



- E.1 Hearing to consider: (1) Adopting a resolution making certain findings and recommending City Council approval of an Initial Study and Mitigated Negative Declaration (E-14-31); and (2) ASR-14-30, an Architectural and Site Plan Review, to construct a new, approximately 135,884 square foot three-story self-storage warehouse at 6649 Central Avenue (APN's: 092-0074-007; 092-0074-008) – From Assistant Planner Jimenez. *Yg* (RESOLUTIONS-2)**

Background/Discussion – Mr. Venkata Vemireddy, on behalf of 6649 Central Ave, LLC, has submitted an application for a new self-storage warehouse at 6649 Central Avenue. Attached is Exhibit A, pages 1 to 9.

Project Description

The proposed project involves the construction of a three-story personal storage warehouse at an approximately 1.96-acre vacant parcel of land on the north side of Central Avenue west of the intersection of Central Avenue and Cherry Street. The site is an irregular shaped lot which is zoned CG (General Commercial) and has a GC (General Commercial) General Plan land use designation. One building would be constructed on three floors approximately 135,884 square feet in size. Each floor would be approximately 45,000 square feet in floor area and would house individual personal storage areas rented to the public. Approximately 853 individual storage areas are proposed, with sizes of the individual units ranging from 2.5-feet x 5-feet to 15.4-feet x 40-feet. Each floor would include a lobby, stairwells, and an elevator to provide access to the storage units. A managers/retail sales office is proposed on the first floor near the building's main entrance. The retail sales component includes the sale of materials such as boxes and tape. The facility would be staffed by three employees during the proposed operation hours of 9:00 a.m. to 5:00 p.m. Monday through Saturday. Facility gates would be available to customers from 6:00 a.m. to 9:00 p.m.

Vehicular access to the project site would be via two driveways along Central Avenue. A total of eleven parking spaces would be provided, including one disabled-accessible stall. Although the Newark Municipal Code requires storage facilities to provide one parking space for each one thousand square feet of gross floor area, a parking demand analysis provided by the applicant based on industry data shows that self-storage facilities, although large in size, generate few vehicle trips per day and require a maximum average of five parking spaces. With the proposed provision of ten standard parking spaces, staff feels that the parking provided would be sufficient to accommodate the use.

The storage spaces would be accessed from drive aisles located next to the exterior doors, which are wide enough to allow customers to park and also allow other vehicles to pass. A meandering sidewalk would be provided along the project's frontage, and a disabled travel path would lead

from the sidewalk to the sales office. Landscaping would be provided on either side of the six-foot wide sidewalk.

The building's exterior would be comprised of masonry block, plaster, and metal. Glass windows would surround the front entrance and faux windows would be provided on the second and third floors to aid in breaking up the large structure. Orange-color entry and roll-up warehouse doors would be provided on each elevation to complement the beige and brown earth color tones of the façade.

Environmental Analysis

An Initial Study/Mitigated Negative Declaration (IS/MND) was prepared by Mr. Jerry Haag, Urban Planner. The analysis concluded that the proposal would not have a significant impact on overall environmental quality, including biological and cultural resources, with adherence to the mitigation measures. One potential impact was identified concerning air quality, however it can be mitigated to a less than significant level as discussed in Section 3 of the Initial Study and Mitigated Negative Declaration and in the Mitigation Monitoring Reporting Program (MMRP). The project would not result in any short-term traffic impacts and cumulative impacts are considered to be less than significant with the addition of only a few peak hour trips. The review period for the IS/MND ended on October 14, 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 an Initial Study/Mitigated Negative Declaration (E-14-31), and (2) by resolution, recommend that City Council with Exhibit A, pages 1 to 9, approve (ASR-14-30), an Architectural and Site Plan Review, to construct a new, approximately 135,884 square foot three-story self-storage warehouse at 6649 Central Avenue (APN's: 092-0074-007; 092-0074-008).

