 3885-3886, 3887-3888, 3889-3890, 3891-3892, 3893-3894, 3895-3896, 3897-3898, 3899-3900, 3901-3902, 3903-3904, 3905-3906, 3907-3908, 3909-3910, 3911-3912, 3913-3914, 3915-3916, 3917-3918, 3919-3920, 3921-3922, 3923-3924, 3925-3926, 3927-3928, 3929-3930, 3931-3932, 3933-3934, 3935-3936, 3937-3938, 3939-3940, 3941-3942, 3943-3944, 3945-3946, 3947-3948, 3949-3950, 3951-3952, 3953-3954, 3955-3956, 3957-3958, 3959-3960, 3961-3962, 3963-3964, 3965-3966, 3967-3968, 3969-3970, 3971-3972, 3973-3974, 3975-3976, 3977-3978, 3979-3980, 3981-3982, 3983-3984, 3985-3986, 3987-3988, 3989-3990, 3991-3992, 3993-3994, 3995-3996, 3997-3998, 3999-4000, 4001-4002, 4003-4004, 4005-4006, 4007-4008, 4009-4010, 4011-4012, 4013-4014, 4015-4016, 4017-4018, 4019-4020, 4021-4022, 4023-4024, 4025-4026, 4027-4028, 4029-4030, 4031-4032, 4033-4034, 4035-4036, 4037-4038, 4039-4040, 4041-4042, 4043-4044, 4045-4046, 4047-4048, 4049-4050, 4051-4052, 4053-4054, 4055-4056, 4057-4058, 4059-4060, 4061-4062, 4063-4064, 4065-4066, 4067-4068, 4069-4070, 4071-4072, 4073-4074, 4075-4076, 4077-4078, 4079-4080, 4081-4082, 4083-4084, 4085-4086, 4087-4088, 4089-4090, 4091-4092, 4093-4094, 4095-4096, 4097-4098, 4099-4100, 4101-4102, 4103-4104, 4105-4106, 4107-4108, 4109-4110, 4111-4112, 4113-4114, 4115-4116, 4117-4118, 4119-4120, 4121-4122, 4123-4124, 4125-4126, 4127-4128, 4129-4130, 4131-4132, 4133-4134, 4135-4136, 4137-4138, 4139-4140, 4141-4142, 4143-4144, 4145-4146, 4147-4148, 4149-4150, 4151-4152, 4153-4154, 4155-4156, 4157-4158, 4159-4160, 4

RESOLUTION NO.

RESOLUTION RECOMMENDING 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, Integral Communities has made application to the Planning Commission of the City of Newark to consider the amendment (RZ-14-8) to Title 17 (Zoning) of the Newark Municipal Code and the Official Zoning Map, by rezoning property described as follows;

All that real property shown on Vesting Tentative Tract Map 8166 in the City of Newark, County of Alameda, State of California as shown on Exhibit A, pages 1 through 33, attached hereto and incorporated herein by reference.

PURSUANT to Municipal Code Section 17.80.050, a public hearing notice was published in the Argus on May 16, 2014, and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on May 27, 2014 at the City Administration Building, 37101 Newark Boulevard, Newark, California; and

NOW, THEREFORE, the Planning Commission, based on the evidence and oral and written testimony presented at public hearings, and based on all the information contained in the Community Development Department's files on the project, including, but not limited to, the SEIR, the Planning Commission's staff report, does resolve:

- a. That the Planning Commission recommends that the Newark City Council amend Title 17 (Zoning) of the Newark Municipal code and Section 17.44.010 "Zoning Map" thereof, being the City of Newark Zoning Ordinance and Official Zoning Map, by rezoning all that real property shown on Vesting Tentative Tract Map 8166 from CC (Community Commercial) to R-1500 (High Density Residential – 1,500); 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
- c. That a copy of the minutes be forwarded to the City Council as a summary of the hearing.

The resolution was introduced at the Planning Commission's May 27, 2014 meeting by Commissioner _____, seconded by Commissioner _____, and passed as follows

AYES:

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

BERNIE NILLO, Chairperson

RESOLUTION NO.

RESOLUTION OF THE NEWARK PLANNING COMMISSION
RECOMMENDING THAT THE CITY COUNCIL APPROVE
AN ALTERNATIVE MEANS OF COMPLIANCE WITH THE
INCLUSIONARY HOUSING ORDINANCE FOR THE CEDAR
TOWNHOMES ATRIUM PROJECT AND MAKING FINDINGS
RELATED TO THE USE OF AN ALTERNATIVE MEANS OF
COMPLIANCE

WHEREAS, the Cedar Townhomes Atrium Project includes a condition that the project comply with the City's Inclusionary Housing Ordinance (Municipal Code Section 17.18); and

WHEREAS, the Inclusionary Housing Ordinance includes provisions for the application of an alternative means of compliance; and

WHEREAS, in connection with the Torian project, The City, the SHH Project Owner, LLC and New Atrium Project Owner, LLC have previously entered into an Affordable Housing Obligation Satisfaction Agreement for the provision of at least seventy-two (72) Affordable Dwelling Units to be constructed on the SHH parcel, including nine (9) Affordable Dwelling Units required to satisfy the affordable housing obligation resulting from the development of the Atrium Property; and

WHEREAS, these required nine (9) Affordable Dwelling Units shall be provided on the Affordable Property identified pursuant to the SHH Affordable Housing Agreement if the Atrium Project is constructed by Atrium, an affiliate of Atrium, or an assignee of Atrium which is a successor in interest to the Atrium Property; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission:

