



CITY OF NEWARK

CITY COUNCIL

City Administration Building, City Council Chambers

37101 Newark Boulevard, Newark, CA 94560 | (510) 578-4266 | E-mail: city.clerk@newark.org



AGENDA

Thursday, January 25, 2024
7:00 P.M.

A. ROLL CALL

B. PRESENTATIONS

1. Introduction of employee(s)
2. Commendation for Saketh Srikantha Science Fair STEM Winner

C. PUBLIC COMMENT

The public is invited to address the City Council on any item not listed on the agenda. Public Comments are generally limited to 5 minutes per speaker. Please note that State law prohibits the Council from acting on non-agenda items.

D. CONSENT CALENDAR

Consent Calendar items are considered to be routine and may be approved by one motion. There will be no separate discussion on these items unless there is a request by a Council Member, a staff member, or a member of the public to remove an item for separate discussion and action.

1. Approval of Audited Demands
2. Approval of January 11, 2024 minutes
3. Adopt a resolution approving the Contractual Services Agreement with Sable Computer Inc., dba KIS for a Cybersecurity Platform that provides 24x7 Security Operations
4. Adopt a resolution approving the Contractual Services Agreement with DLT Solutions, LLC for the renewal of AutoCAD Civil3D licensing
5. Adopt a resolution to authorize the City Manager to execute the Affordable Housing Loan Agreement and all related loan documents to effectuate the approval of the \$2,765,000 funding award for a senior affordable housing project at 37660 Timber Street. Exempt from CEQA Review per CEQA Guidelines Section 15061(b)(3)

E. PUBLIC HEARINGS

1. Public Hearing to consider adopting a resolution approving a plan of finance for the issuance of revenue bonds by the California Municipal Finance Authority to finance and refinance a 79-unit qualified residential rental project for low-income seniors located at 37660 Timber Street.

F. OTHER BUSINESS

1. Adopt a resolution amending the 2022-2024 Biennial Budget and Capital Improvement Plan for the Fiscal Year 2024 Capital Improvement Plan budget rollovers
2. General Overview of the Capital Improvement Plan and majority of projects
3. Overview of the Capital Improvement Plan related to Old Town PDA Streetscape Improvements
4. Overview of the Capital Improvement Plan related to the Traffic Signal Interconnect Project
5. Overview of the Capital Improvement Plan related to Citywide Information Kiosks Phase 1 Old Town
6. Overview of the Capital Improvement Plan related to Quiet Zone Improvements and Thornton Avenue Streetscape Improvements (Elm Street to Willow Street)
7. Overview of the Capital Improvement Plan related to Thornton Avenue Pavement Overlay (I-880 to Olive Street)

G. CITY COUNCIL MATTERS

City Council Members report on attendance at intergovernmental agency meetings, conferences, and seminars since the last meeting. City Council Members may also announce upcoming events and coordinate attendance; report on local events attended since the last meeting; and make brief comments on issues of concern.

H. CITY MANAGER UPDATES

I. CLOSED SESSION

J. ADJOURNMENT

MEETING INFORMATION

Members of the public may attend the meeting in person, watch online, or watch on Cable Channel 26. The ability to observe online or Cable Channel 26 is predicated on those technologies being available and functioning without technical difficulties. Should those platforms not be available, or become non-functioning, or should the City Council otherwise encounter technical difficulties that make those platforms unavailable, the City Council will proceed with business in person unless otherwise prohibited by law.

How to view the meeting remotely:

Livestream online at YouTube: <https://www.youtube.com/@cityofnewark3077/streams>

Copy/paste the YouTube URL into your browser if the link does not automatically open.

Cable Channel 26 - if the meeting does not broadcast live, please contact your service provider and request the City of Newark channel lineup.

Zoom will no longer be available for public participation unless required by Assembly Bill 2449. Should a Council Member or the Mayor attend the meeting via Zoom pursuant to Assembly Bill 2249, then the Webinar ID <https://us06web.zoom.us/j/81464225694> will be activated. The Mayor will make an announcement at the beginning of the meeting that the City will be allowing public comment via Zoom. Raise your virtual hand to notify the City Clerk that you would like to speak during the item that you wish to speak on.

How to submit written Public Comment:

Send an email to [City Clerk](#) by 3:00 p.m. the day of the meeting. Please identify the agenda item number in the subject line of your email. Emails will be compiled into one file and will be distributed to the City Council before the meeting.

No question shall be asked of a council member, city staff, or an audience member except through the Mayor. No person shall interrupt the meeting. Any person who refuses to carry out instructions given by the Mayor for the purpose of maintaining order may be guilty of an infraction and may result in removal from the meeting.

Council Meeting Access/Materials:

The agenda packet is available for review at [Agendas and Minutes](#). The packet is typically posted to the City website the Friday before the meeting, but no later than 72 hours before the meeting.

Pursuant to Government Code 54957.5, supplemental materials distributed less than 72 hours before this meeting, to a majority of the City Council, will be made available for public inspection at this meeting and will be posted at <https://www.newark.org/departments/city-manager-s-office/agendas-minutes> and will concurrently be made available for public inspection during regular business hours at the David W. Smith City Hall, 37101 Newark Boulevard, Newark CA. Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection. For those persons who require special accommodations, please contact the City Clerk at least two days prior to the meeting at [City Clerk](#) or 510-578-4266.



STAFF REPORT

Item B. 1.

DATE 01/25/2024
TO Honorable Mayor and City Council Members
FROM Sheila Harrington, City Clerk
SUBJECT Introduction of employee(s)

The following employees were recently promoted and will be introduced at the City Council meeting:

Nicholas Icasiano, Maintenance Supervisor
Gustavo Perez, Facilities Supervisor



STAFF REPORT

Item B. 2.

DATE 01/25/2024
TO Honorable Mayor and City Council Members
FROM Sheila Harrington, City Clerk
SUBJECT Commendation for Saketh Srikantha Science Fair STEM Winner

The annual Synopsys Championship showcases students in the Santa Clara County of California who will become future scientists, technology experts, engineers, and mathematicians. This regional competition celebrates achievement by middle and high school students supported by their parents, teachers, and schools. Through the annual Fair competition, hundreds of the area's students are challenged to go beyond their classroom studies to do independent project-based research. They work independently or in teams to address questions in the fields of Computer Science, Environmental Science, Medicine & Health, Chemistry, Biology, and a half dozen other categories.

The Synopsys Championship is affiliated with the Society for Science, and selects projects which go on to compete and win in other state and national competitions. Every student is celebrated and encouraged by the hundreds of other attending students, parents, teachers, mentors, sponsors, judges, and members of the public.

Newark resident, Saketh Srikantha, was a 2023 STEM Winner for a wave danger detection project. Saketh will be honored at the City Council with a commendation

Attachments

Commendation

COMMENDATION

SAKETH SRIKANTHA

WHEREAS, Newark resident SAKETH SRIKANTHA is a freshman at Saint Francis High School in Mountain View; and

WHEREAS, SAKETH SRIKANTHA participated in the 2023 Synopsis Championship presented by the Santa Clara Valley Science & Engineering Fair Association; and

WHEREAS, hundreds of students, who will become the area's future scientists, technology experts, and mathematicians, participate in this event each year; and

WHEREAS, SAKETH SRIKANTHA, achieved honorable mention in the Physical Science and Engineering category for his project detecting wave danger using buoy data and wave properties;

NOW, THEREFORE, I, Michael K. Hannon, Mayor of the City of Newark, on behalf of the Newark City Council, do hereby commend

SAKETH SRIKANTHA

for this outstanding achievement, hold him up as an example of what the young people in our community can accomplish, and wish him a successful future.

IN WITNESS THEREOF, I have hereunto set forth my hand and caused the Official Seal of the City of Newark, State of California, to be affixed this Twenty-fifth Day of January, Two Thousand Twenty-four.

MICHAEL K. HANNON
Mayor



STAFF REPORT

Item D. 1.

DATE 01/25/2024
TO Honorable Mayor and City Council Members
FROM Krysten Lee, Finance Director
SUBJECT Approval of Audited Demands

Attachments

Audited Demands 12.21.23
Audited Demands 01.04.23

LIVE Newark CA LIVE
Payment Batch Register
 Bank Account: AP - ZBA ACCOUNTS PAYABLE
 Batch Date: 12/21/2023

Type	Date	Number Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE					
Check	12/21/2023	10136 Accounts Payable	ABACUS PRODUCTS INC		1,165.75
	Invoice	Date	Description	Check Sort Code	Amount
	B74016	11/27/2023	NEW CITATION SCANNER		1,165.75
Check	12/21/2023	10137 Accounts Payable	ACCESS		100.00
	Invoice	Date	Description	Check Sort Code	Amount
	10622296	11/30/2023	SHREDDING SVCS NOVEMBER 2023		100.00
Check	12/21/2023	10138 Accounts Payable	AIRGAS USA, LLC		96.17
	Invoice	Date	Description	Check Sort Code	Amount
	5504233979	11/30/2023	CYL ACETYLENE RENTAL 11/30/23		96.17
Check	12/21/2023	10139 Accounts Payable	AMERICAN LANGUAGE SERVICES		365.00
	Invoice	Date	Description	Check Sort Code	Amount
	78142	12/01/2023	TRNSL & INTERP SVCS - OLD TOWN - WORKSHOPS 12/1-12/2/23		265.00
	78170	12/04/2023	TRNSL & INTERP SVCS - OLD TOWN - SURVEY 12/4/23		100.00
Check	12/21/2023	10140 Accounts Payable	AMERICAN STAGE TOURS		4,945.00
	Invoice	Date	Description	Check Sort Code	Amount
	30958	05/17/2023	FLEET WEEK DAY TRIP 10/07/23		4,945.00
Check	12/21/2023	10141 Accounts Payable	ART BUILDS COMMUNITY LLC		5,000.00
	Invoice	Date	Description	Check Sort Code	Amount
	1001	11/01/2023	CENTRAL OVERPASS TASK #1		5,000.00
Check	12/21/2023	10142 Accounts Payable	AT&T		101.43
	Invoice	Date	Description	Check Sort Code	Amount
	2300-12012023	12/01/2023	CAPTION LISTING - 12/01-12/31/2023		101.43
Check	12/21/2023	10143 Accounts Payable	BAKER TILLY US, LLP		8,820.00
	Invoice	Date	Description	Check Sort Code	Amount
	BT2628915	12/15/2023	RECLASSIFICATION STUDY-ANALYZE PDQs, CONDUCT INTERVIEWS		8,820.00
Check	12/21/2023	10144 Accounts Payable	BAY AREA AIR QUALITY MGMT DIST.		493.00
	Invoice	Date	Description	Check Sort Code	Amount
	T161451	11/02/2023	ANNUAL PERMIT RENEWAL 01/01/24-01/01/25		493.00
Check	12/21/2023	10145 Accounts Payable	BAY CENTRAL PRINTING		64.27

	Invoice	Date	Description	Check Sort Code	Amount
	197375	11/29/2023	BUSINESS CARD IMPRINTING - HECKMAN		64.27
Check	12/21/2023	10146 Accounts Payable	BLAISDELL'S BUSINESS PRODUCTS		76.40
	Invoice	Date	Description	Check Sort Code	Amount
	NOV'23	12/01/2023	OFFICE SUPPLIES 11/07-11/15/23		76.40
Check	12/21/2023	10147 Accounts Payable	BUREAU VERITAS NORTH AMERICA INC.		546.25
	Invoice	Date	Description	Check Sort Code	Amount
	RI 23054800	11/16/2023	BI FIELD INSPECTION AND RELATED PROFESSIONAL SVCS 05/23-06/23		546.25
Check	12/21/2023	10148 Accounts Payable	MICHAEL CARMEN		86.46
	Invoice	Date	Description	Check Sort Code	Amount
	1108-110923EXP	12/13/2023	NORCAL APWA CONFERENCE EXP REIMBURSEMENT - 11/8-11/9/23		86.46
Check	12/21/2023	10149 Accounts Payable	BEACON VETERINARY SPECIALISTS		1,900.00
	Invoice	Date	Description	Check Sort Code	Amount
	147852	12/01/2023	VET SVCS 11/29/23		150.00
	147851	12/01/2023	VET SVCS 11/28/23		150.00
	147672	11/26/2023	VET SVCS 11/25/23		175.00
	147606	11/23/2023	VET SVCS 11/23/23		150.00
	147850	12/01/2023	VET SVCS 11/19/23		150.00
	147500	11/20/2023	VET SVCS 11/19/23		165.00
	147498	11/20/2023	VET SVCS 11/18-11/20/23		200.00
	147242	11/11/2023	VET SVCS 11/11/23		200.00
	146845	10/30/2023	VET SVCS 10/21-10/24/23		76.00
	146508	10/20/2023	VET SVCS 10/15-10/16/23		25.00
	146506	10/20/2023	VET SVCS 10/15-10/16/23		109.00
	146289	10/14/2023	VET SVCS 10/12/23		150.00
	146286	10/12/2023	VET SVCS 10/09-10/12/23		200.00
Check	12/21/2023	10150 Accounts Payable	CHEVROLET OF FREMONT		68.83
	Invoice	Date	Description	Check Sort Code	Amount
	145802	12/01/2023	FLEET CHEVY PARTS-SWITCH		68.83
Check	12/21/2023	10151 Accounts Payable	CHILDCARE CAREERS, LLC		3,061.36
	Invoice	Date	Description	Check Sort Code	Amount
	661209	11/03/2023	10/23-10/27/23 CHILDCARE SUBSTITUTE		998.75
	667590	11/24/2023	11/13-11/17/23 CHILDCARE SUBSTITUTE		1,303.07
	668679	12/01/2023	11/20-11/22/23 CHILDCARE SUBSTITUTE		759.54
Check	12/21/2023	10152 Accounts Payable	PECKHAM & MCKENNEY		9,000.00
	Invoice	Date	Description	Check Sort Code	Amount
	1	12/18/2023	PROFESSIONAL FEE RETAINER INVOICE POLICE CHIEF RECRUITMENT		9,000.00
Check	12/21/2023	10153 Accounts Payable	CIVICA LAW GROUP, APC		149.40
	Invoice	Date	Description	Check Sort Code	Amount
	11549	12/01/2023	PROFESSIONAL SERVICES RENDERED THROUGH NOVEMBER 30, 2023		149.40
Check	12/21/2023	10154 Accounts Payable	CCC SHERIFF/FISCAL/LETC/HEATHER M.		13,155.00
	Invoice	Date	Description	Check Sort Code	Amount