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 A SELF-STORAGE FACILITY (THREE SIXTY STORAGE CENTER) AT 6649 CENTRAL AVENUE

WHEREAS, the Three Sixty Storage Center Project (“Project”), consists of the construction of a three-story, approximately 135,884 square foot self-storage facility with associated parking, landscaping and extension of utility services; and

WHEREAS, the entitlements requested include an Architectural and Site Plan Review; 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 impact specifically relates to an impact associated with air quality; and

WHEREAS, this potentially significant impact can be mitigated to less than significant as shown in Section 3 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 September 25, 2014 and ending on October 14, 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 September 25, 2014; and

WHEREAS, as of the date of this resolution, October 28, 2014, no comment letters have been received; and

WHEREAS, on October 28, 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 October 28, 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 the Architectural and Site Plan Review, 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.

This Resolution was introduced at the Planning Commission's October 28, 2014 meeting by Commissioner, seconded by Commissioner, and passed as follows:

AYES: .

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

BERNIE NILLO, Chairperson

RESOLUTION NO.

RESOLUTION APPROVING ASR-14-30, AN ARCHITECTURAL AND SITE PLAN REVIEW FOR A SELF-STORGE FACILITY (THREE SIXTY STORAGE CENTER) AT 6649 CENTRAL AVENUE

WHEREAS, 6649 Central Ave, LLC, has filed with the Planning Commission of the City of Newark application for an Architectural and Site Plan Review for a self-storage facility (Three Sixty Storage Center) at 6649 Central Avenue; and

PURSUANT to Municipal Code Section 17.72.060, a public hearing notice was published in The Argus on October 17, 2014 and mailed as required, and the Planning Commission held a public hearing on said application at 7:30 p.m. on October 28, 2014 at the City Administration Building, 37101 Newark Boulevard, Newark, California; and

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby approve this application as shown on Exhibit A, pages 1 through 9, subject to compliance with the following conditions:

Planning Division

- a. The project shall be subject to the mitigation measures identified in the Initial Study/Mitigated Negative Declaration prepared for this project.
- b. The operators of the facility and their customers shall not conduct any activity in or around, nor store any property in the storage units which would result in a violation of any ordinance, statute, or regulation of the City of Newark, or permit such actions to occur. In addition, storage of perishable, flammable, explosive, dangerous materials, or live animals in the storage unit is prohibited. Trash or other materials shall not be left in or near the storage unit. Storage units shall not be used for a dwelling, place of business, manufacturing, or production. The storage facilities may be used for commercial and household goods.
- c. All operations associated with this proposal shall be conducted within an entirely enclosed structure. If any complaint regarding noise is received from nearby residential properties, a supplemental noise analysis shall be prepared at the discretion of the Community Development Director and at the cost of the developer. The developer shall mitigate any problems identified by the noise study.
- d. Measures to respond to and track complaints regarding construction noise shall include: (1) a procedure and phone numbers for notifying the City of Newark Building Inspection Division and Newark Police Department (during regular construction hours and off-hours); and (2) a sign posted on-site pertaining to the permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign

shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours).

- e. The owner of the property is responsible for any recycling facilities located upon the subject property. The owner hereby agrees that if any illegal recycling facilities are located on this property, the City of Newark will have the right to enter said property and physically remove the illegal facilities if the owner thereof has not, within a reasonable period of time removed, or requested approval of, said facilities. The cost of removal and storage of the illegal facilities shall be the responsibility of the owner of said facilities except, if unpaid, then the cost shall become a lien upon the property.
- f. The drive aisles shall not be used by delivery trucks between the hours of 9:00 p.m. and 7:00 a.m. Parking lot cleaning with sweeping or vacuum equipment shall not be permitted between 9:00 p.m. and 8:00 a.m. No delivery truck or van shall be left overnight on any portion of the site.
- g. Prior to the issuance of a building permit, a screening design shall be submitted to and approved by the Community Development Director. Roof equipment shall not be visible from public streets. All equipment shall be fully screened within the context of the buildings' architecture. Said screening design shall be maintained to the satisfaction of the Community Development Director. The building owner shall paint the roof equipment and the inside of its screening wall within the context of the buildings' color scheme and maintain the painted areas to the Community Development Director's satisfaction. Screening panels shall not exceed six feet in height unless the screens are part of the integral design elements of the buildings.
- h. Prior to the issuance of a building permit, the location and screening design for centralized 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. All trash enclosures shall provide signage that states that the dumpsters shall remain in the enclosure(s) and that the enclosure's doors shall be closed immediately after use. The enclosure(s) shall be sited such that the enclosure's doors, when open, do not extend into drive aisles/back-up areas.