- a. Recommends that the City Council approve an Affordable Housing Agreement for the Cedar Townhomes project, said agreement being on file with the Secretary of the Planning Commission; and
- b. That the Planning Commission does find that:
 - i) The proposed alternative means of compliance fulfills the purposes of this, the Inclusionary Housing Ordinance, as set forth in Section 17.18.010; and
 - ii) The proposed alternative means of compliance will further affordable housing opportunities in the City to an equal or greater extent than compliance with the requirements of Section 17.18.030; and

iii) The proposed alternative means of compliance would better address the City's needs than compliance with the requirements of Section 17.18.030; and

This Resolution was introduced at the Planning Commission's May 27, 2014 meeting by Commissioner , seconded by Commissioner , and passed as follows:

AYES:

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

BERNIE NILLO, Chairperson

AFFORDABLE HOUSING OBLIGATION SATISFACTION AGREEMENT

THIS AFFORDABLE HOUSING OBLIGATION SATISFACTION AGREEMENT (“Agreement”) is made as of _____, 2014, by and among the CITY OF NEWARK, a California municipal corporation (the “City”), and THE NEWARK ATRIUM PROJECT OWNER, LLC, a Delaware limited liability company (referred to herein as “Atrium” or as “Developer”).

RECITALS

A. Atrium has a contract for the purchase of approximately four and 28/100th acres (4.28) acres of real property in the City of Newark, County of Alameda, State of California, more particularly described in the legal description attached hereto as Exhibit A-1 and incorporated herein by this reference (the “Atrium Property”).

B. Atrium plans to develop the Atrium Property with approximately 85 market rate dwelling units known as the Cedar Townhomes Project (“Cedar Townhomes Project”).

C. The City’s Inclusionary Housing Program provides an overall goal of providing affordable housing throughout the City, but includes flexibility in implementing this overall goal for each project. This Agreement implements those requirements by determining the appropriate amount of housing to be provided by the Atrium Property, and shall constitute the affordable housing program for the Atrium Property. The Cedar Townhomes Project on the Atrium Property will require the development of nine (9) affordable dwelling units consisting of senior residential units affordable to persons of low income.

D. The City, the SHH Project Owner, LLC and New Atrium Project Owner, LLC have previously entered into an Affordable Housing Obligation Satisfaction Agreement providing for the provision of at least seventy-two (72) senior Affordable Dwelling Units, including nine (9) senior Affordable Dwelling Units required to satisfy the affordable housing obligation resulting from the development of the Atrium Property (the “SHH Affordable Housing Agreement”).

F. The required nine (9) Affordable Dwelling Units shall be provided on the Affordable Property identified pursuant to the SHH Affordable Housing Agreement if the Atrium Project is constructed by Atrium, an affiliate of Atrium, or an assignee of Atrium which is a successor in interest to the Atrium Property.

G. The City and Atrium now desire to set forth the specific terms and conditions under which Developer’ obligations under the Affordable Housing Program will be satisfied in connection with Atrium’s development of the Atrium Property.

NOW, THEREFORE, in consideration of the foregoing recitals which are hereby incorporated into the operative provisions of this Agreement by this reference and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and the Developer agree as follows:

1. **Definitions.**

1.1 “**Affordable Dwelling Unit**” shall mean each of the Dwelling Units available for occupancy by Senior Low Income Households at an Affordable Rent.

1.2 “**Affordable Housing Declaration**” shall mean an Affordable Housing Declaration of Covenants and Restrictions ordinarily required by the City to ensure availability of Affordable Dwelling Units in form and substance. The Affordable Housing Declaration shall also include any and all amendments or modifications thereto agreed to in writing by City and Developer.

1.3 “**Affordable Housing Obligation**” shall mean the requirement to construct nine (9) Affordable Dwelling Units attributable to the Atrium Property.

1.4 “**Affordable Rent**” shall mean rent affordable to households earning 60% or less than Area Median Income.

1.5 “**Area Median Income**” shall mean the area median income for the County of Alameda (“County”) as published annually by the Department of Housing and Community Development, and determined in accordance with the U.S. Department of Housing and Urban Development criteria then in effect and published from time to time. For purposes of this Agreement, the qualifying limits shall be those limits for the County, as set forth in Title 25, California Code of Regulations, section 6932, as that section may be amended, modified or recodified from time to time. If the California Code of Regulations is amended or modified during the term of this Agreement so that such regulations do not specify the area median income for the County, the City and Developer shall negotiate in good faith to determine an equivalent authoritative source which determines median income for the County.

1.6 “**City Council**” shall mean the City Council of the City of Newark.

1.7 “**City Manager**” shall mean the City Manager of the City of Newark.

1.8 “**County**” shall mean Alameda County.

1.9 “**Dwelling Unit**” shall mean a place in the Project that is legally available to be rented by a person or family.

1.10 “**Effective Date**” means the date on which this Agreement has been (i) executed by Developer, and (ii) approved by the City Council.

1.11 “**Low Income Household**” means persons and families whose gross incomes do not exceed sixty percent (60%) of the Area Median Income, adjusted for size, in accordance with adjustment factors adopted by the United States Department of Housing and Urban Development, as published annually by the California Department of Housing and Community Development.

1.12 “**Market Rate Rental Dwelling Unit**” shall mean those Dwelling Units in the Atrium Property that are not Affordable Dwelling Units nor governed by the Affordable Housing Declaration.