	23-26497	08/23/2023	198TH POST CERTIFIED BASIC POLICE ACADEMY 07/10/23-01/05/24		13,155.00
Check	12/21/2023	10155 Accounts Payable	COUNTY OF ALAMEDA		1,112.50
	Invoice	Date	Description	Check Sort Code	Amount
	NOVEMBER '23	12/05/2023	CITATION PROCESSING FEES - NOVEMBER '23		1,112.50
Check	12/21/2023	10156 Accounts Payable	ALAMEDA COUNTY ENVIRONMENTAL HEALTH		1,392.00
	Invoice	Date	Description	Check Sort Code	Amount
	IN0348152	11/06/2023	SB1383 EDIBLE FOOD RECOVERY INSPECTION SVCS 1/1/22-6/30/23		1,392.00
Check	12/21/2023	10157 Accounts Payable	CSG CONSULTANTS, INC.		337.50
	Invoice	Date	Description	Check Sort Code	Amount
	B232103	12/01/2023	BI FIELD INSPECTION & RELATED PROFESSIONAL SVCS 11/01-11/30/23		337.50
Check	12/21/2023	10158 Accounts Payable	DEPARTMENT OF INDUSTRIAL RELATIONS		11,416.69
	Invoice	Date	Description	Check Sort Code	Amount
	OSIP 71335	12/01/2023	DEPARTMENT OF INDUSTRIAL RELATIONS FY23/24 ANNUAL ASSESSMENT FEE		11,416.69
Check	12/21/2023	10159 Accounts Payable	DEPARTMENT OF JUSTICE		324.00
	Invoice	Date	Description	Check Sort Code	Amount
	699559	12/05/2023	FINGERPRINTING FEES- 11/23		324.00
Check	12/21/2023	10160 Accounts Payable	ALHAMBRA		315.59
	Invoice	Date	Description	Check Sort Code	Amount
	15734365121323	12/13/2023	WATER SERVICE 11/22 - 12/12/23		315.59
Check	12/21/2023	10161 Accounts Payable	EQUIFAX INFORMATION SVCS LLC		50.50
	Invoice	Date	Description	Check Sort Code	Amount
	2058375606	12/13/2023	CREDIT BUREAU REPORT FEES - 12/13/23		50.50
Check	12/21/2023	10162 Accounts Payable	PETER FONG		35.63
	Invoice	Date	Description	Check Sort Code	Amount
	103123EXP	12/15/2023	MILEAGE TO ACSO CYBERSECURITY TABLETOP 10/31/23		35.63
Check	12/21/2023	10163 Accounts Payable	FREMONT FORD		293.65
	Invoice	Date	Description	Check Sort Code	Amount
	220292	12/01/2023	FLEET PARTS - LAMP ASY		64.51
	220359	12/06/2023	FLEET PARTS - SEAT PAD, COVER		229.14
Check	12/21/2023	10164 Accounts Payable	GACHINA LANDSCAPE MANAGEMENT, INC.		23,597.81
	Invoice	Date	Description	Check Sort Code	Amount
	E 214284B	12/01/2023	MAINTENANCE CONTRACT-CH, PD, LIB DECEMBER 2023		3,689.00
	E 214284A	12/01/2023	MAINTENANCE CONTRACT DECEMBER 2023		19,908.81
Check	12/21/2023	10165 Accounts Payable	GAIL M. GOLDMAN ASSOCIATES, LLC		18,330.00
	Invoice	Date	Description	Check Sort Code	Amount
	4	11/20/2023	PUBLIC ART CONSULTING SERVICES - PHASE III NOV 2023		18,330.00
Check	12/21/2023	10166 Accounts Payable	GRAINGER		186.73
	Invoice	Date	Description	Check Sort Code	Amount

	9903469881	11/13/2023	SILLIMAN FLUORESCENT 32W		186.73
Check	12/21/2023	10167 Accounts Payable	MICHELLE GRIESE		476.33
	Invoice	Date	Description	Check Sort Code	Amount
	1210-121523EXP	12/18/2023	COMMAND COLLEGE, SESSION 1 - 12/10-12/15/23		476.33
Check	12/21/2023	10168 Accounts Payable	HARRINGTON INDUSTRIAL PLASTICS LLC		339.89
	Invoice	Date	Description	Check Sort Code	Amount
	003T4537	11/27/2023	SILLIMAN VALVE BALL AND O RING-POINT OF SALE		339.89
Check	12/21/2023	10169 Accounts Payable	HARRIS COMPUTER SYSTEMS		6,747.53
	Invoice	Date	Description	Check Sort Code	Amount
	CERMN0000116	10/24/2023	FINANCIAL SOFTWARE 12/23-11/24		6,747.53
Check	12/21/2023	10170 Accounts Payable	HDL SOFTWARE, LLC		2,000.00
	Invoice	Date	Description	Check Sort Code	Amount
	SIN033599	12/01/2023	UUT SUPPORT & INDUSTRY MONITORING - NOV 2023		2,000.00
Check	12/21/2023	10171 Accounts Payable	HIROSHI ICHIMURA		4,136.40
	Invoice	Date	Description	Check Sort Code	Amount
	1028-121623	12/15/2023	KENDO CLASSES 10/28-12/16/23		4,136.40
Check	12/21/2023	10172 Accounts Payable	JOSH HORST		6,468.03
	Invoice	Date	Description	Check Sort Code	Amount
	010123ADPP	12/07/2023	ADPP - 01/01-01/31/24		6,468.03
Check	12/21/2023	10173 Accounts Payable	INDUSTRIAL PLUMBING SUPPLY, LLC.		481.62
	Invoice	Date	Description	Check Sort Code	Amount
	112107	12/08/2023	SILLIMAN PLUMBING SUPPLIES-SENSOR		481.62
Check	12/21/2023	10174 Accounts Payable	CATHREENE INGHAM-WATTERS		689.19
	Invoice	Date	Description	Check Sort Code	Amount
	1114-111723EXP	12/15/2023	CAL PELRA CONFERENCE 11/14-11/17/23		689.19
Check	12/21/2023	10175 Accounts Payable	SPECTRUM CANINE		900.00
	Invoice	Date	Description	Check Sort Code	Amount
	0006072	12/13/2023	K9 TRAINING NOVEMBER 2023		900.00
Check	12/21/2023	10176 Accounts Payable	L.N. CURTIS & SONS		92.00
	Invoice	Date	Description	Check Sort Code	Amount
	INV770990	12/06/2023	UNIFORMS-PSA E.TANAKA		92.00
Check	12/21/2023	10177 Accounts Payable	LEXISNEXIS RISK SOLUTIONS FL INC		50.00
	Invoice	Date	Description	Check Sort Code	Amount
	1845802-20231130	11/30/2023	INVESTIGATIVE INFO RESEARCH - 11/30/23		50.00
Check	12/21/2023	10178 Accounts Payable	JESSICA LOMELI		75.95
	Invoice	Date	Description	Check Sort Code	Amount
	121223EXP	12/13/2023	CANDY FOR FIREHOUSE EVENTS 12/12/23		75.95
Check	12/21/2023	10179 Accounts Payable	JOLIE MACIAS		100.52

	Invoice	Date	Description	Check Sort Code	Amount
	1127-1130EXP	12/13/2023	CRITICAL CONSIDERATIONS FOR POLICE EXECUTIVE 11/27-11/30/23		100.52
Check	12/21/2023	10180 Accounts Payable	MARK GOTHARD		10,515.20
	Invoice	Date	Description	Check Sort Code	Amount
	091423120723	12/14/2023	KARATE & CHESS CLASSES 9/14-12/7/23		10,515.20
Check	12/21/2023	10181 Accounts Payable	MEYERS NAVE		5,983.00
	Invoice	Date	Description	Check Sort Code	Amount
	212530	12/12/2023	LEGAL SVCS FOR SANCTUARY WEST - SVCS THRU 11/30/23		2,128.00
	212531	12/12/2023	LEGAL SVCS - TIMBER STREET PROJECT - SVCS THRU 11/30/23		1,709.00
	212539	12/12/2023	LEGAL SVCS FOR NEWPARK PLAZA PROJECT - 11/30/23		151.50
	212538	12/12/2023	LEGAL SVCS FOR CEDAR BLVD TWNHMS (WAYMARK) SVCS THRU 11/30/23		479.50
	212537	12/12/2023	LEGAL SVCS - PROLOGIS PROJECT - THRU 11/30/23		252.50
	212532	12/12/2023	LEGAL SVCS - MOWRY VILLAGE PROJECT - SVCS THRU 11/30/23		1,262.50
Check	12/21/2023	10182 Accounts Payable	MIKE YORKS INVESTIGATIONS		900.00
	Invoice	Date	Description	Check Sort Code	Amount
	2023-38	06/25/2023	BACKGROUND INVESTIGATIONS 06/25-12/16/23		900.00
Check	12/21/2023	10183 Accounts Payable	PATRICIA MONTEJANO		15.00
	Invoice	Date	Description	Check Sort Code	Amount
	112123EXP	12/12/2023	DECORATIONS FOR THE CD CHRISTMAS WREATH		15.00
Check	12/21/2023	10184 Accounts Payable	AVENU INSIGHTS & ANALYTICS		1,300.00
	Invoice	Date	Description	Check Sort Code	Amount
	INV06-017767	12/06/2023	ACFR - PRINCIPAL EMPLOYERS REPORT 11/23		1,300.00
Check	12/21/2023	10185 Accounts Payable	NATIONAL DATA & SURVEYING SERVICES		320.00
	Invoice	Date	Description	Check Sort Code	Amount
	23-080272	09/20/2023	TRAFFIC SURVEY - APA #24-87		320.00
Check	12/21/2023	10186 Accounts Payable	PACIFIC GAS & ELECTRIC		81,676.16
	Invoice	Date	Description	Check Sort Code	Amount
	2305-120423	12/04/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 10/26-11/27/23		144.03
	1859-120623	12/06/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 10/30-11/29/23		3,359.21
	3926-120623	12/06/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 10/30-11/29/23		114.08
	0552-120523	12/05/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 10/27-11/28/23		97.69
	9045-120523	12/05/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 10/26-11/27/23		270.35
	7578-121123	12/11/2023	CITYWIDE ELECTRICAL 12/11/23		77,606.03
	0870-120723	12/07/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 10/31-11/30/23		84.77
Check	12/21/2023	10187 Accounts Payable	PAKPOUR CONSULTING GROUP, INC.		26,449.51
	Invoice	Date	Description	Check Sort Code	Amount
	4309	12/05/2023	ON-CALL CIVIL ENGINEERING PLAN REVIEW SERVICES 11/01-11/30/23		338.63
	4310	12/05/2023	PRJ MANAGEMENT SVCS - CENTRAL AVE OVERPASS PRJ 11/01-11/30/23		26,110.88
Check	12/21/2023	10188 Accounts Payable	PENINSULA UNIFORMS & EQUIPMENT, INC.		791.07
	Invoice	Date	Description	Check Sort Code	Amount

	203925	11/28/2023	RAIN JACKETS		791.07
Check	12/21/2023	10189 Accounts Payable	PERFORMANCE PEST MANAGEMENT		1,388.00
	Invoice	Date	Description	Check Sort Code	Amount
	72045	12/08/2023	PEST SERVICES - COMMUNITY CENTER #102700 12/8/23		95.00
	72116	12/08/2023	PEST SERVICES - CITY HALL #102699 12/8/23		267.00
	72044	12/08/2023	PEST SERVICES - FIRE STATION #2 #102709 12/8/23		220.00
	72008	12/08/2023	PEST SERVICES - FIRE STATION #1 #102707 12/8/23		275.00
	72155	12/08/2023	PEST SERVICES - CITY HALL #102699 12/8/23		175.00
	72157	12/08/2023	PEST SERVICES - LIBRARY #116524 12/8/23		175.00
	72156	12/08/2023	PEST SERVICES - PD #104419 12/8/23		181.00
Check	12/21/2023	10190 Accounts Payable	PREFERRED ALLIANCE INC		65.00
	Invoice	Date	Description	Check Sort Code	Amount
	0190346-IN	11/30/2023	RANDOM & NON-RANDOM DRUG TESTING - NOV '23		65.00
Check	12/21/2023	10191 Accounts Payable	QUADIENT, INC.		33.23
	Invoice	Date	Description	Check Sort Code	Amount
	40217055	12/05/2023	POSTAGE MACHINE SUPPLIES - BRUSH AND SPONGE KIT		33.23
Check	12/21/2023	10192 Accounts Payable	REDFLEX TRAFFIC SYSTEMS, INC.		17,400.00
	Invoice	Date	Description	Check Sort Code	Amount
	INV0066020	11/30/2023	REDLIGHT CAMERA MONITORING NOVEMBER 2023		17,400.00
Check	12/21/2023	10193 Accounts Payable	ROYSTON HANAMOTO ALLEY & ABEY		3,212.55
	Invoice	Date	Description	Check Sort Code	Amount
	0025018	12/19/2023	PROFESSIONAL SERVICES 06/01-06/30/23		3,212.55
Check	12/21/2023	10194 Accounts Payable	YORK RISK SERVICE GROUP, INC. A SEDGWICK COMPANY		3,528.00
	Invoice	Date	Description	Check Sort Code	Amount
	400000165007	12/04/2023	WORKERS COMPENSATION CLAIMS - 12/01/23-12/31/23		3,528.00
Check	12/21/2023	10195 Accounts Payable	BLAIR SLAVAZZA		225.00
	Invoice	Date	Description	Check Sort Code	Amount
	092523EXP	09/20/2023	STREET COP TRAINING REIMBURESEMENT		225.00
Check	12/21/2023	10196 Accounts Payable	S.B.R.P.S.T.C.		151.00
	Invoice	Date	Description	Check Sort Code	Amount
	161864	12/13/2023	PC 832 ARREST-VERONICA MORA		151.00
Check	12/21/2023	10197 Accounts Payable	STAPLES		1,945.89
	Invoice	Date	Description	Check Sort Code	Amount
	8072444083	11/30/2023	OFFICE SUPPLIES 11/07-11/27/23		599.39
	8072613860	12/15/2023	OFFICE SUPPLIES 11/28-12/14/23		1,346.50
Check	12/21/2023	10198 Accounts Payable	STATE OF CALIFORNIA		416.58
	Invoice	Date	Description	Check Sort Code	Amount
	PPE 12.9.23	12/13/2023	GARNISH - 11/26/23-12/9/23 - CASE 569116649		416.58
Check	12/21/2023	10199 Accounts Payable	ANNE STEDLER		1,085.35
	Invoice	Date	Description	Check Sort Code	Amount