The enclosure(s) shall utilize integral color, split-face block or a suitable durable material, and be provided with a roof for storm water quality purposes. A stucco band shall be placed around the top of the enclosure(s) with a mortar cap on top to prevent the infiltration of water and leaching of materials from the block. The enclosure(s) shall be treated with a waterproof finish approved by the Building Official. The doors of the enclosure(s) shall be made of metal and painted to match the color of the enclosure's walls. The enclosure's materials, colors, and roof design shall be subject to the review and approval of the Community Development Director.
- i. Prior to 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.

- j. Prior to the issuance of a grading permit, the developer shall hire a qualified biologist to: (1) determine if Burrowing Owl habitat(s) exist on the site, and (2) implement a plan to protect the owls and to excavate the site around any active burrows using hand tools to assure that the owls are not buried during grading in the event Burrowing Owl habitat(s) is found on the site. The Burrowing Owl habitat(s), if found, shall not be disturbed during the nesting season. The Burrowing Owl study shall be conducted not more than 30 days prior to the time site grading activities will commence.
- k. The site and its improvements shall be maintained in a neat and presentable condition, to the satisfaction of the Community Development Director. This shall include, but not be limited to, repainting surfaces damaged by graffiti and site clean-up. Graffiti removal/repainting and site clean-up shall occur on a continuing, as needed basis. Any vehicle or portable building brought on the site during construction shall remain graffiti free.
- l. 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.
- m. Prior to the issuance of a building permit, the color elevations of all dissimilar sides of the buildings as submitted as part of this application, shall be submitted for the review and approval of the Planning Commission and City Council. The building elevations shall reflect all architectural features and projections and shall specify exterior materials. A site plan showing the building locations with respect to property lines shall also show the projections. Final building colors shall be reviewed and approved by the Community Development Director.
- n. Prior to the issuance of a building permit, roof material shall be submitted to the Planning Commission and City Council for review and approval. All roof material shall consist of fire retardant shake roof, concrete tile or a roof of similar non-combustible 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.
- o. There shall be no outdoor vending machines other than for the sale of newspapers. There shall be no outdoor storage of any materials for sale, display, inventory, or advertisement without the review and approval of the Community Development Director.
- p. No refuse, garbage, or recycling shall be stored outdoors except within the approved trash and recycling enclosures.
- q. Prior to the issuance of a Certificate of Occupancy, all on-site parking facilities shown on the approved plans shall be installed and striped. This shall include, but not be limited to, identifying providing directional arrows as required by the Community Development Director.
- r. 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.

Engineering Division

- s. The development will require approval of a record parcel map to be filed in accordance with the State Subdivision Map Act and the City of Newark Subdivision Ordinance. Said parcel map shall merge the two existing parcels and create all required easements on the site, including a 5-foot Roadway and Public Utility Easement dedication on the Central Avenue frontage.
- t. Prior to the issuance of any building permits, the developer shall guarantee the construction of all necessary off-site improvements, including but not necessarily limited to: curb and gutter relocation to result in a 39-foot wide street centerline to curb face width for the entire project frontage, paving, pavement striping, utility relocations including installation of a new street light luminaire and arm on the joint utility pole located near the center of the frontage, signage, construction of a 6-foot wide meandering sidewalk along Central Avenue, driveway construction, utility tie-ins, and landscaping along the project frontage and adjoining easement areas. The new pavement section on Central Avenue shall be designed to a Traffic Index of 9.0. All off-site work shall be shown on separate off-site improvements plans that shall be prepared by a civil engineer licensed by the State of California to do such work.
- u. 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."
- v. 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.