1.13 “**Project**” shall mean the development of the Atrium Property pursuant to this Agreement.

1.14 “**Satisfaction Event**” shall mean the completion of Affordable Dwelling Units in a number equal to the Affordable Housing Obligation.

1.15 “**Senior or Senior Citizen**” shall mean a person who is fifty-five (55) years or older at the date of occupancy of an Affordable Dwelling Unit.

2. **Term of Agreement.** This Agreement shall become operative and commence upon the Effective Date, and remain in effect until a Satisfaction Event has occurred. Upon the expiration or termination of the term, this Agreement shall be deemed terminated, and have no further force and effect.

3. **Affordable Housing.**

3.1 **Affordable Housing Obligation.** Pursuant to the SHH Affordable Housing Agreement, SHH shall satisfy one hundred percent (100%) of the Affordable Housing Obligation for the Atrium Property by the construction of a project including 9-units of Affordable Senior housing on a portion of the SHH Property and as set forth more fully in the SHH Affordable Housing Agreement, which is incorporated herein by reference.

3.2 **SHH Affordable Housing Agreement in Full Force and Effect.** This Agreement is not intended to and does not amend in any way the SHH Affordable Housing Agreement. This Agreement is intended to implement the SHH Affordable Housing Agreement as it applies to the Atrium Property. In the event of a conflict between this Agreement and the SHH Affordable Housing Agreement, the SHH Affordable Housing Agreement shall control.

4. **Modification, Amendment, Cancellation or Termination.**

4.1 **Amendment and Cancellation.** This Agreement may be amended or canceled, in whole or in part, by mutual written consent of the City and the Developer or its successors-in-interest.

4.2 **Modification.** The City Manager, with the consent of the Developer, may make non-substantive modifications to the Agreement without the need for formal action by the City Council.

5. **Limitations on Remedies; Monetary Damages.** The Developer and City acknowledge that neither the City nor the Developer would have entered into this Agreement if either were liable for monetary damages under or with respect to this Agreement or the application thereof. Both the City and the Developer agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages which would adequately compensate the Developer for its investment of time and financial resources in

(b) Severability. If any part of this Agreement is declared invalid for any reason, such invalidity shall not affect the validity of the remainder of the Agreement unless the invalid provision is a material part of the Agreement. The other parts of this Agreement shall remain in effect as if this Agreement had been executed without the invalid part.

(c) Entire Agreement. Except as provided in Section 3.1, this Agreement represents the entire agreement between the City and the Developer with respect to the subject matter hereof, and supersedes all prior agreements and understandings, whether oral or written, between the City and the Developer with respect to the matters contained in this Agreement.

(d) Further Assurances. The City and the Developer agree to perform, from time to time, such further acts and to execute and deliver such further instruments reasonably to effect the intents and purposes of this Agreement, provided that the intended obligations of the City and the Developer are not thereby modified.

(e) Assignment. This Agreement shall inure to the benefit of, and bind the successors and assigns of the City and the Developer, and may be assigned by either the City or the Developer to any party or parties purchasing all or any part of the fee interest in the Property. The provisions of this Paragraph 11(e) shall be self-executing and shall not require the execution or recordation of any further document or instrument. Upon the sale, transfer or assignment of all or a portion of the Property to a party that acquires fee title to the Property or any portion thereof, Developer shall be released of all executory obligations under this Agreement that relate to the transferred property; provided, however, that Developer shall not be released from liability for any default of Developer committed prior to the date of the transfer.

(f) Negation of Agency. The City and the Developer acknowledge that, in entering into and performing under this Agreement, each is acting as an independent entity and not as an agent of the other in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as making the City and the Developer joint venturers, partners or employer/employee.

(g) Attorney's Fees. In the event of any claim, dispute or controversy arising out of or relating to this Agreement, including an action for declaratory relief, the prevailing party in such action or proceeding shall be entitled to recover its court costs and reasonable out-of-pocket expenses.

(h) Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought.

(i) Force Majeure. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to one or more of the following events, providing that anyone or more of such event(s) actually delays or interferes with the timely performance of the matter to which it would apply and despite the exercise of diligence and good business practices and such event(s) are beyond the reasonable control of the party claiming such interference: war, terrorism, terrorist acts, insurrection, strikes, lock-outs, unavailability in the marketplace of essential labor, tools, materials or supplies, failure of any contractor,

subcontractor, or consultant to timely perform (so long as Developer is not otherwise in default of any obligation under this Agreement and is exercising commercially reasonable diligence of such contractor, subcontractor or consultant to perform, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, or unusually severe weather. An extension of time for any such cause (a "**Force Majeure Delay**") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of actual knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date and the event commenced, and the estimated delay resulting therefrom.

(j) Paragraph Headings. The paragraph headings contained in this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents to which they relate.

(k) Time of Essence. Time is of the essence of this Agreement, and all performances required hereunder shall be completed within the time periods specified. Any failure of performance shall be deemed as a material breach of this Agreement.

(l) Counterparts. This Agreement and any modifications hereto may be executed in any number of counterparts with the same force and effect as if executed in the form of a single document.

(m) Alternative Dispute Resolution Procedure.

(1) Dispute. If a dispute arises concerning whether the City or the Developer or any of Developer's successors or assigns is in default under this Agreement or whether any such default has been cured or whether or not a dispute is subject to this Paragraph (a "**Dispute**"), then such dispute shall be subject to negotiation between the parties to this Agreement, and if then not resolved, shall be subject to nonbinding mediation, both as set forth below, before either party may institute legal proceedings.