	02062023EXP	08/28/2023	TRANSLATION DEVICES FOR OUTREACH & WORKSHOP SESSIONS		1,085.35
Check	12/21/2023	10200 Accounts Payable	THE KPA GROUP		24,422.00
	Invoice	Date	Description	Check Sort Code	Amount
	004	11/30/2023	ON-CALL ARCHITECTURAL SERVICES 11/01-11/30/23		15,929.50
	003	10/31/2023	ON-CALL ARCHITECTURAL SERVICES 10/01-10/31/23		8,492.50
Check	12/21/2023	10201 Accounts Payable	TURBO DATA SYSTEMS, INC		700.00
	Invoice	Date	Description	Check Sort Code	Amount
	41659	11/30/2023	E-CITATION HARDWARE AND TRAFFIC PROCESSING SERVICES NOV '23		700.00
Check	12/21/2023	10202 Accounts Payable	UNIVERSAL BUILDING SERVICES & SUPPLY CO.		40,873.00
	Invoice	Date	Description	Check Sort Code	Amount
	519884	11/30/2023	LIBRARY DAY PORTER SERVICES NOVEMBER 2023		1,408.00
	519883	11/30/2023	JANITORIAL SERVICES - LIBRARY NOVEMBER 2023		4,438.00
	2023-1101	11/30/2023	JANITORIAL SERVICES - CITYWIDE NOVEMBER 2023		35,027.00
Check	12/21/2023	10203 Accounts Payable	VERIZON WIRELESS		21,618.16
	Invoice	Date	Description	Check Sort Code	Amount
	9949575479	11/18/2023	WIRELESS SERVICE - 10/19-11/18/23		21,618.16
Check	12/21/2023	10204 Accounts Payable	WASHINGTON HOSPITAL		75.00
	Invoice	Date	Description	Check Sort Code	Amount
	1123-NPD-LB	12/04/2023	LAB TESTS NOVEMBER 2023		75.00
Check	12/21/2023	10205 Accounts Payable	WEST COAST ARBORISTS INC		32,366.55
	Invoice	Date	Description	Check Sort Code	Amount
	208519	11/30/2023	STREET TREE MAINTENANCE 11/16/23-11/30/23		7,861.55
	207320	10/25/2023	SEVERN DR & SEVERN PL TREE SERVICES 10/18/23-10/25/23		24,505.00
Check	12/21/2023	10206 Accounts Payable	WEX BANK		1,151.33
	Invoice	Date	Description	Check Sort Code	Amount
	93725451	12/06/2023	CHEVRON CC 12/06/23		1,151.33
Check	12/21/2023	10207 Accounts Payable	WSP USA ENVIRONMENT & INFRASTRUCTURE INC.		6,969.93
	Invoice	Date	Description	Check Sort Code	Amount
	S64114338	11/29/2023	MUNICIPAL STORMWATER INSPECTION SERVICES THROUGH 10/31/23		6,969.93
Check	12/21/2023	10208 Accounts Payable	ZUMAR INDUSTRIES		1,795.59
	Invoice	Date	Description	Check Sort Code	Amount
	8549	11/29/2023	PEDESTRIAN YIELD SIGN		1,795.59
EFT	12/21/2023	829 Accounts Payable	COTTON, SHIRES AND ASSOCIATES, INC. 121122676 / 157535269292 (ACH)		1,557.50
	Invoice	Date	Description	Check Sort Code	Amount
	1223001	12/04/2023	PEER REVIEW - ESUB2023-0001 TRACT 8583 CEDAR BLVD 11/03-11/08/23		1,557.50
EFT	12/21/2023	830 Accounts Payable	GOV CONNECTION (ACH) 211070175 / 1310873272		9,879.18
	Invoice	Date	Description	Check Sort Code	Amount
	74671993	10/31/2023	E45C HP MONITOR		1,161.18
	74698335	11/08/2023	DISPATCH REPLACEMENT COMPUTERS APPROVAL 2024-04		7,088.00

74721769	11/14/2023	PD AND AQUATICS REPLACEMENT COMPUTERS - 2024-05	400.00
74721792	11/15/2023	MERAKI 3 YEAR LICENSES	1,230.00
AP ZBA ACCOUNTS PAYABLE Totals:		Transactions: 75	\$427,953.16
Checks:	73	\$416,516.48	
EFTs:	2	\$11,436.68	

LIVE Newark CA LIVE
Payment Batch Register
 Bank Account: AP - ZBA ACCOUNTS PAYABLE
 Batch Date: 01/04/2024

Type	Date	Number Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE					
Check	01/04/2024	10209 Accounts Payable	ALAMEDA COUNTY SHERIFF'S OFFICE		1,000.00
	Invoice	Date	Description	Check Sort Code	Amount
		290131-1023-8040	10/16/2023 EVOC BASIC SKILLS-LOR,OROZCO,LARA,TOWNSEND,STEVENSON - 10/14/23		1,000.00
Check	01/04/2024	10210 Accounts Payable	ALFREDO TRINIDAD		4,250.00
	Invoice	Date	Description	Check Sort Code	Amount
		12012023001-2	12/01/2023 STAGE FOR TREE LIGHTING EVENT 12/01/23		4,250.00
Check	01/04/2024	10211 Accounts Payable	ALLDATA LLC		1,338.75
	Invoice	Date	Description	Check Sort Code	Amount
		030424-030325	12/19/2023 ALLDATA SUBSCRIPTION RENEWAL 03/04/24-03/03/25		1,338.75
Check	01/04/2024	10212 Accounts Payable	ALLIED AUTO STORES INC		827.41
	Invoice	Date	Description	Check Sort Code	Amount
		NOV' 23	11/30/2023 ALLIED-FLEET SUPPLIES 11/2-11/27/23		827.41
Check	01/04/2024	10213 Accounts Payable	AMERICAN FLOOR SANDING		8,398.00
	Invoice	Date	Description	Check Sort Code	Amount
		776	12/15/2023 SILLIMAN GYM FLOOR REFINISH 12/15/23		8,398.00
Check	01/04/2024	10214 Accounts Payable	ART BUILDS COMMUNITY LLC		7,000.00
	Invoice	Date	Description	Check Sort Code	Amount
		1002	12/12/2023 CENTRAL OVERPASS TASK #2		7,000.00
Check	01/04/2024	10215 Accounts Payable	BEELINE GLASS, INC		528.00
	Invoice	Date	Description	Check Sort Code	Amount
		120487	09/06/2023 GLASS REPAIR AND SERVICE 9/6/23		528.00
Check	01/04/2024	10216 Accounts Payable	BUREAU VERITAS NORTH AMERICA INC.		915.00
	Invoice	Date	Description	Check Sort Code	Amount
		RI 23058902	12/13/2023 BI FIELD INSPECTION AND RELATED PROFESSIONAL SVCS 10/23-11/23		727.50
		RI 23058903	12/13/2023 BI FIELD INSPECTION AND RELATED PROFESSIONAL SERVICES 11/23		187.50
Check	01/04/2024	10217 Accounts Payable	BURTON'S FIRE INC		1,414.80
	Invoice	Date	Description	Check Sort Code	Amount
		W 81606	11/09/2023 OPACITY TESTING ON 206/241/242/243/252/264/266/267/268 - 11/8/23		1,414.80

Check	01/04/2024	10218 Accounts Payable	CAL-WEST LIGHTING & SIGNAL MAINTENANCE		81,932.39
	Invoice	Date	Description	Check Sort Code	Amount
	230945	09/21/2023	FY23-24 STREET LIGHT MAINTENANCE 09/23		50,424.00
	230946	09/21/2023	FY23-24 STREET LIGHT MAINTENANCE 09/23		1,350.00
	231016	10/31/2023	FY23-24 STREET LIGHT MAINTENANCE 10/23		4,591.18
	231017	10/31/2023	FY23-24 STREET LIGHT MAINTENANCE 10/23		3,810.84
	231149	11/30/2023	FY23-24 STREET LIGHT MAINTENANCE 11/23		5,933.89
	231150	11/30/2023	FY23-24 STREET LIGHT MAINTENANCE 11/23		5,274.16
	231151	11/30/2023	FY23-24 STREET LIGHT MAINTENANCE 11/23		5,274.16
	231152	11/30/2023	FY23-24 STREET LIGHT MAINTENANCE 11/23		5,274.16
Check	01/04/2024	10219 Accounts Payable	SABRE BACKFLOW LLC		277.68
	Invoice	Date	Description	Check Sort Code	Amount
	3793	12/07/2023	BACKFLOW CALIBRATION		277.68
Check	01/04/2024	10220 Accounts Payable	CHEVROLET OF FREMONT		2,036.05
	Invoice	Date	Description	Check Sort Code	Amount
	145575	12/21/2023	FLEET ROTOR AND PAD KITS		2,036.05
Check	01/04/2024	10221 Accounts Payable	DAN CIANCARULO		168.17
	Invoice	Date	Description	Check Sort Code	Amount
	122823EXP	12/28/2023	BOOT REIMBURSEMENT 12/28/23		168.17
Check	01/04/2024	10222 Accounts Payable	CLASSIC GRAPHICS		13,901.89
	Invoice	Date	Description	Check Sort Code	Amount
	48858	12/13/2023	FLEET DECALS		141.54
	48831	12/07/2023	SWEEPER REINFORCE BODY AND HINGES		901.64
	48394	08/21/2023	FLEET REPAIR 1902		12,321.57
	48733	11/10/2023	FABRICATE GRATE		537.14
Check	01/04/2024	10223 Accounts Payable	ALAMEDA COUNTY PUBLIC HEALTH LAB		126.00
	Invoice	Date	Description	Check Sort Code	Amount
	9230008	09/29/2023	ANIMAL RABIES EXAM 07/19/23		126.00
Check	01/04/2024	10224 Accounts Payable	ALAMEDA COUNTY INFORMATION TECHNOLOGY DEPARTMENT		3,541.50
	Invoice	Date	Description	Check Sort Code	Amount
	112-2309036	10/11/2023	AWS ACCESS FEE SEPTEMBER 2023		3,541.50
Check	01/04/2024	10225 Accounts Payable	DALE HARDWARE		374.42
	Invoice	Date	Description	Check Sort Code	Amount
	DEC' 23	12/25/2023	DALE SUPPLIES 12/25/2023		374.42
Check	01/04/2024	10226 Accounts Payable	EDWARD P. EVERETT		1,758.75
	Invoice	Date	Description	Check Sort Code	Amount
	MONTH NOV/DEC 23	12/21/2023	PROFESSIONAL COACHING FOR EMPLOYEE DEVELOPMENT 11-12/23		1,758.75
Check	01/04/2024	10227 Accounts Payable	FEDEX		17.45
	Invoice	Date	Description	Check Sort Code	Amount
	8-341-80337	12/08/2023	PACKAGE DELIVERY 11/28/23		17.45

Check	01/04/2024	10228	Accounts Payable	FEHR & PEERS		4,029.38
	Invoice		Date	Description	Check Sort Code	Amount
	170899		12/12/2023	TASK ORDER #11 - VEHICLE MILES TRAVELED POLICY 10/28-11/24/23		651.00
	170632		12/09/2023	TASK ORDER #10 - ACTIVE TRANSPORTATION PLAN 10/28-11/24/23		3,378.38
Check	01/04/2024	10229	Accounts Payable	FRANK BONETTI PLUMBING INC		1,152.09
	Invoice		Date	Description	Check Sort Code	Amount
	47555		11/15/2023	SINK CLOG 10/24/23		315.00
	47664		11/17/2023	KINETIC RAM CLEAR 11/1/23		268.50
	47715		11/28/2023	COMMUNITY URINAL BACKUP 10/31/23		568.59
Check	01/04/2024	10230	Accounts Payable	GACHINA LANDSCAPE MANAGEMENT, INC.		2,235.99
	Invoice		Date	Description	Check Sort Code	Amount
	E 214004		11/10/2023	L&L 1 PLUGGED MAINLINE REPAIR 11/10/23		730.00
	E 214003		11/10/2023	SILLIMAN IRRIGATION REPAIR 11/10/23		545.96
	E 214005		11/10/2023	SILLIMAN IRRIGATION REPAIR 11/10/23		960.03
Check	01/04/2024	10231	Accounts Payable	GRAINGER		332.25
	Invoice		Date	Description	Check Sort Code	Amount
	9917922263		11/28/2023	SILLIMAN CFL		332.25
Check	01/04/2024	10232	Accounts Payable	HINDERLITER DE LLAMAS & ASSOCIATES		4,347.71
	Invoice		Date	Description	Check Sort Code	Amount
	SIN033671		12/08/2023	SALES TAX AUDIT SERVICES Q2/2023		4,347.71
Check	01/04/2024	10233	Accounts Payable	JEFF'S MOBILE GLASS INC.		1,130.62
	Invoice		Date	Description	Check Sort Code	Amount
	IJMG-1103-82274		11/03/2023	WINDSHIELD REPAIR 11/3/23		454.56
	IJMG-1103-82275		11/03/2023	WINDSHIELD REPAIR 11/3/23		676.06
Check	01/04/2024	10234	Accounts Payable	AMERICAN EAGLE ENTERPRISES		14,895.15
	Invoice		Date	Description	Check Sort Code	Amount
	7863		12/13/2023	SILLIMAN ACTIVITY GYM SERVICES 12/4-12/5/23		14,895.15
Check	01/04/2024	10235	Accounts Payable	LYNN PEAVEY COMPANY		378.07
	Invoice		Date	Description	Check Sort Code	Amount
	405996		12/12/2023	TENTMARKERS FOR EVIDENCE		268.29
	406065		12/14/2023	EVIDENCE SUPPLIES BAG SK		109.78
Check	01/04/2024	10236	Accounts Payable	MANUEL FERNANDEZ CONSTRUCTION		7,355.71
	Invoice		Date	Description	Check Sort Code	Amount
	2020225		12/05/2023	BUILDING SPECIALTY SERVICE-RETAINING WALL REPAIR 8/22-12/5/23		7,355.71
Check	01/04/2024	10237	Accounts Payable	MEYERS NAVE		163.50
	Invoice		Date	Description	Check Sort Code	Amount
	212545		12/12/2023	LEGAL SERVICES - CENTRAL AVENUE OVERPASS 11/23		163.50
Check	01/04/2024	10238	Accounts Payable	MFCP INC		70.37
	Invoice		Date	Description	Check Sort Code	Amount
	8948229		12/05/2023	BLDG SUPPLIES-TUBE NICKEL PLATED AND TUBE UNION TEE NICKEL PLATE		70.37