- w. 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, 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 City Engineer and modifications to the preliminary design may be required. The developer shall modify the site design to satisfy all elements of Provision C.3 of the MRP. The use of treatment controls for runoff requires the submittal of a Stormwater Treatment Measures Maintenance Agreement prior to the issuance of any Certificates of Occupancy.
- x. All stormwater treatment measures 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.
- y. 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 property owner.
- z. 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 pavement shall drain at a minimum of one percent.

The developer shall ensure that all upstream drainage is not blocked and that no ponding is created by this development. Any construction necessary to ensure this shall be the developer's responsibility.

Hydrology and hydraulic calculations shall be submitted for review and approval by the City Engineer 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).

- aa. 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.
- bb. Prior to the issuance of a building permit, the property owner shall enter into an agreement to guarantee the future undergrounding of all existing overhead utilities along the project frontage. This includes installation of a replacement stand-alone street light. The agreement shall be in form acceptable to the City Attorney and the City Engineer.
- cc. 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.
- dd. 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.
- ee. Any new utilities including, but not limited to, electric, telephone and cable television services shall be provided underground.
- ff. Any proposed utility connections and/or underground work within structurally sound street pavement must be bored or jacked. Open street cuts will not be permitted across Central Avenue.
- gg. Prior to approval of the record parcel map, any outstanding Area Improvement District assessments will have to be either paid off or segregated. If the segregation is to occur, an amended assessment diagram will be required.
- hh. 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.

- ii. 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. A pick-up or vacuum type street sweeper shall be available at all times at the direction of the City Engineer to be remove tracked dirt and debris from adjacent streets.
- jj. Prior to the issuance of a building permit, the developer shall demonstrate approval from the adjoining property owner(s) for any access to adjoining properties that is necessary for construction.

Landscape-Parks Division

- kk. Prior to issuance of a building permit, the property owner shall dedicate to the City of Newark a minimum 10-foot wide and up to 15-foot wide landscape, sidewalk, and public utility easement, exclusive of any parked vehicle overhangs, along the frontage of Central Avenue. This easement shall incorporate all landscape areas beyond the minimum dimension to the nearest physical constraints.
- ll. The developer shall enter into a Landscape Maintenance Agreement to ensure the perpetual maintenance of all landscaping along the property frontage and on the project site. This agreement shall run with the land and be binding upon all future owners or assigns.
- mm. The developer shall retain a licensed landscape architect to prepare working drawings for landscape plans in accordance to with City of Newark requirements and the State of California Model Water Efficient Landscape Ordinance. The associated Landscape Documentation Package must be approved by the City Engineer prior to the issuance of a building permit.
- nn. 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.
- oo. The plant species identified for any proposed biotreatment measures are subject to final approval of the City Engineer.
- pp. Prior to installation by the developer, plant species, location, container size, quality, and quantity of all landscaping plants and materials shall be reviewed and approved by the City Engineer. All plant replacements shall be to an equal or better standard than originally approved subject to approval by the City Engineer.
- qq. 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.
- rr. 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.

- ss. Landscaping adjacent to the public right-of-way must conform to the City's visibility requirements in accordance with Newark Municipal Code, Chapter 10.36.
- tt. 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 Central Avenue. 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.

Building Inspection Division

- uu. 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.

General Comments

- vv. 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.
- ww. If any condition of this Architectural and Site Plan Review be declared invalid or unenforceable by a court of competent jurisdiction, this Architectural and Site Plan Review shall terminate and be of no force and effect, at the election of the City Council on motion.
- xx. This Architectural and Site Plan Review shall be referred to the City Council for the Council's review and approval.
- yy. Prior to the submittal for building permit review, all conditions of approval for this project, as approved by the City Council, shall be printed on the plans.
- zz. 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.

- aaa. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to Government Code Section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other exactions. The 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 Section 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.

This Resolution was introduced at the Planning Commission's October 28, 2014 meeting by Commissioner, seconded by Commissioner, and passed as follows:

AYES:

NOES:

ABSENT:

TERRENCE GRINDALL, Secretary

BERNIE NILLO, Chairperson