(2) Negotiation. If a Dispute arises, the parties agree to negotiate in good faith to resolve the Dispute. If the negotiations do not resolve the Dispute to the reasonable satisfaction of the parties within 15 days from a written request for a negotiation, then each party shall give notice to the other party identifying an official or executive officer who has authority to resolve the Dispute to meet in person with the other party's designated official or executive officer who is similarly authorized. The designated persons identified by each party shall meet in person for one day within the 20-day period following the expiration of the 15-day period and the designated persons shall attempt in good faith to resolve the Dispute. If the designated persons are unable to resolve the Dispute, then the Dispute shall be submitted to non-binding mediation.

(3) Mediation.

(i) Within 15 days following the designated persons' meeting described in Paragraph 14(0)(2), above, either party may initiate non-binding mediation (the "**Mediation**"), conducted by Judicial Arbitration & Mediation Services, Inc. ("**JAMS**") or other agreed upon mediator. Either party may initiate the Mediation by written notice to the other party.

(ii) The mediator shall be a retired judge or other mediator, selected by mutual agreement of the parties, and if they cannot agree within 15 days after the Mediation notice, the mediator shall be selected through the procedures regularly followed by JAMS. The Mediation shall be held within 15 days after the Mediator is selected, or a longer period as the parties and the mediator mutually decide.

(iii) If the Dispute is not fully resolved by mutual agreement of the parties within 15 days after completion of the Mediation, then either party may institute legal proceedings.

(iv) The parties shall bear equally the cost of the mediator's fees and expenses, but each party shall pay its own attorneys' and expert witness fees and any other associated costs in connection with the mediation.

(4) Preservation of Rights. Nothing in this Paragraph shall limit a party's right to seek an injunction or restraining order from a court in circumstances where such equitable relief is deemed necessary by a party to preserve such party's rights.

(n) Reference of California Law. Unless expressly stated to the contrary, all references to statutes herein are to the California codes.

(o) Interpretation. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has independently reviewed this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

IN WITNESS WHEREOF, the City and Atrium hereto have each executed this Agreement as of the date first written above.

“CITY”

CITY OF NEWARK,
a California municipal corporation

Mayor

ATTEST:

City Clerk

THE NEWARK ATRIUM PROJECT
OWNER, LLC,
a Delaware limited liability company

By: KPMW Integral, LLC,
a California limited liability company,
Its Managing Member

By: _____

Name: _____

Title: _____

EXHIBIT "A" TO AFFORDABLE HOUSING AGREEMENT
LEGAL DESCRIPTION OF ATRIUM PROPERTY

EXHIBIT "B" TO AFFORDABLE HOUSING OBLIGATION

SATISFACTION AGREEMENT

SITE PLAN

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPROVING VESTING TENTATIVE TRACT MAP
8166

WHEREAS, Integral Communities, Inc. has submitted TTM-14-11, Vesting Tentative Tract Map 8166, to the City Council of the City of Newark for a 85-unit residential townhome development on an approximately 4.28-acre project site (Atrium Property) located at the northeast corner of Cedar Boulevard and Mowry School Road; and

NOW, THEREFORE, pursuant to California Government Code Sections 66473 *et seq.*, the City Council and as a result of the studies and investigations made by the City Council and on its behalf, the oral and written testimony presented at the public hearings, the information contained in the Community Development Department's file and the Initial Study/Mitigated Negative Declaration (IS/MND), finds and resolves as follows:

1. That TTM-14-11, Vesting Tentative Tract Map 8166 is consistent with the City's General Plan and as such is compatible with the objectives, policies, general land uses, and programs specified therein. TTM-14-11, Vesting Tentative Tract Map 8166 calls for the construction of 85 residential townhome units. TTM-14-11, Vesting Tentative Tract Map 8166 is an implementation of the City's previously adopted policies.
2. That the Atrium Property is physically suitable for the construction of 85 residential units. The IS/MND recommended by the Planning Commission on May 27, 2014, analyzed all physical impacts of TTM-14-11, Tentative Tract Map 8166 on the Atrium Property. The impacts on the Atrium Property of both a residential use generally and the density envisioned by TTM-14-11, Tentative Tract Map 8166 were fully analyzed by the IS/MND.
3. That TTM-14-11, Tentative Tract Map 8166 is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The IS/MND analyzed all the environmental impacts of TTM-14-11, Tentative Map Tract Map 8166.
4. That TTM-14-11, Tentative Tract Map 8166 is not likely to cause serious health problems. The IS/MND, recommended by the Planning Commission on May 27, 2014, analyzed all the environmental impacts of TTM-14-11, Tentative Tract Map 8166 on public health and safety.
5. That TTM-14-11, Tentative Tract Map 8166 does not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Newark does hereby approve TTM-14-11, Tentative Tract Map 8166 as shown on Exhibit A, pages 1 through 33, and made a part hereof by reference, subject to the following conditions:

Planning Division

- a. Approval of TTM-14-11, Vesting Tentative Tract Map 8166 shall be effective at such time GP-14-7 and RZ-14-8, the General Plan Amendment and Rezoning, respectively, of the property within the boundary of Tentative Tract Map 8166, takes effect.
- b. The project shall be subject to the environmental mitigation measures as described in the Initial Study/Mitigated Negative Declaration.
- c. All lighting shall be directed on-site so as not to create glare off-site, as required by the Community Development Director.
- d. There shall be no roof-mounted equipment other than AC units, satellite dishes, other similar television or radio antennas, and solar equipment.
- e. Construction site trailers and buildings located on-site shall be used for office and storage purposes 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.
- 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 cleanup. Graffiti removal/repainting and site cleanup shall occur on a continuing, as needed basis.
- 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. Prior to the issuance of a building permit, the elevations as submitted by the developer as part of this application, shall be reviewed and approved by the Planning Commission and City Council. The building elevations shall reflect all roof eaves, bay windows, greenhouse windows, chimneys, porches, and similar architectural features. A site plan showing the building locations with respect to property lines shall also show the projections. Said elevations shall specify exterior materials. Final colors shall be submitted for the review and approval of the Community Development Director.
- i. Prior to the issuance of a building permit, the floor plans as submitted by the developer as part of this application, shall be reviewed and approved by the Planning Commission and City Council.
- j. Prior to the issuance of a building permit, roof material shall be submitted for the review and approval of the Planning Commission and City Council. 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 location and screening design for garbage, refuse and recycling collection areas for the project shall be submitted for the review and approval of Republic Services of Alameda County and the Community Development Director, in that order. No refuse, garbage or recycling shall be stored outdoors except within approved trash and recycling enclosures.
- l. 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. Fencing shall be at least six (6) feet high from the developer's finished lot grade between the project and the adjacent properties, except that fencing shall be a maximum of three (3) feet high within the front yard setback.
- m. Prior to the issuance of a building permit, details of the outdoor recreational amenities, such as play structures, shall be submitted for the review and approval of the Community Development Director.
- n. Prior to the issuance of a building permit, the developer shall demonstrate compliance with the City's Affordable Housing Program, Chapter 17.18 of the Newark Municipal Code.
- o. Prior to the issuance of a building permit, the developer shall enter into a Community Financing Agreement with the City Council in the amount of \$20,000 per unit for the Map Area specific to this project.
- p. Prior to the issuance of a building permit, the developer shall pay the following fees, in the amount in effect at the time: public safety impact fee (currently \$1,989 per dwelling unit); community service and facilities impact fee (currently \$1,942 per dwelling unit); transportation impact fee (currently \$801 per dwelling unit); Park Impact Fee (currently \$7,460 per dwelling unit); and Art in Public Places and Private Development fee (currently \$270 per dwelling unit).
- q. 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.
- r. Prior to issuance of a grading permit, the developer shall hire a qualified biologist to: (1) determine if occupied Burrowing Owl habitat(s) exists 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 survey shall be conducted not more than 30 days prior to the time site grading activities will commence.

- s. Prior to issuance of a grading permit, measures shall be put in place to respond to and track complaints pertaining to construction noise and shall include, at a minimum: (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, to be approved by the City prior to installation, shall also include a list of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours).
- t. Prior to installation, mailbox locations and designs shall be approved by the Community Development Director and Newark Postmaster. The mailbox compartments of centralized mailboxes shall identify the individual dwelling units with permanent, easily legible lettering.
- u. Prior to final inspection and utility release for each unit, the developer shall pre-wire each unit for satellite and cable television connections, as required by the Community Development Director.
- v. Prior to final inspection and utility release for each unit, the developer shall provide each unit with internally illuminated house numbers, using numbers at least 2 ½ inches tall with a stroke of ½ inch. The Police Chief may modify these specifications to achieve desired objectives.
- w. 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 to the Community Development Director for review and approval.
- x. Construction equipment, including compressors, generators and mobile equipment shall be fitted with heavy-duty mufflers designed to reduce noise impacts.

Engineering Division

- y. The development will require approval of a vesting tentative and final tract map filed in accordance with the State Subdivision Map Act and the City of Newark Subdivision Ordinance. The final map shall designate and/or dedicate emergency vehicle access easements, private vehicle access ways, open space/recreational easements and public utility easements over all common areas of the project. The final map must be approved prior to the issuance of any building permits.
- z. The project shall conform to the approved vesting tentative tract map and all conditions of approval set forth herein. Approval of the vesting tentative tract 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. The vesting tentative tract map provides a preliminary design for the infrastructure improvements associated

with the proposed subdivision. The developer shall be responsible for any required changes to this preliminary design as determined necessary by the City of Newark to satisfy applicable design requirements of the City or any other public agencies or utilities with jurisdictional authority.

- aa. Prior to approval of the final map, the developer shall guarantee all necessary street improvements adjoining the development as required by the City of Newark Subdivision Ordinance and in accordance with tract improvement plans to be approved by the City Engineer. Improvement plans for on-site common areas in the development, including, but not necessarily limited to all private street areas, underground utilities, storm drain system improvements, common area storm water bio-treatment improvements, in-tract lighting, and public landscape areas shall be included with the tract improvement plans to ensure that the improvements are designed and constructed to City standards. Off-site Improvements include, but are not necessarily limited to, City standard driveways, curb ramps, 6-foot wide meandering sidewalk, street lighting, fire hydrants, landscape and irrigation facilities, utility connections, pavement overlays on adjoining streets, ADA facilities, repair of existing damaged public improvements, signage, and any necessary pavement striping modifications required by the City Engineer. All such improvements shall be considered in determination of the tract improvement plan set review and inspection fees for the subdivision. The improvement plans shall be consistent with the traffic engineering analysis prepared for the project. Improvement plans must be prepared by a qualified person licensed by the State of California to do such work.