Check	01/04/2024	10239	Accounts Payable	NATIONAL DATA & SURVEYING SERVICES	185.00
	Invoice		Date	Description	Check Sort Code
	23-080364		12/15/2023	TRAFFIC SURVEY - APA #24-87	185.00
Check	01/04/2024	10240	Accounts Payable	NEWARK UNIFIED SCHOOL DISTRICT	12,617.04
	Invoice		Date	Description	Check Sort Code
	INV24-00055		12/14/2023	NEWARK UNIFIED ACWD BILLING 9/6/23-11/2/23	12,617.04
Check	01/04/2024	10241	Accounts Payable	PERFORMANCE PEST MANAGEMENT	410.00
	Invoice		Date	Description	Check Sort Code
	71624		11/30/2023	PEST SERVICES - CITY HALL #102699 11/30/23	225.00
	71623		11/30/2023	PEST SERVICES - VIOLA BLYTHE #102704 11/30/23	185.00
Check	01/04/2024	10242	Accounts Payable	PHAN'S SMOG STATION	610.00
	Invoice		Date	Description	Check Sort Code
	054582		11/26/2023	SMOG VEH #119	40.00
	054127		12/01/2023	SMOG VEH #122	40.00
	054183		12/04/2023	SMOG VEH #22	40.00
	054213		12/05/2023	SMOG VEH #41	40.00
	054569		11/06/2023	SMOG VEH #190	40.00
	054577		11/06/2023	SMOG VEH #2	40.00
	054579		11/06/2023	SMOG VEH #1	40.00
	054586		11/06/2023	SMOG VEH #15	40.00
	054609		11/07/2023	SMOG VEH #141	40.00
	054970		11/29/2023	SMOG VEH #17	40.00
	055007		12/01/2023	SMOG VEH #121	40.00
	054727		11/14/2023	SMOG VEH #143	40.00
	054966		11/29/2023	SMOG VEH #1	40.00
	054508		11/02/2023	SMOG VEH #163	50.00
	054078		12/11/2023	SMOG VEH #195	40.00
Check	01/04/2024	10243	Accounts Payable	PLAN JPA	4,764.90
	Invoice		Date	Description	Check Sort Code
	PLAN-2024-0109		12/11/2023	GENERAL LIABILITY PREMIUM FY23/24-NOVEMBER 2023	4,764.90
Check	01/04/2024	10244	Accounts Payable	CONSOLIDATED ENGINEERING LABORATORIES	9,601.90
	Invoice		Date	Description	Check Sort Code
	213016		10/17/2023	MATERIAL TESTING FOR PROJECT 1300 09/27-10/06/23	3,933.60
	212110		09/19/2023	MATERIAL TESTING FOR PROJECT 1301 08/04-09/08/23	1,100.00
	213751		11/19/2023	MATERIAL TESTING FOR PROJECT 1300 09/27-10/20/23	4,568.30
Check	01/04/2024	10245	Accounts Payable	ROADRUNNER GLASS DOOR, INC	1,836.05
	Invoice		Date	Description	Check Sort Code
	12625		11/03/2023	GLASS REPAIR AND SERVICE 9/26/23	560.00
	12698		11/15/2023	SILLIMAN GLASS REPAIR AND SERVICE 11/15/23	1,276.05
Check	01/04/2024	10246	Accounts Payable	SFPUC	3,885.81
	Invoice		Date	Description	Check Sort Code
	63865		12/21/2023	SFPUC RENT WATER AC#2866 12/21/23	2,915.64

	63833	12/21/2023	SFPUC RENT WATER AC#3642 12/21/23		970.17
Check	01/04/2024	10247 Accounts Payable	STATE OF CALIFORNIA		416.58
	Invoice	Date	Description	Check Sort Code	Amount
	PPE 12.23.23	12/20/2023	GARNISH - CASE 569116649 - 12/10/23-12/23/23		416.58
Check	01/04/2024	10248 Accounts Payable	JENNIFER TRAN		51.61
	Invoice	Date	Description	Check Sort Code	Amount
	1201-122123EXP	12/31/2023	MILEAGE REIMBURSEMENT 12/01/23-12/21/23		51.61
Check	01/04/2024	10249 Accounts Payable	BOSCO OIL INC DBA VALLEY OIL		22,939.81
	Invoice	Date	Description	Check Sort Code	Amount
	178861	12/19/2023	FUEL 12/19/2023		22,939.81
Check	01/04/2024	10250 Accounts Payable	WATERPROOFING ASSOCIATES, INC.		805.00
	Invoice	Date	Description	Check Sort Code	Amount
	49577	11/16/2023	SILLIMAN LEAK DETECTION 11/13/23		805.00
Check	01/04/2024	10251 Accounts Payable	WSP USA ENVIRONMENT & INFRASTRUCTURE INC.		1,988.43
	Invoice	Date	Description	Check Sort Code	Amount
	S64114401	12/14/2023	MUNICIPAL STORMWATER INSPECTION SERVICES THROUGH 11/30/23		1,988.43
Check	01/04/2024	10252 Accounts Payable	ZI-TECH PROFESSIONAL SERVICES		7,062.50
	Invoice	Date	Description	Check Sort Code	Amount
	202415	11/30/2023	INDIVIDUAL COACHING PREP - 11/23		7,062.50
Check	01/04/2024	10253 Accounts Payable	ARUNACHALAM , SUBRAMANIAM		1,000.00
	Invoice	Date	Description	Check Sort Code	Amount
	2023-0104	12/20/2023	ENCP2022-0159 RFND		1,000.00
Check	01/04/2024	10254 Accounts Payable	PARKER , LAWRENCE		1,000.00
	Invoice	Date	Description	Check Sort Code	Amount
	2023-2205	12/20/2023	ENCP2022-0272 RFND		1,000.00
Check	01/04/2024	10255 Accounts Payable	THIRUMURTHY , ROHIT RAJ		1,000.00
	Invoice	Date	Description	Check Sort Code	Amount
	2023-0254	12/20/2023	ENCP2022-0173 RFND		1,000.00
EFT	01/04/2024	842 Accounts Payable	PET BENEFIT SOLUTION	021000021 / 238821802	53.75
	Invoice	Date	Description	Check Sort Code	Amount
	145328	12/20/2023	TOTAL PET PLAN - DECEMBER 2023 COVERAGE		53.75
AP ZBA ACCOUNTS PAYABLE Totals:			Transactions: 48		\$236,125.48
	Checks:	47	\$236,071.73		
	EFTs:	1	\$53.75		



STAFF REPORT

Item D. 2.

DATE 01/25/2024
TO Honorable Mayor and City Council Members
FROM Sheila Harrington, City Clerk
SUBJECT Approval of January 11, 2024 minutes

Attachments

Minutes



CITY OF NEWARK

CITY COUNCIL

City Administration Building, City Council Chambers

37101 Newark Boulevard, Newark, CA 94560 | (510) 578-4266 | E-mail: city.clerk@newark.org

Minutes

Thursday, January 11, 2024
7:00 P.M.

A. ROLL CALL

Mayor Hannon called the meeting to order at 7:00 p.m. Vice Mayor Freitas, Council Members Bucci, Collazo, and Jorgens were noted present.

Mayor Hannon announced that he would adjourn the meeting in memory of City of Oakland Police Officer Tuan Le.

B. PRESENTATIONS

1. Proclaiming January 13 - 28, 2024 as Sun Salutation Awareness Period

Mayor Hannon presented the proclamation to Rohit Sharma and members of the Hindu Swayamsevak Sangh.

C. PUBLIC COMMENT

Barbara Miller of the First Presbyterian Church thanked the Police Department for their assistance with the homeless. She requested that staff look into the Chapman Drive and Lake Boulevard intersection to determine if the prohibitory traffic sign was still needed.

Unidentified speaker mentioned the vandalism at a temple in Newark recently. He would like the Police to find out who did it and suggested security cameras at temples.

D. CONSENT CALENDAR

City Manager Benoun stated that D.3 and D.4 had minor revisions that were explained in a memorandum to the City Council and public before the meeting.

Mayor Hannon requested the removal of item D.3 from the Consent Calendar.

Council Member Collazo moved, Council Member Bucci seconded, to approve Consent Calendar Items D.1, D.2, and D.4, with revisions as referenced by City Manager Benoun, that the resolutions be numbered consecutively, and that reading of the titles suffice for adoption. The motion passed, 5 AYES.

1. Approval of Audited Demands
2. Approval of December 14, 2023 minutes
3. Pulled - Acceptance of the Annual Comprehensive Financial Report (ACFR) for the period ended June 30, 2023
4. Adopt a resolution: (1) amending the Employee Classification Plan to delete and add multiple classifications due to title changes and new position of Deputy Finance Director; (2) amending the Compensation and Benefit Plan for the Management, Supervisory, and Professional Employees Group; (3) amending the City's Salary Schedule; (4) amending the 2022-2024 Biennial Budget and Capital Improvement Plan; and (5) approving a letter of understanding with Newark Association of Miscellaneous Employees (NAME)
Resolution No. 11608

D.3 Acceptance of the Annual Comprehensive Financial Report (ACFR) for the period ended June 30, 2023

Mayor Hannon thanked the Finance Department for another clean audit.

No one from the public requested to speak.

Council Member Hannon moved, Vice Mayor Freitas seconded to accept the Annual Comprehensive Financial Report with the revisions as outlined by City Manager Benoun. The motion passed, 5 AYES.

E. PUBLIC HEARINGS

F. OTHER BUSINESS

1. Presentation: "Resilient East Bay" Industrial Lands Analysis

Deputy Economic Development Director Stedler introduced Dena Belzer, Strategic Economics. Ms. Belzer gave a presentation on Industrial Land Use Analysis and Implementation Toolkit Introduction. Presentation on file with City Clerk. At the conclusion of her report she stated that she would assess the existing conditions for Newark's Industrial Land and prepare recommendations.

No one from the public requested to speak.

Council Member Bucci stated he would like the Newark Industrial Land Analysis (Analysis) to include tips on how to turn old distribution buildings into manufacturing buildings.

Mayor Hannon stated that he would like to see the Analysis to include: a history (1980s) versus today to protect industrial lands, current vacancy rates for industrial use buildings, how much square footage growth in the industrial area is anticipated in the future, anticipated revenue manufacturing versus industrial use in the future, is there a warehouse/manufacturing combination that would be beneficial for job creation and tax benefits.

Alexander Quinn stated that Newark's current vacancy rate is 7.5%

This item was informational only.

2. Adoption of an ordinance adding Chapter 17.15 to the Newark Municipal Code to establish the By Right Housing (-BRH) Overlay District, amending the Newark Zoning Map by applying the -BRH Overlay District to specific parcels, and making related miscellaneous amendments to Title 17, Zoning, of the Newark Municipal Code

Vice Mayor Freitas announced that he would recuse himself from this item due to real property and business conflicts of interest. He exited the Council Chambers.

Council Member Collazo announced that she would recuse herself from this item due to real property and business conflicts of interest. She exited the

Council Chambers.

City Manager Benoun gave the staff report recommending approval.

No one from the public requested to speak.

Council Member Bucci moved, Council Member Jorgens seconded to adopt an ordinance adding Chapter 17.15 to the Newark Municipal Code to establish the By Right Housing (-BRH) Overlay District, amending the Newark Zoning Map by applying the -BRH Overlay District to specific parcels, and making related miscellaneous amendments to Title 17, Zoning, of the Newark Municipal Code. The motion passed, 3 AYES, 2 RECUSED.

Vice Mayor Freitas and Council Member Collazo returned to the City Council Chambers.

G. CITY COUNCIL MATTERS

Council Member Jorgens wished everyone a Happy New Year.

Council Member Collazo wished everyone a Happy New Year and stated that she will try to be the best version of herself this year.

Council Member Bucci wished everyone a Happy New Year. He encouraged people to attend the next Parks Master Plan meeting and to fill out the Parks Survey online.

Vice Mayor Freitas stated that the Central Avenue Overpass will be completed in 2027. He noted that some of the bike lane balusters on Cherry Street and Newark Boulevard are bent and the reflective protectors are falling off. He asked how the street be cleaned in those bike lanes.

City Manager Benoun staff will review the conditions of the balusters and that a subcompact sweeper will be acquired to clean the bike lanes.

Mayor Hannon thanked the nonprofits that provided food and toys for families at Christmas. He thanked the Police Department and the Alameda County Fire Department for Santa at the Fire House Event. He announced that the meeting would be adjourned in memory of Oakland Police Officer Le.

H. CITY MANAGER UPDATES

I. CLOSED SESSION

J. ADJOURNMENT

Mayor Hannon adjourned the meeting at 8:14 p.m. in memory of Oakland Police Officer Tuan Le.



STAFF REPORT

Item D. 3.

DATE 01/25/2024
TO Honorable Mayor and City Council Members
FROM Ed Miranda, Information Technology Director/CIO
SUBJECT Adopt a resolution approving the Contractual Services Agreement with Sable Computer Inc., dba KIS for a Cybersecurity Platform that provides 24x7 Security Operations

SUMMARY AND RECOMMENDATION

Staff recommends that the City Council approve a resolution for the renewal of cybersecurity tools that provide 24x7 security operations for managed detection and response.

BACKGROUND

The City relies on a 24x7 Security Operations Center (SOC) to secure the City against cybersecurity threats. The existing service secures the city and continually improves the City's security posture. Additionally, this service has been used for the last year and has proven effective, providing regular reporting and continuous protection.

DISCUSSION/ANALYSIS

The Information Technology Department is responsible for deploying cybersecurity tools to protect the City. Sable Computer, Inc. dba KIS is the reseller that currently provides the cybersecurity software used by the City over the last year. The initial purchase was for a one-year term to provide time for the City to assess the software's effectiveness. The cybersecurity platform deployed and in use over the last year reduced the likelihood and potential impact of a data breach, augmenting staff's ability to catch and react to cybersecurity threats during and beyond staff working hours. Staff recommends extending the service for an additional three years with the option to renew for an additional two years.

FISCAL IMPACT

Year one renewal cost is \$63,904.61. Years two and three include a 5.0% increase per year. Years four and five are optional years and the increase will not exceed 5.0% of the prior year fee. Therefore, the Total Not To Exceed cost over five years is \$353,113.31. The year one cost of \$63,904.61 can be accommodated in the 2022-2024 Biennial Budget in fiscal year 2024 for Information Technology Computer Software and Licenses from the unappropriated General Fund balance. Future year renewals are subject to prior funding approval by the City Council.

Year one renewal cost is \$63,904.61. Years two and three include a 5.0% increase per year. Years four and five are optional years and the increase will not exceed 5.0% of the prior year fee. Therefore, the Total Not To Exceed cost over five years is \$353,113.31. A budget adjustment of \$63,905 is necessary to appropriate the year one cost for Information Technology Computer Software and Licenses from the unappropriated General Fund balance. Future year renewals are subject to prior funding approval by the City Council.

REVIEW AND APPROVAL

Prepared by - Edwin Miranda, Information Technology Director/CIO

Reviewed by - Lenka Hovorka, Assistant City Manager

Reviewed by - Krysten Lee, Finance Director

Reviewed by - Kristopher J. Kokotaylo, City Attorney

Approved by - David J. Benoun, City Manager

Attachments

875_Resolution_SABLE_COMPUTER_dba_KIS

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACTUAL SERVICES AGREEMENT WITH SABLE COMPUTER INC., DBA KIS FOR A MANAGED DETECTION AND RESPONSE CYBERSECURITY PLATFORM IN AN AMOUNT NOT TO EXCEED \$353,113.30 FOR AN INITIAL TERM OF THREE (3) ONE (1) YEAR TERMS, WITH AN OPTION TO RENEW FOR TWO (2) ADDITIONAL ONE (1) YEAR TERMS AND AMENDING THE 2022-2024 BIENNIAL BUDGET AND CAPITAL IMPROVEMENT PLAN

WHEREAS, the City must protect its data and operating systems from cybersecurity threats such as ransomware attacks; and

WHEREAS, the Information Technology Department entered into an agreement to purchase and install a managed detection and response cybersecurity platform through a Value Added Reseller, Sable Computer Inc. dba KIS for the period of February 4, 2023 to February 3, 2024; and

WHEREAS, Information Technology staff assessed the cybersecurity platform over the initial term and determined the solution provides the expected cybersecurity detection and response to the satisfaction of the City.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby authorizes the City Manager to negotiate and enter into a Contractual Services Agreement with Sable Computer Inc., dba KIS, in a form approved by the City Attorney, to continue providing a managed detection and response cybersecurity platform in an amount not to exceed \$353,113.31 for an initial term of three (3) one (1) year terms and up to two (2) additional one (1) year terms upon mutual consent of the City of Newark and Sable Computer, Inc., dba KIS subject to prior funding approval by the City Council.

