5) Adopt a resolution authorizing the Mayor to sign a Community Financing Agreement with Enterprise Drive, LLC;

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE MAYOR TO SIGN A COMMUNITY FINANCING AGREEMENT WITH NEWARK ENTERPRISE JOINT VENTURE LLC

BE IT RESOLVED by the City Council of the City of Newark that the Mayor of the City of Newark be and is hereby authorized to sign a Community Financing Agreement with Newark Enterprise Joint Venture, LLC. regarding provision of certain public facilities and services for the Dumbarton Transit Oriented Project Specific Plan, said agreement on file in the Office of the City Clerk.

COMMUNITY FINANCING AGREEMENT BY AND AMONG THE CITY OF NEWARK AND ENTERPRISE DRIVE LLC, REGARDING PROVISION OF CERTAIN PUBLIC FACILITIES AND SERVICES FOR THE DUMBARTON TOD PROJECT SPECIFIC PLAN

This Agreement dated _____, 2014, (the "**Effective Date**") is entered into by and among the CITY OF NEWARK, a California municipal corporation (hereinafter "**City**") and ENTERPRISE DRIVE LLC, a California limited liability company (**"Developer"**). City and Developer are, from time to time, hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**." This Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties.

RECITALS

A. In September, 2011, the City Council adopted the Dumbarton Transit Oriented Development ("TOD") Specific Plan ("**Specific Plan**"). The real property that is the subject of this Agreement is the entirety of the approximately 205-acre Specific Plan area, which is depicted and legally described on **Exhibit A** to this Agreement ("**Specific Plan Property**"), excluding certain governmental property located therein. Developer owns an approximately 2.14-acre site that is located at 8375 Enterprise Drive, comprised of one parcel (APN 092-0140-006), and commonly referred to as the Enterprise site, legally described on **Exhibit B** to this Agreement and is referred to herein as "**Property**." It is the intent of the City, through the Specific Plan, to provide a comprehensive, long-term plan that guides future development of the Specific Plan Property in concert with and in response to the needs of the marketplace. The Specific Plan establishes a policy and a regulatory framework to guide future development, including allowable land uses, development regulations, design guidelines, necessary infrastructure improvements, and an implementation plan to direct future development of the Specific Plan Property.

B. In accordance with the California Environmental Quality Act (Pub. Res. Code Sections 21000 *et seq.*) and its Guidelines (C.C.R., Title 14 Sections 15000, *et seq.*), as each is amended from time to time ("**CEQA**") (defined herein), City certified as adequate and complete an Environmental Impact Report ("**EIR**") for the Specific Plan, and the development envisioned within the Specific Plan. The various property owners may propose to plan, develop, construct, operate and maintain a mix of residential, commercial, entertainment, retail, office, recreation and related uses and structures on the Specific Plan Property, as more particularly described in the EIR ("**TOD Project**").

C. The City and Developer affirm and agree that the City is not committing or agreeing to take any particular action(s) or make any particular decision(s) regarding potential acquisition of the Neighborhood Park (whether by eminent domain or otherwise or any issues raised by the City's consideration of possible acquisition of the Park Site, the Project Approval Documents or the Project, whether such action(s) or decision(s) would customarily be made by

the City Council, the Planning Commission or any department of the City. Nor is the City making any representation about any such particular action(s) or decision(s) concerning any Project Approval Documents, the Project, any Project-related issues, or the possible acquisition or development of the Park Site.

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

1.01 **Agreed Upon Developer Obligations** In order to implement the Specific Plan and to contribute to the provision of appropriate public improvements and services, the City and Developer hereby agree to the following contributions by Developer related to the TOD Project:

(1) Developer has agreed to contribute toward the estimated costs of the anticipated TOD Project-wide improvements, including the development of a neighborhood park . Developer's contribution for each dwelling unit on the Property shall be payable by Developer to the City at the time of the issuance of the building permit for such dwelling unit, at the rate and in the fixed amount of Two Thousand Five Hundred Dollars ($2,500.00) per dwelling unit (without adjustment) (the "Fee"). City agrees that such funds shall only be used towards the development of the to the approximately two-acre park (on the Gallade parcel) depicted in Figure 8.3 of the City's Dumbarton TOD Specific Plan (the "Neighborhood Park") as further described in that certain agreement _____ (the "Park Agreement"). Because the timing of development of the Neighborhood Park is uncertain, the Fees shall be earmarked for development of the Neighborhood Park and not expended on other improvements, as further described in the Park Agreement. Any fees remaining or collected after completion of construction of the Neighborhood Park may be used for other infrastructure improvements within the Specific Plan Area for TOD Project-wide improvements as further described in the Park Agreement. In no event shall the Fee be paid more than once per dwelling unit.

(2) Developer hereby consents to the imposition, creation, or funding of a duly-established financing district (including but not limited to a Communities Facilities District pursuant to the Mello Act) on the Property to fund services or facilities, or shall arrange for an alternative permanent annuity to provide equivalent revenue. The maximum amount of the assessment, special tax, or annuity shall not exceed Two Hundred Twenty Dollars ($220.00) per year per residential housing unit, which amount will be adjusted annually to reflect inflation, based on changes in the United States Bureau of Labor Statistics Cost of Living Index for the SF Bay Area.

1.02 **Amendments of this Agreement.**

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

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

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

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

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

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

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

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

Exhibit A Legal Description of Specific Plan Property

Exhibit B Legal Description of Property

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

[Signatures on next page.]

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"City":

CITY OF NEWARK,
a municipal corporation

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

"Developer":

ENTERPRISE DRIVE LLC,
a California limited liability company
By: _____
Name: _____
Its:

Exhibit A

Legal Description

205-acre Dumbarton TOD Specific Plan area

Exhibit B

Legal Description of Property