The developer may request to pay the City for the cost of the requirement street pavement overlays on Mowry School Road and Cedar Boulevard as part of a future City project, subject to approval by the City Engineer. The amount of any such payment shall be determined based on the anticipated unit prices and reasonable overhead costs associated with the future City project.

- bb. Prior to approval of the final map, the developer shall modify the boundary and/or written terms of the existing Roadway, Walkway, and Landscape Easement (Alameda County Document No. 90-207536) if necessary to accommodate the proposed residential subdivision improvements for private uses (buildings, front yards, etc.) within the existing easement boundary. Any modifications of the easement boundary and/or the written terms of the existing document, including the determination of all future maintenance responsibilities, requires approval from the adjoining property owner. Modification of the easement shall be demonstrated by the recording of a formal document prior to final map approval.

Prior to approval of the final map, the developer shall also obtain written approval from the adjoining property owner to the northeast for all physical improvements proposed within the existing or modified easement area. This includes but is not necessarily limited to tree removals, median modifications, site grading, paving, signing and striping, pond perimeter modifications, recreational facilities, fencing, walkways, landscaping, irrigation, and underground utilities. Alterations to the preliminary site design shown on the vesting tentative tract map as necessary to satisfy this requirement are the sole responsibility of the developer. The required written approval from the adjoining property owner shall be provided to the City of Newark.

- cc. This site is subject to the State of California National Pollutant Discharge Elimination System (NPDES) Program General Permit for Storm Water Discharges Associated with Construction Activity. Prior to issuance of a grading permit or a building permit, the developer needs to provide evidence that the proposed site development work is covered by said General Permit for Construction Activity. This will require confirmation that a Notice of Intent (NOI) and the applicable fee were received by the State Water Resources Control Board and the submittal of the required Storm Water Pollution Prevention Plan (SWPPP) for review and approval by the City Engineer. In addition the grading plans need to state: "All grading work shall be done in accordance with the Storm Water Pollution Prevention Plan prepared by the developer pursuant to the Notice of Intent on file with the State Water Resources Control Board."

- dd. Prior to the issuance of a grading or any building permits for this project, the developer shall submit a Stormwater Pollution Prevention Plan (SWPPP) for the review and approval of the City Engineer. The site specific 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 SWPPP shall be prepared by a Qualified SWPPP Developer (QSD) in the State of California. 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 stormwater runoff from the project site including, but not limited to, low impact development stormwater treatment measures, 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.

- ee. 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 R2-2009-0074, revised November 28, 2011, 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 such as fountains, swimming pools, trash compactors, interior floor drains within parking garages, 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 developer shall modify the site design as necessary 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.

- ff. The site is subject to hydromodification management (HM) requirements stated in C.3.g of the MRP. This project shall incorporate site planning, sources control measures, and on-site structural controls to manage hydromodification impacts and comply with the requirements in Attachment B of the MRP. The Bay Area Hydrology Model (BAHM) shall be used to size the proposed flow duration controls. The proposed HM controls incorporated in the project shall include the treatment control design guidance for vector control included in the Alameda Countywide Clean Water Program's Vector Control Plan. Any necessary modifications to the preliminary site design as necessary to satisfy HM requirements are the sole responsibility of the developer.
- gg. All stormwater treatment measures and HM controls are subject to review and approval by the Alameda County Mosquito Abatement District. The developer shall modify the grading and drainage and stormwater treatment design as necessary to satisfy any imposed requirements from the District.
- hh. The entire site shall be equipped with full trash capture devices approved by the Regional Water Quality Control Board – San Francisco Bay Region, for 100% trash capture at all on-site and adjoining off-site storm drain inlets. All on-site trash capture devices shall be permanently maintained by the homeowners association.
- ii. The developer shall submit a grading and drainage plan for review and approval by the City Engineer and the Alameda County Flood Control and Water Conservation District. This plan must be based upon a City benchmark and needs 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 asphalt concrete pavement shall drain at a minimum of one percent (1%) and all Portland cement concrete surfaces shall drain at a minimum 0.3%. 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 prior to approval of the final map. The calculations shall show that the City freeboard requirements will be satisfied (0.75 feet to grate or 1.25 feet to the top of curb under a 10-year storm duration).

- ff. Where a grade differential of more than a 1-foot is created along the boundary parcel lines between the proposed development and adjacent property, the developer 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.
- gg. Prior to issuance of a building permit, the developer shall submit a pavement maintenance program for the drive aisles and parking areas on the project site. The

maintenance program shall be signed by the property owner and the property owner shall follow the maintenance program at the City Engineer's direction.

- hh. The developer shall upgrade the three (3) existing wheelchair accessible ramps and install one (1) new ramp at the intersection of Cedar Boulevard and Mowry School Road in accordance with Curb Ramp Detail No. A88A from the Caltrans Standard Plans, dated May 2006.
- ii. Any new utilities including, but not limited to, electric, telephone and cable television services shall be provided underground.
- jj. Any proposed utility connections and/or underground work within structurally sound street pavement must be bored or jacked unless otherwise approved by the City Engineer.
- kk. The developer shall repair and/or replace any public and private improvements damaged as a result of construction activity to the satisfaction of the City Engineer and adjoining property owners.
- ll. 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.
- mm. The developer shall incorporate a Homeowner's Association consisting of all property owners of lots in the development at the time of incorporation and in the future for the purpose of owning and maintaining the association's property, including but not limited to all private streets and common drive aisles, parking areas, landscape areas, stormwater treatment areas, storm drain systems, public access areas, 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. A centralized facility of sufficient size such as a clubhouse shall be constructed for Homeowner's Association use or alternatively provide an agreement for use of an off-site facility at a location to be approved by the Community Development Director. The CC&Rs shall prohibit the use of private streets as alternative routes to the in-tract public street system.
- nn. Prior to City Council approval of any final maps, the bylaws governing the property owner's association 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 all private streets and common drive aisles.