BE IT FURTHER RESOLVED that the City Council does hereby authorize an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan by appropriating \$63,905 as follows:

TO:	110.21.021.200.6150	COMPUTER SOFTWARE AND LICENSES	\$63,905
FR:	110.3000	UNAPPROPRIATED FUND BALANCE	\$63,905



STAFF REPORT

Item D. 4.

DATE 01/25/2024
TO Honorable Mayor and City Council Members
FROM Ed Miranda, Information Technology Director/CIO
SUBJECT Adopt a resolution approving the Contractual Services Agreement with DLT Solutions, LLC for the renewal of AutoCAD Civil3D licensing

SUMMARY AND RECOMMENDATION

AutoCAD Civil3D software plays a critical role in the city's infrastructure and development projects, facilitating efficient and accurate design and documentation processing. The current licensing agreement for AutoCAD Civil3D is set to expire on January 30, 2024. Staff recommends that the City Council, by resolution, approve a Contractual Services Agreement for the renewal of AutoCAD Civil3D licensing for a three-year term.

BACKGROUND

AutoCAD Civil3D has been an integral part of the City of Newark's Public Works engineering and design workflow for several years. The software provides essential tools for civil engineering design, drafting, modeling, and documentation. Its features contribute significantly to the efficiency and accuracy of infrastructure projects, helping the City meet its development goals. In anticipation of the licensing agreement expiration, in coordination with the Public Works engineering team, the Information Technology Department has reviewed the software's usage, assessed its value to ongoing and upcoming projects, and negotiated a favorable renewal agreement with the software vendor.

DISCUSSION/ANALYSIS

AutoCAD Civil3D has proven to be an indispensable tool for our engineering and design teams, streamlining and accelerating design and documentation, advancing design automation and improving collaboration and coordination. The software empowers civil engineers to create detailed project plans, analyze surfaces and grading, and manage various aspects of civil infrastructure projects. The software's compatibility with other design and drafting tools enhances collaboration and ensures seamless integration into our existing workflow.

The renewal of AutoCAD Civil3D licensing provides licensing for eleven users for three years and aligns with the City's commitment to maintaining a modern technology

infrastructure. The updated version includes enhancements and improvements that will further support our teams in delivering accurate and efficient design, ultimately contributing to the successful completion of City projects. It is important to note that not renewing the licensing agreement could disrupt ongoing projects, lead to increased costs associated with alternative software solutions, and hinder the efficiency of our engineering and design teams.

FISCAL IMPACT

The total not-to-exceed amount for three years, which includes licensing fees, maintenance, and support, is One Hundred Twenty-Three Thousand Eight Hundred Six Dollars and Thirty-Eight cents (\$123,806.38). An amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan appropriating \$123,806.38 from unappropriated fund balance for Fiscal Year 2024 is needed.

REVIEW AND APPROVAL

Prepared by - Edwin J. Miranda, Information Technology Director/CIO

Reviewed by - Lenka Hovorka, Assistant City Manager

Reviewed by - Krysten Lee, Finance Director

Reviewed by - Kristopher J. Kokotaylo, City Attorney

Approved by - David J. Benoun, City Manager

Attachments

916_Resolution _DLT

DLT Quote

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING THE CITY MANAGER TO ENTER
INTO A CONTRACTUAL SERVICES AGREEMENT WITH
DLT SOLUTIONS, LLC FOR THE RENEWAL OF AUTOCAD
CIVIL3D LICENSING IN AN AMOUNT NOT TO EXCEED
\$123,806.38 FOR A TERM OF THREE (3) YEARS, AND
AMENDING THE 2022-2024 BIENNIAL BUDGET AND
CAPITAL IMPROVEMENT PLAN

WHEREAS, AutoCAD Civil3D has been an integral part of the City of Newark's Public Works engineering and design workflow, providing essential tools for civil engineering design, drafting, modeling, and documentation, contributing significantly to the efficiency and accuracy of infrastructure projects; and;

WHEREAS, the current licensing agreement for AutoCAD Civil3D is set to expire on January 30, 2024; and

WHEREAS, the renewal of AutoCAD Civil3D licensing, providing licensing for eleven users for the next three years, aligns with the city's commitment to maintaining a modern technology infrastructure, including enhancements and improvements that will further support teams in delivering accurate and efficient design, ultimately contributing to the successful completion of city projects; and;

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby authorizes the City Manager to enter into a Contractual Services Agreement with DLT Solutions, LLC, in a form approved by the City Attorney, for the renewal of AutoCAD Civil3D, including licensing fees, maintenance, and support for a three-year term in an amount not to exceed \$123,806.38.

BE IT FURTHER RESOLVED that the City Council does hereby authorize an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan by appropriating \$123,806.38 as follows:

TO:	120.60.061.611.6150	COMPUTER SOFTWARE AND LICENSES	\$123,806.38
FR:	120.3000	UNAPPROPRIATED FUND BALANCE	\$123,806.38



Price Quotation

Quote: 5204642
Reference: 1818997
Date: 11/29/2023
Expires: 12/29/2023

To: Angela Montez
Newark City of (CA)
37101 Newark Blvd
Newark, CA 94560

From: Jenny Chen
DLT Solutions, LLC
2411 Dulles Corner Park
Suite 800
Herndon, VA 20171

Phone: (510) 578-4421
Fax:
Email: angela.montez@newark.org

Phone: (703) 773-9263
Fax: (703) 773-9282
Email: jenny.chen@dlts.com

#	DLT Part No.	Contract	Qty	Unit Price	Ext. Price
1	9701-1001718	OM	7	\$9,194.33	\$64,360.31
	Architecture Engineering & Construction Collection Government Single-user 3-Year Subscription Renewal 110003414926 PoP: 1/31/2024 through 1/30/2027				
2	9701-1452	OM	2	\$2,305.95	\$4,611.90
	Architecture Engineering & Construction Collection Government Single-user 3-Year Subscription Renewal Switched From Network Maintenance 2:1 Trade-In 110003414926 PoP: 1/31/2024 through 1/30/2027				
3	9701-1001737	OM	2	\$10,211.01	\$20,422.02
	Architecture Engineering & Construction Collection IC Government New Single-user ELD 3-Year Subscription add to C: 110003414926 PoP: 1/31/2024 through 1/30/2027				
4	9701-3382	OM	1	\$24,400.33	\$24,400.33
	BIM Collaborate Pro - 10 Subscription Government 10 Pack 3-Year Subscription Renewal 110003414926 PoP: 1/31/2024 through 1/30/2027				
5	9701-3392	OM	1	\$2,784.82	\$2,784.82
	BIM Collaborate Pro - Single User CLOUD Government New 3-Year Subscription add to C: 110003414926 PoP: 1/31/2024 through 1/30/2027				
6	9971-30205	OM	11	\$657.00	\$7,227.00
	ProductivityNOW Standard-Telephone Support & eLearning, 6-24 users support PoP: 1/31/2024 through 1/30/2027				

Total \$123,806.38



Price Quotation

Quote: 5204642
Reference: 1818997
Date: 11/29/2023
Expires: 12/29/2023

#	DLT Part No.	Contract	Qty	Unit Price	Ext. Price
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Contract Number: OPEN MARKET
DUNS #: 78-646-8199
Federal ID #: 54-1599882
CAGE Code: 0S0H9
FOB: Destination
Terms: Net 30 (On Approved Credit)
DLT accepts VISA/MC/AMEX

UNLESS CONTROLLED BY AN EXISTING RESELLER PARTNER AGREEMENT OR OTHER WRITTEN CONTRACTUAL AGREEMENT BETWEEN YOU AND DLT, THIS QUOTE AND ANY RESULTING AWARD OR ORDER IS SUBJECT TO THE TERMS AND CONDITIONS POSTED AT [HTTPS://WWW.DLT.COM/PRODUCTS/CLIENT-COMMERCIAL-LICENSES](https://www.dlt.com/products/client-commercial-licenses). THESE TERMS CONTROL THE TERMS OF SALES AS WELL AS THE END USER'S USE OF THE PRODUCTS AND/OR SERVICES INCLUDED IN THIS QUOTE. BUYER IS DIRECTED TO INCORPORATE (BY REFERENCE) THIS QUOTE IN ANY RESULTING AWARD OR ORDER. THE TERMS AND CONDITIONS AT THE ABOVE LINK ARE THE ONLY CONTROLLING TERMS THAT WILL APPLY TO A RESULTING ORDER AND THE USE OF THE PRODUCTS AND/OR SERVICES INCLUDED IN THIS QUOTE. ANY ADDITIONAL OR INCONSISTENT TERMS ON BUYER'S ORDER THAT IN ANY WAY, MODIFY, ALTER OR NEGATE THE TERMS OF SALE OR THE MANUFACTURER'S END USER LICENSE AGREEMENT WILL NOT BE BINDING ON DLT OR ITS MANUFACTURERS AND SHALL NOT APPLY UNLESS SPECIFICALLY AGREED TO IN WRITING BY DLT AND THE MANUFACTURER. NO RETURNS ARE AUTHORIZED OF THE PRODUCTS AND/OR SERVICES INCLUDED IN THIS QUOTE. THE PRODUCTS AND/OR SERVICES INCLUDED IN THIS QUOTE ARE NONRECOURSE, NONCANCELLABLE, AND NON-RETURNABLE UNLESS EXPLICITLY AGREED TO IN WRITING BY DLT.

**PLEASE REMIT
PAYMENT TO:**

ACH: DLT Solutions, LLC
Bank of America
ABA # 111000012
Acct # 4451063799

-OR-

Mail: DLT Solutions, LLC
P.O. Box 743359
Atlanta, GA 30374-3359

Customer orders are subject to all applicable taxes and regulatory fees.

Documentation to be submitted to validate Invoice for payment:

- Authorized Services shall be invoiced with a corresponding time report for the period of performance identifying names, days, and hours worked.
- Authorized reimbursable expenses shall be invoiced with a detailed expense report, documented by copies of supporting receipts.
- Authorized Education or Training shall be invoiced with a Report identifying date and name of class completed, and where applicable the name of attendees.



STAFF REPORT

Item D. 5.

DATE 01/25/2024
TO Honorable Mayor and City Council Members
FROM Carmelisa Lopez, Senior Planner
SUBJECT Adopt a resolution to authorize the City Manager to execute the Affordable Housing Loan Agreement and all related loan documents to effectuate the approval of the \$2,765,000 funding award for a senior affordable housing project at 37660 Timber Street. Exempt from CEQA Review per CEQA Guidelines Section 15061(b)(3)

SUMMARY AND RECOMMENDATION

At the November 2016 General Election, Alameda County voters approved the Alameda County Measure A1 Housing General Obligation Bond ("Measure A1"), the sale of general obligation bonds to provide affordable local housing to prevent displacement of vulnerable populations. Revenue from Measure A1 was allocated through a \$225 million Base City Allocation and a \$200 million Regional Pool fund. The City of Newark received an allocation of \$5,426,348.

Alameda County issued a Request for Proposals ("RFP") for affordable housing projects in South County with several guidelines for funding such as requiring that cities provide a match that, at a minimum, equal the city planning and building fees (not including development impact fees). To meet the RFP guidelines, the City Council committed \$2,765,000 from the City's Affordable Housing Impact Fee Fund and assigned \$2,713,174 of Newark's Base City Allocation to a 79-unit, affordable housing project for senior residents (the "Project") at 37660 Timber Street (the "Property") proposed by the property owner and project applicant, Timber Street Investors L.P. (controlled by Eden Housing as managing partner) (the "Project Applicant").

Unfortunately, the Project was not selected for funding from the South County Regional Pool because it was in the preliminary stage and did not have the land use approvals or additional financing commitments necessary to be competitive at that time. Nonetheless, the Project Applicant remained committed to the Project and submitted a Preliminary Plan Review for the Project in 2020. The Project Applicant also revised their funding proposal for the City's consideration that included the City's 2019 commitment of \$2,765,000 from the Affordable Housing Impact Fee Fund and a request that the City authorize the assignment of the entire Base City Allocation of \$5,426,348, an increase of \$2,713,174. Staff supported the request to use the entire

Base City Allocation due to the Project Applicant's commitment to the Project, submitting the entitlement application for the Project later that year. Additionally, under the terms of the Measure A1 funding program, each City was required to assign their Base City Allocation by December 2021 or risk the loss of those funds to other uses or projects. The City Council authorized the assignment of \$5,426,348 of the Measure A1 Base City Allocation to the Project in November 2020 and approved the entitlements for the Project in October 2021.

The agreement between the City and the Project Applicant, including the terms of the City loan totaling \$2,765,000 to the Project and the Project Applicant's current project delivery expectations, are memorialized through the loan documents in Attachment D through H of this report. Staff recommends that the City Council authorize the City Manager to execute the Affordable Housing Loan Agreement and all related loan and closing documents to effectuate the approval of the funding award.

BACKGROUND

Project Timeline

On October 28, 2021, the City Council approved Resolution No. 11,273. Resolution No. 11,273 approved the Project, a 79-unit, affordable housing project for senior residents proposed at 37660 Timber Street (see Attachment A). The project approval included an amendment to the General Plan land use designation from Medium Density Residential to High Density Residential to allow for higher density multi-unit development on the site, a zoning change from RM Residential Medium Density to RH Residential High Density to conform with the General Plan land use designation, a Conditional Use Permit to allow for a building height greater than 35 feet, and Design Review.

Pursuant to Newark Municipal Code (NMC) Chapter 17.19 and California Government Code Section 65915 et seq., as a 100 percent affordable housing project, the Project was eligible for an up to 80 percent density bonus, up to four incentives or concessions, and the waiver or reduction of an unlimited number of development standards that would have otherwise physically precluded the construction of the Project. The Project included a density bonus of approximately 34 percent and incentives, concessions, and waivers for a reduction of the minimum parking requirement, the reduction of certain setback requirements for the first floor parking podium, an increase in the maximum lot coverage, the allowance of open space on top of the parking podium to count towards the minimum landscape area requirement, and the reduction of the minimum open space requirement.

The Project Applicant is currently in the process of securing financing and obtaining the building permit(s) for the Project. Construction closing, the date upon which all financing necessary for the construction of the Project on the Property closes, and any deeds of trust related to such financing are recorded against the Property, is scheduled for March 2024 and construction will start shortly thereafter. The Project Applicant anticipates the project will complete construction by August 2026 and the building will be fully occupied by February 2027.

Project Funding

At the November 8, 2016, General Election, Alameda County voters approved the sale of general obligation bonds to provide affordable local housing to prevent displacement of vulnerable populations including low and moderate income families, seniors, veterans, people with disabilities, homeless, and others most in need. The bond is known as the Alameda County Measure A1 Housing General Obligation Bond ("Measure A1"). Measure A1 includes a Rental Housing Development Fund (\$425 million) to create and preserve affordable rental housing countywide to be regulated for a period of 55-years. Revenue from Measure A1 was allocated through a \$225 million Base City Allocation and a \$200 million Regional Pool fund. The Base City Allocation makes available a certain amount of funds to each city through a competitive process for each region within the County. The City of Newark's allocation was \$5,426,348. The City of Newark is part of the South County Regional Pool that was allocated approximately \$30 million.

On September 3, 2019, Alameda County issued an RFP for affordable housing projects in South County. The guidelines for funding required that cities provide a match that, at a minimum, equal the city planning and building fees (not including development impact fees). The Project Applicant notified City staff that they obtained the Property and plan to seek approval for a 79-unit senior affordable housing project. To meet the RFP guidelines, on October 10, 2019, City Council adopted Resolution No. 10,993 that committed \$2,765,000 to the Project that would be paid from the City's Affordable Housing Impact Fee Fund (see Attachment B). The resolution also authorized the assignment of \$2,713,174 of Newark's Base City Allocation for the Project.

On October 16, 2019, Eden Housing submitted the project proposal to Alameda County for consideration. Unfortunately, the Project was not selected for funding from the South County Regional Pool. The Project was not selected because it was in the preliminary stage and did not have the land use approvals or additional financing commitments necessary to be competitive at that time.

Although the Project was not selected for Regional Pool funding, the Project Applicant remained committed to a senior affordable housing project at the site. In 2020, the Project Applicant submitted a Preliminary Plan Review, a precursor to a formal request for entitlements where staff provided preliminary project comments to help streamline the forthcoming entitlement review process. The Project Applicant also revised their funding proposal for the City's consideration that included the City's 2019 commitment of \$2,765,000 from the Affordable Housing Impact Fee Fund and a request that the City authorize the assignment of the entire Base City Allocation of \$5,426,348, an increase of \$2,713,174.

Staff supported the request to use the entire Base City Allocation for the Project. On October 29, 2020, the Project Applicant submitted the entitlement application for the Project confirming their commitment to the Project. Additionally, under the terms of the Measure A1 funding program, each City was required to assign their Base City Allocation by December 2021 or risk the loss of those funds to other uses or projects.

The City Council approved Resolution No. 11,141 authorizing the assignment of \$5,426,348 of the Measure A1 Base City Allocation to the Project on November 12, 2020 (see Attachment C).

In response to the City's request to use the entire Measure A1 Base City Allocation for this Project, Alameda County authorized a permanent financing loan to the Project Applicant for this Project for up to \$5,426,348 in May 2021. No further action by the City is required for this loan.

DISCUSSION/ANALYSIS

With Alameda County's authorization to use the entire Measure A1 Base City Allocation for this Project, the remaining required action for the City relates to the loan of \$2,765,000 from the City's Affordable Housing Impact Fee Fund. Staff has prepared loan documents to memorialize the agreement between the City and the Project Applicant for the City Council's consideration.

Loan Terms

The agreement between the City and the Project Applicant, including the terms of the City loan to the project and the Project Applicant's current project delivery expectations, are memorialized through the loan documents in Attachment D through H of this report. The main terms of the City loan are as follows:

Loan Amount	\$2,765,000
Interest Rate	3%
Term	55 years from the date of the final certificate of occupancy
Repayment	The City would receive the prorata share of residual receipts (the excess of annual Operating Revenues over annual Operating Expenses for the property)
Affordability	The City's regulatory agreement, state density bonus, and California Tax Credit Allocation Committee ("TCAC") regulatory agreements will protect the affordability of 100% of the units (except for the manager's unit).
Affordability Levels	Approximately 25% of the regulated units will be restricted to extremely low-income households (15-30% of local area median income (AMI) and approximately 73% of the units will be restricted to very low-income households (30-50% of AMI). This mirrors the planned affordability of the overall project.
City Preference	To the extent permitted by law and funding regulations, the owner shall give a preference to applicants who live or work in Newark.
Covenants Run With The Land	The Regulatory Agreement and Density Bonus Agreement remain in place even if the property is transferred to another owner.

Subordination	It is standard practice for commercial lenders (construction and permanent lenders) to require local government lenders to subordinate their loans to the commercial loan, and sometimes affordability restrictions are also required to be subordinated. In the rare and unlikely event of foreclosure, the City's affordability restrictions would be eliminated if they are subordinate to the senior loan. The documents currently reflect the City's interest in avoiding subordination of the affordability restrictions and remaining in first position, but it is possible that this will have to be renegotiated in order to obtain a construction loan commitment. To support the financial viability of the Project, the City will commit to meeting and conferring with the successor owner (foreclosing entity) to discuss whether the rents of some units will need to increase to 60% AMI rents to protect the viability of the development. This draws upon (but does not mirror) language successfully used on a recent Alameda County project. As noted above, the affordability of the project will also be protected by a density bonus regulatory agreement which staff believes may not be subordinated and will survive foreclosure under state density bonus law.
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The loan documents are typical for affordable housing projects and formalize the exchange of commitments and expectations between the City and Project Applicant. The documents refer to Timber Street Investors, L.P. as the Developer and Owner. Following standard industry practice for affordable housing real estate projects, the Project Applicant has created a limited partnership, Timber Street Investors, L.P., to serve as the legal entity for this project. Eden Housing is the general partner for the limited partnership. A brief description of each document is provided below.

- **Affordable Housing Loan Agreement:** This agreement generally documents the agreement between the City and developer/borrower, including expectations about the housing project, expectations for Eden Housing's performance, required City approvals, the City's loan terms, conditions of disbursement, limitations on use of the property, security for the city's loan and the process in the event of default and remedies.
- **Regulatory Agreement and Declaration of Restrictive Covenants:** This agreement will be recorded against the property to document the owner's affordability covenants and other commitments. This agreement governs affordability restrictions, how rent is calculated, rent increases, over-income tenants, income certification and the operation and management of the project.
- **Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing:** The Deed of Trust protects the City's loan. It is recorded against the property and memorializes the borrower's pledge of property as security for the loan.
- **Promissory Note:** The Promissory Note documents the borrower's promise to

repay a certain amount of money at a specified time.

- **Density Bonus Agreement:** This agreement will be recorded against the property to document the owner's affordability covenants and other commitments that are required as a condition of receiving the density bonus, incentives and concessions, and development standard waivers and modifications.
- **Subordination Agreements:** The City may be required to enter into one or more Subordination Agreements with the Project lender and/or the County of Alameda, which will place the City's loan, and possibly the affordability restrictions set forth in the Regulatory Agreement and Declaration of Restrictive Covenants, in a junior lien position.

Next Steps

If approved by the City Council, the adopted resolution would authorize the City Manager to execute the Affordable Housing Loan Agreement and all related documents, which may include a subordination agreement with the Project lender and/or the County of Alameda, as well as escrow and title instructions and other closing documents, in a form approved by the City Attorney. City staff would then disburse funds to the Project Applicant pursuant to the Affordable Housing Loan Agreement and all related loan documents.

After construction closing, the Project Applicant will complete all outstanding remaining items, if any, required prior to the issuance of the associated building permit(s). Once the building permit(s) is issued, the Project Applicant will start the construction stage of the Project. The Project Applicant anticipates the project will complete construction by August 2026 and the building will be fully occupied by February 2027.

FISCAL IMPACT

The \$2,765,000 of the City's Affordable Housing Impact Fee Funds is reserved for the Project pursuant Resolution No. 10,993, which authorized the assignment of the funds to the Project. There is no impact on the City's General Fund or other program funds.

ENVIRONMENTAL/PLANNING COMMISSION REVIEW

The City's provision of financial assistance is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines, as the City has previously adopted a Mitigated Negative Declaration for the Project pursuant to CEQA (see Attachment A), and it can be seen with certainty that the approval of financial assistance will have no significant effect on the environment.

REVIEW AND APPROVAL

Prepared by - Carmelisa Lopez, Senior Planner

Reviewed by - Steven Turner, Community Development Director

Reviewed by - Krysten Lee, Finance Director

Reviewed by - Kristopher J. Kokotaylo, City Attorney

Approved by - David J. Benoun, City Manager

Attachments

Attachment A - Resolution No. 11273 - Project Approval

Attachment B - Resolution No. 10993 - City Funding Approval

Attachment C - Resolution No. 11141 - A1 Funding Approval

Attachment D - Affordable Housing Loan Agreement

Attachment E - Draft Promissory Note

Attachment F - Draft Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing

Attachment G - Draft Regulatory Agreement and Declaration of Restrictive Covenants

Attachment H - Draft Density Bonus Agreement and Declaration of Restrictive Covenants

Attachment I - Draft Resolution

ATTACHMENT A

RESOLUTION NO. 11,273

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK ADOPTING A MITIGATED NEGATIVE DECLARATION, AMENDING THE NEWARK GENERAL PLAN, APPROVING A CONDITIONAL USE PERMIT, AND DESIGN REVIEW TO ALLOW A 79-UNIT AFFORDABLE HOUSING DEVELOPMENT (“TIMBER STREET SENIOR HOUSING”) AT 37660 TIMBER STREET (APN 92A-2125-10-2)

WHEREAS, Timber Street Investors L.P. [a.k.a. Eden Housing] (the “Applicant”), filed with the City of Newark applications for a General Plan Amendment, an amendment to the Zoning Map, a Conditional Use Permit, and Design Review to construct a 79-unit affordable housing development for seniors at 37660 Timber Street (APN 92A-2125-10-2) (the “Property”) (the “Project” as illustrated in “*Exhibit A*”); and

WHEREAS, the Property was initially developed in 1960 with a corrugated metal-sided, approximate 13,500 square foot building. The building is supported by metal beams and is secured by a concrete slab-on-grade. The building is a single-story structure with mezzanines and divided into three tenant spaces including: a textile shop, an upholstery shop, and an automobile restoration company. Much of the Property is surfaced with either concrete or asphalt paving and has not been redeveloped since 1960; and

WHEREAS, the Property is an approximately one-acre parcel with a General Plan Land-Use designation of Medium Density Residential and is currently zoned RM: Medium Density Residential; and

WHEREAS, the Applicant seeks to amend the General Plan land-use map from Medium Density Residential to High Density Residential to allow for higher density multi-unit development; and

WHEREAS, the Applicant also seeks to amend the Zoning Map from RM: Residential Medium Density to RH: Residential High Density to conform with the requested General Plan amendment; and

WHEREAS, the Applicant seeks a Conditional Use Permit (“CUP”) to allow for a building height of more than 35 feet in accordance with Newark Municipal Code (“NMC”) §17.07.030; and

WHEREAS, the Applicant seeks Design Review approval, which per NMC §17.34.020 is required for all projects that require a permit for new construction, reconstruction, rehabilitation, alteration, or other improvements to the exterior of a structure, site, or a parking area; and

WHEREAS, the Applicant invokes California Government Code (“CGC”) §65915 – §65918 (“Density Bonus Law”) and the provisions of NMC Chapter 17.19. As a 100-percent affordable housing development under CGC §65915, et seq., the Project is eligible for a density bonus of up to 80-percent. Under the RH zoning district, the Property allows a maximum density of 59 units. The Project proposes 79 units, which equates to a density bonus of approximately 34-

percent; and

WHEREAS, GC §65915(d)(2)(D) grants four incentives or concessions for 100-percent affordable projects. In addition, GC §65915(e)(1) grants the waiver or reduction of an *unlimited* number of development standards that would have the effect of physically precluding the construction of the development with the density bonus and incentives/concessions requested; and

WHEREAS, the Applicant requests Incentives/Concessions for the minimum parking and setback requirements in the RH zoning district; and

WHEREAS, the Applicant requests a Waiver of the maximum lot coverage, minimum landscape area, and minimum open space requirements in the RH zoning district; and

WHEREAS, pursuant to and in accordance with the provisions of the California Environmental Quality Act (Public Resources Code §21000 et seq.; herein referred to as “CEQA”), the State of California Guidelines for the Implementation of the California Environmental Quality Act (commencing with §15000 of Title 14 of the California Code of Regulations; herein referred to as the “CEQA Guidelines”), the City is the “lead agency” for the preparation and consideration of environmental documents for the Project; and

WHEREAS, pursuant to CEQA Section 21080(c)(2), CEQA Guidelines Section 15070 and NMC §17.31.050, an Initial Study/Mitigated Negative Declaration (“IS/MND” and included as “*Exhibit B*”) was prepared for the Project. The IS/MND analyzed the requested entitlements, regulatory approvals, and operation of the Project itself, to determine if these actions would result in significant impacts to the environment; and

WHEREAS, the IS/MND did not identify any significant environmental impacts arising from the requested entitlements, regulatory approvals, and operation of the Project itself that could not be mitigated to a less than significant level; and the City reviewed the IS/MND, and based upon substantial evidence in the record, determined that all potentially significant effects of the project can and will be avoided or mitigated to a less than significant level by project revisions or other requirements imposed on the Project; and

WHEREAS, public notices announcing a 20-day public review period for the IS/MND, beginning on September 1, 2021 and ending on September 21, 2021 and the Planning Commission’s hearing of September 28, 2021 were sent to all property owners within a 500-foot radius of the Project Site and filed with the Alameda County Clerk’s Office, and all persons requesting notice pursuant to NMC §17.31.060, NMC §17.35.050, NMC§17.38.050, and NMC §17.39.050, and posted on the City’s website (<https://www.newark.org/departments/community-development/planning-division/projects-under-environmental-review>); and

WHEREAS, the Planning Commission held a public hearing on September 28, 2021, and fully considered the Project, IS/MND, entitlements, staff report, findings of fact, conditions of approval, oral and written public comments, and all other testimony and evidence presented; and

WHEREAS, the Planning Commission recommended approval of the proposed Project to the City Council by a 5-0 vote; and

WHEREAS, pursuant to NMC §17.31.060 and pursuant to State law, the City published a public hearing notice in the Tri City Voice on October 12, 2021 and mailed the public hearing notice as required for a public hearing before the City Council at, or after, 7:00 p.m. on October 28, 2021; and

WHEREAS, the City Council fully considered the Project application, Initial Study, entitlements, staff report, findings of fact, conditions of approval, public comments, and all other testimony and evidence presented at the public hearing; and

WHEREAS, the City Council finds that the staff report and standards for approval reflect the City's independent judgement and analysis of the Project; and

WHEREAS, based upon a thorough review of the Project and the IS/MND dated August 2021, and the record as a whole, the City Council does find and determine that the IS/MND has been prepared in compliance with the requirements of CEQA, and the CEQA Guidelines; and serves as the appropriate environmental documentation for the Project, based on the Statement of CEQA Findings of Fact and accompanying Mitigation Monitoring Reporting and Program ("MMRP") provided in "***Exhibit C***;" and

WHEREAS, the City Council finds that the Project does satisfy the requisite findings of fact necessary for approval as further explained in the staff report and the findings of fact associated with this Resolution, as identified in "***Exhibit D***" attached to this Resolution; and

WHEREAS, the City's General Plan and the Zoning Code are incorporated herein by reference and are available for review at City Hall during normal business hours and on the City's website.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark as follows:

SECTION 1. RECORD

The Record of Proceedings ("Record") upon which the City Council bases its recommendation includes, but is not limited to: 1) the staff reports, City files and records and other documents, prepared for and/or submitted to the City relating to the IS/MND, the Project, the Project's associated development entitlement requests; 2) all designs, plans, studies, data and correspondence submitted by the City in connection with the IS/MND, the Project, and the Project's associated development entitlement requests, 3) the IS/MND and the appendices and technical reports cited in and/or relied upon in preparing the IS/MND; 4) the evidence, facts, findings and other determinations set forth in this resolution; 5) the City of Newark General Plan and its related EIR, and the NMC; 6) all documentary and oral evidence received at public workshops, meetings, and hearings, the Project, and the Project's associated development entitlement requests; 7) all other matters of common knowledge to the City decision maker including, but not limited to, City, state, and federal laws, policies, rules, regulations, reports, records and projections related to development within the City of Newark and its surrounding areas.