- oo. 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. The CC&Rs shall prohibit the on-site repair and washing of all motor vehicles.
- pp. The CC&Rs for the project shall include a disclosure statement to all property owners indicating that the project site is located within a seismic hazard zone for liquefaction. The disclosure statement shall indicate that the buildings have been designed to current code requirements. The statement shall further indicate that the buildings, site improvements, and utilities are subject to damage during an earthquake and that the buildings may be uninhabitable after an earthquake. This CC&R disclosure statement is subject to review and approval of the City Engineer prior to final map approval.
- qq. The developer 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 developer shall pay all costs of incorporation and initial management review and reports.
- rr. 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.
- ss. The Homeowner's Association shall periodically provide educational materials on stormwater pollution prevention to all residents.
- tt. Each buyer shall sign an acknowledgment that he/she has read the constitution and bylaws of the Homeowner's Association and the CC&Rs applied to the development.
- uu. The developer shall provide a complete set of construction plans in electronic format and reproducible paper (mylar) format to the Homeowner's Association at the time of its formation.
- vv. 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.

- ww. All new utilities including, but not limited to, electric and communication 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.
- xx. Fire hydrants are to be located along public and private streets as determined by the Alameda County Fire Department.
- yy. A streetlight plan and joint trench plan shall be submitted by the applicant with the first tract improvement plan check and approved prior to final map approval. LED lighting shall be utilized on all public and private streets and other common areas.
- zz. On-site private streets are to be posted for "No Parking," except in those areas designed to accommodate guest parking, as shown on the vesting tentative tract map.
- aaa. The connection between private streets and public streets shall be by a City of Newark standard driveway.
- bbb. Public Utility Easements (PUE), Water Line Easements (WLE), Storm Drain Easements (SDE), and Sanitary Sewer Easements (SSE) shall be dedicated over all private streets in the development. The PUE, WLE, SDE and SSE dedication statements on the final map shall state that the PUE, WLE, SDE and SSE are available for, but not limited to, the installation, access and maintenance of water supply sanitary and storm sewers, and gas, electrical, and communication facilities.
- ccc. Emergency Vehicle Access Easements (EVAE) shall be dedicated over the full pavement width on all private streets in the development. The final easement geometry shall be subject to the approval of the City Engineer.
- ddd. All improvement plans are subject to review and approval by the Alameda County Water District (ACWD), Union Sanitary District (USD), Alameda County Flood Control and Water Conservation District (ACFC&WCD), and Pacific, Gas & Electric Company (PG&E). Any modifications to the site design provided with the vesting tentative tract map as necessary to satisfy requirements from individual utilities or districts are the sole responsibility of the developer. The developer shall coordinate with Pacific, Gas & Electric Co. for the design of the underground utility improvements for the proposed development as soon as practical following vesting tentative tract map approval.
- eee. Above ground architectural and building features that project over proposed property lines shall be permitted on townhouse and/or condominium units by easements recorded on the All future maintenance responsibilities of the easement area are subject to approval by the adjoining property owner under the terms of the existing easement document. final map or identified in the CC&Rs. Such features include, but are not limited to, eaves, bay windows, balconies, porches, landings, and stairways. The details for these easements, including dimensions and descriptions, shall be included on the final map. Foundations for townhouse units shall be contained within the individual lot.

- fff. Street names and an addressing scheme shall be developed during the final map and improvement plan review process in accordance with the City of Newark's Street Numbering and Naming Ordinance (Chapter 12.12). This area of Newark has a "California History" theme for street names.
- ggg. The developer shall repair and/or replace any public improvements (pavement, curb, gutter, etc.) damaged as a result of construction activity to the satisfaction of the City Engineer.
- hhh. Prior to issuance of a Certificate of Occupancy or release of utilities for any residential units, private streets, common vehicle accessways and parking facilities serving said units shall be paved in accordance with the recommendation of a licensed engineer based on a minimum Traffic Index of 6.0.
- 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 concrete surfaces and 0.3% for Portland cement concrete surfaces.
- jjj. Prior to the issuance of any permits, any proposed permeable pavement design shall be based on a geotechnical engineer's recommendation and reviewed by the manufacturer or the National Ready Mixed Concrete Association (NRMCA). The developer shall submit documentation to the City confirming approval by the manufacturer or NRMCA and geotechnical engineer. The developer shall also ensure that the contractor hired to install the permeable pavement be certified by the NRMCA. Documentation that confirms certification shall be submitted directly to the City Engineer for review and approval.
- kkk. The developer shall provide all required paper and digital submittals of the project final map, tract improvements plans, and as-built plans as required by the City Engineer, including, but not necessarily limited to the following: (1) One full-size reproducible copy and one reduced reproducible copy of the approved vesting tentative tract map; (2) Two electronic copies of the approved final map and improvement plans in a format approved by the City Engineer; (3) One full-size mylar copy and one reduced copy of the recorded final map; (4) One reproducible set and four blue-line or photocopied sets of the approved tract improvement plans; (5) Two electronic copies and one mylar set of the as-built tract improvement plans. The City will require a digital submittal of all final maps and improvements plans. All CAD work must be prepared in a manner consistent with the Union Sanitary District's digital submittal requirements for layering conventions. This can be found on the web at: <http://www.unionsanitary.com/digitalSubmittal.htm>. Digital files submitted shall be based on accurate coordinate geometry calculations and the NAD83 State Plane Coordinate System (Zone III) and NGVD29 (USD requires NAVD88) as vertical datum. A deposit of \$5,000 shall be provided by the developer to the City to ensure submittal of all required documents.
- lll. The developer shall provide as-built record drawings in both electronic format and on mylar paper based on full and complete review and inspection by the developer's project