The location and custodian of the records is the City of Newark Community Development Department, 37101 Newark Boulevard, Newark, California, 94560.

SECTION 2. CEQA FINDINGS

Based on the findings and determinations set forth in the foregoing recitals and the evidence in the record, including the Initial Study, the City Council finds that all significant environmental effects of the Project and its associated development entitlement actions have been reduced to a less-than-significant level in that all significant environmental effects have been avoided or mitigated as set forth in the IS/MND. Based upon the foregoing, the City Council finds and determines, on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the Project and its associated actions will have a significant effect upon the environment and that the IS/MND reflects the lead agency's independent judgment and analysis.

SECTION 3. MITIGATION, MONITORING, AND REPORTING PROGRAM

The City Council adopts the mitigation measures set forth in the IS/MND and its accompanying MMRP, set forth in "*Exhibit C*," pursuant to Public Resources Code §21081.6, which is a program designed to ensure compliance with the mitigation measures imposed to avoid or substantially lessen the significant effects identified in the IS/MND and said mitigation measures are described in the MMRP included therein and incorporated herein by reference.

SECTION 4. PROJECT FINDINGS

That the City Council does hereby make the necessary findings and determinations required by NMC §17.38.050, NMC §17.39.080, §17.35.060, and NMC §17.34.060 to recommend approval of the requested General Plan Amendment, Zoning Map Amendment, Conditional Use Permit, and Design Review, respectively, for the Project at 37660 Timber Street, as further explained in the staff report and findings of fact for approval as set forth in "*Exhibit D*" attached hereto and incorporated herein by this reference.

SECTION 5. CONDITIONS OF APPROVAL

Based on the findings and determinations, the City Council approves the General Plan Amendment, Zoning Map Amendment, Conditional Use Permit, and Design Review, for GP-21-06; RZ-21-07; U-21-08; DR-21-09; allowing for a 79-unit affordable housing development for seniors at 37660 Timber Street, subject to the Conditions of Approval, as further set forth in "*Exhibit E*" attached hereto and incorporated herein by this reference.

- | | |
|------------|---|
| Exhibit A. | Project Plans |
| Exhibit B. | IS/MND & Appendices |
| Exhibit C. | Statement of CEQA Findings & Facts and MMRP |
| Exhibit D. | Project Findings of Fact |
| Exhibit E. | Conditions of Approval |

I HEREBY CERTIFY the foregoing resolution was introduced at a regular meeting of the City Council of the City of Newark held on October 28, 2021, by Vice Mayor Bucci who moved its adoption and passage, which motion was carried after being duly seconded, and passed by the following vote:

AYES: Council Members Freitas, Collazo, Hannon, Vice Mayor Bucci and Mayor Nagy

NOES: None

ABSENT: None

SECONDED: Council Member Collazo

APPROVED:


s/ALAN L. NAGY
Mayor

ATTEST:


s/SHEILA HARRINGTON
City Clerk

APPROVED AS TO FORM:


s/KRISTOPHER J. KOKOTAYLO
Interim City Attorney

ATTACHMENT B

RESOLUTION NO. 10,993

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE ASSIGNMENT OF: (1) UP TO \$2,713,174 OF MEASURE A1 BASE CITY ALLOCATION AND (2) \$2,765,000 OF CITY OF NEWARK AFFORDABLE HOUSING FUNDS TO EDEN HOUSING FOR DEVELOPMENT OF A SENIOR AFFORDABLE HOUSING DEVELOPMENT LOCATED AT 37660 TIMBER STREET

WHEREAS, in November 2016, Alameda County voters passed a \$580 million Countywide Housing Bond (Measure A1) which will fund countywide affordable housing development programs; and

WHEREAS, \$425 million of the Countywide Housing Bond is allocated to the Rental Housing Development fund to assist in the creation and preservation of affordable rental housing for vulnerable populations; and of that \$225 million is allocated as "Base City Allocation" and \$200 million is allocated as "Regional Pool Allocation" funding to Alameda County jurisdictions based on a geographical allocation formula; and

WHEREAS, the City of Newark's Base City Allocation is approximately \$5.5 million and the Regional Pool Allocation for South County, which is shared between Fremont, Union City and Newark, is approximately \$30 million; and

WHEREAS, \$5,426,348 of the Base City Allocation for Newark and approximately \$30 million of the South County Regional Pool remain available to be assigned to future affordable rental projects; and

WHEREAS, Eden Housing is in contract to purchase a site at 37660 Timber Street and plans to seek approvals for a 79-unit senior affordable housing project; and

WHEREAS, Eden Housing, developer of the Timber Street project, is seeking \$2,713,174 of the Base City Allocation and \$6,800,000 of South County Regional Pool Allocation; and

WHEREAS, the application for the South County Regional Pool Allocation is due October 15, 2019; and

WHEREAS, Eden Housing is seeking an assignment of \$2,765,000 million from the City of Newark Affordable Housing Fund as match funds to leverage Base City Allocation and South County Regional Pool funds to help support construction of the project; and

WHEREAS, local housing funds requested by Eden Housing in the amount herein are available to provide match funds to the project to make the project eligible for the Base City Allocation and South County Regional Pool Allocation.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City Of Newark hereby:

1. Authorizes the assignment of \$2,765,000 from the City of Newark Affordable Housing Fund (Fund 403) to the Timber Street project proposed by Eden Housing; and

2. Authorizes the assignment of \$2,713,174 of the Base City Allocation to the Timber Street project proposed by Eden Housing; and

3. Authorizes the City Manager, or his designee, to submit to the Director of the Alameda County Housing and Community Development the recommendation of assignments of Base City Allocation funds or other administrative documents as may be required for the affordable housing project as described above.

I HEREBY CERTIFY the foregoing resolution was introduced at a regular meeting of the City Council of the City of Newark held on October 10, 2019, by Council Member Hannon who moved its adoption and passage, which motion was carried after being duly seconded, and passed by the following vote:

AYES: Council Members Bucci, Freitas, Hannon, Vice Mayor Collazo and Mayor Nagy

NOES: None

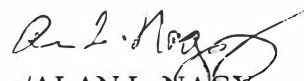
ABSENT: None

SECONDED: Vice Mayor Collazo

ATTEST:


s/SHEILA HARRINGTON
City Clerk

APPROVED:


s/ALAN L. NAGY
Mayor

APPROVED AS TO FORM:


s/KRISTOPHER J. KOKOTAYLO
Interim City Attorney

ATTACHMENT C

RESOLUTION NO. 11,141

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE ASSIGNMENT OF: (1) UP TO \$5,426,348 OF MEASURE A1 BASE CITY ALLOCATION TO EDEN HOUSING FOR DEVELOPMENT OF A SENIOR AFFORDABLE HOUSING DEVELOPMENT LOCATED AT 37660 TIMBER STREET

WHEREAS, in November 2016, Alameda County voters passed a \$580 million Countywide Housing Bond (Measure A1) which will fund countywide affordable housing development programs; and

WHEREAS, \$425 million of the Countywide Housing Bond is allocated to the Rental Housing Development fund to assist in the creation and preservation of affordable rental housing for vulnerable populations; and of that \$225 million is allocated as "Base City Allocation" and \$200 million is allocated as "Regional Pool Allocation" funding to Alameda County jurisdictions based on a geographical allocation formula; and

WHEREAS, the City of Newark's Base City Allocation is approximately \$5.4 million and the Regional Pool Allocation for South County, which is shared between Fremont, Union City and Newark, was approximately \$30 million; and

WHEREAS, \$5,426,348 of the Base City Allocation for Newark remain available to be assigned to future affordable rental projects; and

WHEREAS, Eden Housing has obtained a site at 37660 Timber Street and plans to seek approvals for a 79-unit senior affordable housing project; and

WHEREAS, on October 10, 2019 the City Council approved Resolution 10,993 authorizing the assignment of: (1) up to \$2,713,174 of Measure A1 Base City Allocation and (2) \$2,765,000 of City of Newark affordable housing funds to Eden Housing for development of a senior affordable housing development located at 37660 Timber Street; and

WHEREAS, Eden Housing's application for the South County Regional Pool Allocation was not selected for funding; and

WHEREAS, Eden Housing is currently seeking \$5,426,348 of the Base City Allocation; and

WHEREAS, local housing funds previously assigned to Eden Housing provide match funds to the project to make the project eligible for the Base City Allocation.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City Of Newark hereby:

1. Authorizes the assignment of \$5,426,348 of the Base City Allocation to the Timber Street project proposed by Eden Housing; and

2. Authorizes the City Manager, or his designee, to submit to the Director of the Alameda County Housing and Community Development the recommendation of assignments of Base City Allocation funds or other administrative documents as may be required for the affordable housing project as described above.

I HEREBY CERTIFY the foregoing resolution was introduced at a regular meeting of the City Council of the City of Newark held on November 12, 2020, by Council Member Bucci who moved its adoption and passage, which motion was carried after being duly seconded, and passed by the following vote:

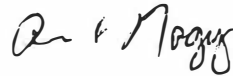
AYES: Council Members Bucci, Collazo, Hannon, Vice Mayor Freitas and Mayor Nagy

NOES: None

ABSENT: None

SECONDED: Council Member Collazo

APPROVED:



s/ALAN L. NAGY
Mayor

ATTEST:



s/SHEILA HARRINGTON
City Clerk

APPROVED AS TO FORM:



s/KRISTOPHER J. KOKOTAYLO
Interim City Attorney

ATTACHMENT D

AFFORDABLE HOUSING LOAN AGREEMENT

by and between

THE CITY OF NEWARK

and

TIMBER STREET INVESTORS, L.P.

(Timber Senior Apartments)

**AFFORDABLE HOUSING LOAN AGREEMENT
(Timber Street Senior Apartments)**

THIS AFFORDABLE HOUSING LOAN AGREEMENT (this “**Agreement**”) is entered into effective as of _____, 2024 (“**Effective Date**”) by and between the City of Newark, a California municipal corporation (“**City**”), and Timber Street Investors, L.P., a California limited partnership (“**Borrower**”). City and Borrower are hereinafter collectively referred to as the “**Parties**.”

RECITALS

A. Borrower is the owner of that certain real property located at 37660 Timber Street in the City of Newark (the “**Property**”). The Property is described in the Legal Description attached hereto as Exhibit A.

B. The City and the Borrower desire for the Borrower to develop a multifamily rental housing development for seniors on the Property with not less than seventy-nine (79) apartment units, which would be subject to long-term affordability requirements (the “**Development**”). To effectuate this purpose, the City desires to provide a loan to Borrower (the “**City Loan**”) pursuant to the terms and conditions set forth in this Agreement.

C. On October 11, 2019, the City Council approved Resolution 10,993 approving the City Loan, and the designation of the Development as the recipient of the City’s Measure A1 bond allocation. On November 12, 2020, the City Council approved Resolution 11,141 approving an increase in the amount of the City’s Measure A1 bond allocation to be made available to the Development.

D. Borrower has represented to the City, and the City has determined that the Borrower has the necessary expertise, skill and ability to carry out the commitments set forth in this Agreement. The City has further determined that this Agreement is in the best interests of the City, and will materially contribute to the improvement of the City by improving the supply of affordable housing therein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

**ARTICLE I
DEFINITIONS**

1. Definitions. The following terms shall have the meanings set forth in the Sections referenced below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

(a) "Agreement" means this Affordable Housing Loan Agreement, including the attached Exhibits and all subsequent amendments to this Agreement and implementation agreements.

(b) "Borrower" means Timber Street Investors, L.P., a California limited partnership, and its permitted successors and assigns as set forth herein.

(c) "Certificate of Completion" means the certificate to be provided by City to Borrower in accordance with Section 3.12, in the form attached hereto as Exhibit H.

(d) "City" means the City of Newark, a California municipal corporation.

(e) "City Deed of Trust" means the deed of trust that will encumber the Borrower's interest in the Property to secure repayment of the City Promissory Note, and will be recorded against the Property at the Construction Loan Closing, substantially in the form attached hereto as Exhibit D and incorporated herein.

(f) "City Documents" means, collectively, this Agreement, the City Promissory Note, the City Deed of Trust, the City Regulatory Agreement, and all other documents required to be executed by the Borrower in connection with the transaction contemplated by this Agreement.

(g) "City Loan" means the loan from the City to the Borrower in the amount of Two Million Seven Hundred Sixty-Five Thousand Dollars (\$2,765,000), evidenced by the City Promissory Note.

(h) "City Manager" means the City Manager of the City.

(i) "City Promissory Note" means the promissory note that will evidence the Borrower's obligation to repay the City Loan, substantially in the form attached hereto as Exhibit C and incorporated herein.

(j) "City Prorata Percentage" has the meaning set forth in Section 4.8(b).

(k) "City Regulatory Agreement" means the regulatory agreement and declaration of restrictive covenants to be executed by the Parties, and recorded against the Property at the Construction Loan Closing, substantially in the form attached hereto as Exhibit G and incorporated herein.

(l) "Conditions of Approval" has the meaning set forth in Section 3.1.

(m) "Construction Loan Closing" means the closing of the Borrower's construction financing for the construction of the Development.

(n) "Construction Plans" has the meaning set forth in Section 3.8.

(o) "Council Members" means the members of the City Council of the City.

(p) "County" means the County of Alameda, California.