civil engineer, landscape architect, and other design professionals of all public improvements and all improvements on private streets and property included in the tract improvement plan set.

- mmm. If any condition of this vesting tentative tract map be declared invalid or unenforceable by a court of competent jurisdiction, this vesting tentative tract map shall terminate and be of no force and effect, at the election of the City Council on motion.
- nnn. Pursuant to Government Code Section 66474.9, the subdivider, or any agent thereof, or successor thereto, shall defend, indemnify, and hold harmless the City of Newark, its officials, employees or agents (collectively "City") from any claim, action or proceeding against the City to attack, set aside, void, or annul, the City's approval concerning this subdivision map application, which action is brought within the time period provided for in Section 66499.37. The City will promptly notify the subdivider of any such claim, action, or proceeding and cooperate fully in the defense.
- ooo. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, and other exactions. Pursuant to Government Code Section 66020(d)(1), these conditions constitute written notice of s statement of the amount of such fees, and a description of the dedications, reservations, and other exactions. The developer is hereby further notified that the 90-day approval period in which the developer may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code 66020(a), has begun. If the developer fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the developer will be legally barred from later challenging such exactions.

Landscape-Parks Division

- ppp. Prior to approval of the final map, the developer shall petition the City Council to participate in Landscaping and Lighting District No.6 and pay all associated fees as established by the City's Master Fee Schedule. Areas covered under the terms of this existing district shall include the Cedar Boulevard median between Stevenson Boulevard and Balentine Drive and the Balentine Drive median between Stevenson Boulevard and Mowry School Road. The property owners within the development shall be assessed annually for the cost of landscape maintenance within this district. The developer shall make an initial installment to this district in the amount of \$25,000 and pay all fees according to the Master Fee Schedule.
- qqq. All landscape maintenance on-site and along the project frontage shall be the responsibility of the homeowners association. The developer shall enter into a Landscape Maintenance Agreement prior to approval of the final map. This agreement shall run with the land and be binding to the homeowners association as successors. Landscape maintenance of these areas by the City under the terms of the Agreement would occur only in the event that City Council deems the homeowners association's maintenance to be inadequate. Any project perimeter walls and adjoining landscape areas shall be included in a dedicated landscape easement to guarantee adequate maintenance of the walls. Any work other than routine maintenance, including but not necessarily limited to, tree removal, tree pruning, or changes to the approved planting palette shall be approved

in advance by the City Engineer. All tree pruning shall be performed by or under the direction of a certified arborist.

- rrr. 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 landscape plans shall be included with the full tract improvement plan set. The associated Landscape Documentation Package must be approved by the City Engineer prior to the issuance of a building permit.
- sss. 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.
- ttt. The developer's landscaping shall include minimum 30-inch high mounding or combination of mounding and low masonry screen walls to screen parking areas from Cedar Boulevard and Mowry School Road. The height of said mounding or screen walls shall be measured from the higher of adjacent on-site or off-site curb elevations. A minimum of 12 inches of any screen wall shall be above the abutting finish grade. The screening shall be located outside of the City right-of-way and screen wall design, materials, and color finish shall be approved by the Community Development Director.
- uuu. The plant species identified for any proposed biotreatment measures are subject to final approval of the City Engineer.
- vvv. 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. Street trees shall be planted along the project frontage at 40 feet on-center. All plant replacements shall be to an equal or better standard than originally approved subject to approval by the City Engineer.
- www. 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.
- xxx. 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

- yyy. This project will require building permits. If this application is approved by City Council, the applicant will need to make a separate application to the Building Inspection Division for building permits for each separate building. Such applications shall include

complete construction drawings prepared by a California licensed architect, structural engineer or civil engineer.

zzz. Construction for this project, including site work and all structures, can occur only between the hours of 7:00 AM and 6:00 PM, Monday through Friday. 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.

aaaa. Prior to the approval of the final map the applicant shall; 1) redesign the site so that no private yards or spaces encroach into the easement, or 2) modify the existing easement boundaries so that the private yards or spaces no longer encroach into the easement, or 3) modify the existing easement to allow private yards or spaces within the easement. If resolution to this issue requires modification to the existing easement such revised easement shall be recorded prior to the approval of the final map.

General

bbbb. 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 developer shall pay the prevailing fee for each additional separate submittal of development exhibits requiring Planning Commission and/or City Council review and approval.

cccc. The developer 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.

dddd. In the event that any person should bring an action to attack, set aside, void or annul the City's approval of TTM-14-11, E-14-6 (the IS/MND), GP-14-7, RZ-14-8, or ASR-14-9 the developer 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 developer (which shall be the same counsel used by developer) and reasonably approved by the City. Developer'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.