- (q) "Development" means the Property and the Improvements.
- (r) "Environmental Laws" has the meaning set forth in Section 9.4.
- (s) "Event of Borrower Default" has the meaning set forth in Section 10.1.
- (t) "Event of City Default" has the meaning set forth in Section 10.2.
- (u) "Financing Plan" means the Borrower's Financing Plan for financing the construction of the Development in the form attached hereto as Exhibit B and incorporated herein.
- (v) "Hazardous Materials" has the meaning set forth in Section 9.3.
- (w) "Improvements" means: (i) seventy-nine (79) apartment units, including one (1) manager's unit, to be constructed in accordance with this Agreement, and (ii) related onsite improvements, parking, landscaping and other onsite improvements located or to be located on the Property, and all onsite and offsite improvements required by the City, all as more particularly set forth in the Scope of Development attached as Exhibit F.
- (x) "Indemnitees" means the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors.
- (y) "Investor" means a tax credit investor to be identified by written notice from Borrower to City.
- (z) "Parties" means the City and the Borrower. "Party" means either the City or the Borrower.
- (aa) "Partnership" means the Borrower's limited partnership which was formed to own, construct, and operate the Development.
- (bb) "Partnership Agreement" means the limited partnership agreement of the Partnership, as it may be amended and restated.
- (cc) "Prevailing Wage Law" has the meaning set forth in Section 3.14.
- (dd) "Property" means the real property to be owned, developed and operated by the Borrower pursuant to this Agreement, which real property is more particularly described in the Legal Description attached hereto as Exhibit A which is incorporated herein.
- (ee) "Residual Receipts" means the excess of annual Operating Revenues over annual Operating Expenses for the Development. "Operating Revenues" means all income derived from the Development, and includes, without limitation: (i) rents; (ii) rent subsidy payments received on behalf of tenants; and (iii) receipts from laundry, parking, vending, or other services in which a fee is charged. "Operating Expenses" means all direct costs and expenses necessary to operate the Development including: (1) debt service on any loans secured by the Property as described in the Financing Plan or otherwise approved by City, provided that such loans have been used to develop or improve the Development (or to refinance loans used for development or

improvement of the Development); (2) resident service program and property management fees and costs; (3) property taxes and assessments (if any); (4) insurance premiums; (5) maintenance and repair; (6) reasonable payments to reserves for operating contingencies, replacement of capital items, and other reserve uses in such amounts as are required by the loans described in paragraph (1); (7) deferred developer fee to the Borrower or its affiliate for development services for the Development in such amount as set forth in the Financing Plan, as such amount may be updated by the final cost certification upon completion of construction; (8) credit adjuster payments, limited partner loans, and developer loans, all as set forth in the Partnership Agreement; and (9) payments for partnership management fee, asset management fees, and other fees payable to a partner of the Partnership pursuant to the Partnership Agreement, in such amounts as are set forth in the Financing Plan, including any annual inflationary increases included in the Financing Plan.

(ff) "Schedule of Performance" means the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve the construction of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit E.

(gg) "Scope of Development" means the description of the Development which is attached to this Agreement as Exhibit F.

(hh) "Term" means the term of this Agreement, which shall commence on the Effective Date and shall continue until expiration or termination of the City Regulatory Agreement, except for such provisions hereof which survive the expiration or termination of the City Regulatory Agreement.

(ii) "Title Company" means WFG Title Company.

(jj) "Title Reports" means the preliminary title reports for the Property prepared by the Title Company, as they may be updated from time to time.

(kk) "Transfer" has the meaning set forth in Section 7.2.

ARTICLE II REPRESENTATIONS; EFFECTIVE DATE AND TERM

2.1 Borrower's Representations. Borrower represents and warrants to City as follows, and Borrower covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 not to be true, Borrower shall immediately give written notice of such fact or condition to City. Borrower acknowledges that City shall rely upon Borrower's representations made herein notwithstanding any investigation made by or on behalf of City.

(i) Authority. Borrower is a limited partnership duly formed and in good standing under the laws of the State of California. Borrower has the full right, power and authority to undertake all obligations of Borrower as provided herein, and Borrower's execution, performance and delivery of this Agreement and the City Documents have been duly authorized by all requisite actions.

(ii) No Conflict. Borrower's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Borrower is a party or by which it is bound.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of Borrower to perform its obligations under this Agreement.

(iv) No Borrower Bankruptcy. Borrower is not the subject of a bankruptcy or insolvency proceeding.

2.2 City Representations. City represents and warrants to Borrower as follows, and City covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.2 not to be true, City shall immediately give written notice of such fact or condition to Borrower. City acknowledges that Borrower shall rely upon City's representations made herein notwithstanding any investigation made by or on behalf of Borrower.

(i) Authority. City is a municipal corporation duly organized and in good standing under the laws of the State of California. City has the full right, power and authority to undertake all of the respective obligations as provided herein, and the execution, performance and delivery of this Agreement by City has been duly authorized by all requisite actions on the part of the City.

(ii) No Conflict. City's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which City is a party or by which it is bound.

(iii) No Litigation or Other Proceeding. No litigation or other proceeding (whether administrative or otherwise) is outstanding or has been threatened which would prevent, hinder or delay the ability of City to perform its obligations under this Agreement.

(iv) No Bankruptcy. City is not the subject of a bankruptcy or insolvency proceeding.

2.3 Effective Date. The representations and warranties of Borrower and City hereunder shall be effective as of the Effective Date.

ARTICLE III DEVELOPMENT OF THE PROJECT

3.1 Scope of Development. Borrower shall develop the Development on the Property substantially in accordance with the terms and conditions of this Agreement, the Scope of Development attached hereto as Exhibit F (subject to the last sentence of this Section 3.1), and in compliance with the terms and conditions of all approvals, entitlements and permits that the City

or any other governmental body or agency with jurisdiction over the Development or the Property has granted or issued as of the date hereof or may hereafter grant or issue in connection with development of the Development, including without limitation, all mitigation measures imposed in connection with environmental review of the Property and the Development and all conditions of approval imposed in connection with any entitlements, approvals or permits (all of the foregoing approvals, entitlements, permits, mitigation measures and conditions of approval are hereafter collectively referred to as the “**Conditions of Approval**”).

3.2 Development Approvals. Borrower acknowledges and agrees that execution of this Agreement by City does not constitute approval for the purpose of the issuance of building permits for the construction of the Development, does not limit in any manner the discretion of City in such approval process, and does not relieve Borrower from the obligation to obtain all necessary entitlements, approvals, and permits for the construction of the Development, including without limitation, the approval of architectural plans, and the completion of any required environmental review of the Development pursuant to CEQA.

Borrower covenants that it shall: (i) obtain all necessary permits and approvals which may be required by City and any other governmental agency having jurisdiction over the construction of the Development or the development of the Property, (ii) comply with all Conditions of Approval, (iii) comply with all mitigation measures, if any, imposed in connection with any environmental review of the Property or the Development, and (iv) not commence construction of the Development prior to issuance of required permits.

3.3 Fees. Borrower shall be solely responsible for, and shall promptly pay when due, all customary and usual fees and charges of City in connection with obtaining building permits and other approvals for the Development, including without limitation, those related to the processing and consideration of amendments, if any, to the current entitlements, any related approvals and permits, environmental review, architectural review, historic review, and any subsequent approvals for the Development or the development of the Property.

3.4 Schedule of Performance. Borrower shall commence and complete construction of the Development and shall satisfy all other obligations of Borrower under this Agreement within the time periods set forth herein and in the Schedule of Performance attached hereto as Exhibit E, as such time periods may be extended upon the mutual written consent of the Parties. Borrower’s failure to commence or complete construction of the Development in accordance with the foregoing schedule as such may be amended by the written consent of the Parties shall constitute a default hereunder. The Borrower shall provide quarterly progress reports to the City regarding the status of the construction of the Development. The Borrower shall provide the reports and information required under this Section until the Development is fully leased up.

3.5 Cost of Acquisition and Construction. Except as expressly set forth herein, Borrower shall be solely responsible for all direct and indirect costs and expenses incurred in connection with the design, development and construction of the Development and compliance with the Conditions of Approval, including without limitation the installation and construction of all off-site or on-site improvements required by City in connection therewith, and none of

such costs and expenses shall be the obligation of the City.

3.6 Rights of Access; Books and Records. For the purpose of ensuring that the Development is developed in compliance with this Agreement, Borrower shall permit representatives of the City to enter upon the Property to inspect the Development following 48 hours' written notice (except in the case of emergency in which case such notice as may be practical under the circumstances shall be provided). Upon request, Borrower shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of Borrower necessary to determine Borrower's compliance with the terms of this Agreement.

3.7 City Disclaimer. Borrower acknowledges that the City is under no obligation, and City neither undertakes or assumes any responsibility or duty to Borrower or to any third party, to in any manner review, supervise, or inspect the progress of construction or the operation of the Development. Borrower and all third parties shall rely entirely upon its or their own supervision and inspection in determining the quality and suitability of the materials and work, the performance of architects, subcontractors, and material suppliers, and all other matters relating to the construction and operation of the Development. Any review or inspection undertaken by the City is solely for the purpose of determining whether Borrower is properly discharging its obligations under this Agreement, and shall not be relied upon by Borrower or any third party as a warranty or representation by the City as to the quality of the design or construction of the Development and other improvements constructed on the Property (collectively, the "**Improvements**") or otherwise.

3.8 Construction Plans. Borrower has submitted to City detailed construction plans for the Development (the "**Construction Plans**"), which have been approved by the City. As used herein "**Construction Plans**" means all construction documents upon which Borrower and Borrower's contractors shall rely in the construction of the Development and development of the Property and shall include, without limitation, final architectural drawings and materials specifications. Such approval of the Construction Plans by the City shall not relieve Borrower's obligation to obtain any and all approvals and permits required by the City or the City Building Division.

3.9 Construction Pursuant to Plans. Borrower shall construct and develop the Development in accordance with the approved Construction Plans, the Conditions of Approval, and all other permits and approvals granted by the City pertaining to development of the Development. Borrower shall comply with all directions, rules and regulations of any fire marshal, health officer, building inspector or other officer of every governmental agency having jurisdiction over the Property or the Development. Each element of the work shall proceed only after procurement of each permit, license or other authorization that may be required for such element by any governmental agency having jurisdiction. All design and construction work on the Development shall be performed by licensed contractors, engineers or architects, as applicable.

3.10 Change in Construction Plans. If Borrower desires to make any material change in the approved Construction Plans, Borrower shall submit the proposed change in writing to the City for its written approval, which approval shall not be unreasonably withheld or delayed if the

Construction Plans, as modified by any proposed change, conform to the requirements of this Agreement and any approvals issued by City after the Effective Date. The Parties shall meet in good faith to discuss the changes if the City propose to reject the changes. Any change in the Construction Plans required in order to comply with applicable codes shall be deemed approved, so long as such change does not substantially nor materially change the design, function, use, or amenities of the Development as shown on the latest approved Construction Plans. For purposes of this section, a “material change” means a change order that would result in a change of costs of a single item of work of Seventy-Five Thousand Dollars (\$75,000) or any set of changes in the work the costs of which cumulatively exceeds One Hundred Fifty Thousand Dollars (\$150,000) or more.

3.11 Defects in Plans. City shall not be responsible to Borrower or to any third party for any defect in the Construction Plans or for any structural or other defect in any work done pursuant to the Construction Plans. Borrower shall indemnify, defend (with counsel approved by City, such approval not to be unreasonably withheld) and hold harmless the Indemnitees from and against all Claims arising out of, or relating to, or alleged to arise from or relate to defects in the Construction Plans or defects in any work done pursuant to the Construction Plans whether or not any insurance policies shall have been determined to be applicable to any such Claims. Borrower’s indemnification obligations set forth in this Section shall survive the expiration or earlier termination of this Agreement and the recordation of a Certificate of Completion. It is further agreed that City does not, and shall not, waive any rights against Borrower which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Borrower’s deposit with City of any of the insurance policies described in this Agreement. Borrower’s indemnification obligations pursuant to this Section shall not extend to Claims arising due to the gross negligence or willful misconduct of the Indemnitees.

3.12 Certificate of Completion for Development. Promptly after completion of construction of the Development, issuance of a final Certificate of Occupancy (or other applicable final City Building Department approval) by the City, and the written request of Borrower, the City will provide an instrument (“**Certificate of Completion**”) so certifying. The Certificate of Completion shall be conclusive evidence that Borrower has satisfied its obligations regarding the construction and development of the Property.

The Certificate of Completion shall be issued substantially in the form attached hereto as Exhibit H, and at Borrower’s option, shall be recorded in the official records of Alameda County. The Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Borrower to any holder of a deed of trust or mortgage securing money loaned to finance the Development or any part thereof and shall not be deemed a notice of completion under the California Civil Code, nor shall such Certificate provide evidence that Borrower has satisfied any obligation that survives the expiration of this Agreement, including without limitation, Borrower’s obligations pursuant to the City Regulatory Agreement.

3.13 Equal Opportunity. During the construction of the Development, there shall be no discrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, reproductive health decisionmaking, medical condition, genetic

information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person in the hiring, firing, promoting or demoting of any person engaged in construction of the Development, and Borrower shall direct its contractors and subcontractors to refrain from discrimination on such basis.

3.14 Prevailing Wage Requirements. If and to the extent required by state and federal prevailing wage laws, Borrower and its contractors and agents shall pay prevailing wages for all construction, alteration, demolition, installation, and repair work performed with respect to the construction of the Development as required herein and described in the Scope of Development, in compliance with Labor Code Section 1720, et seq., and its implementing regulations, and perform all other obligations including the employment of apprentices in compliance with Labor Code Section 1770, et seq., keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and fulfilling all duties under the Civil Code or any other provision of law pertaining to providing, obtaining and maintaining all bonds to secure the payment of wages to workers required to be paid prevailing wages, all as may be amended from time to time (the “**Prevailing Wage Law**”). City does not make any representations to Borrower as to the applicability of the Prevailing Wage Law to the construction of the Development, and Borrower agrees and acknowledges that it is not relying on any representations of City in making its determination as to the applicability of the Prevailing Wage Law. It is agreed by the Parties that, in connection with the construction of the Development, as between City and Borrower, Borrower shall be solely responsible for determining whether the Prevailing Wage Law is applicable to the construction of the Development, and Borrower shall bear all risks of payment or non-payment of prevailing wages under the Prevailing Wage Law and/or the implementation of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. For purposes of this paragraph, “construction” includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. The Borrower shall periodically, upon request of the City, certify to the City that, to its knowledge, it is in compliance with the requirements of this paragraph.

Borrower shall indemnify, defend (with counsel approved by City, such approval not to be unreasonably withheld) and hold the City, and its respective elected and appointed officers, officials, employees, agents, consultants, and contractors (collectively, the “**Indemnitees**”), harmless from and against all liability, loss, cost, expense (including without limitation attorneys’ fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively “**Claims**”) which directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Development, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of Borrower related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall

have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Borrower which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Borrower's deposit with City of any of the insurance policies described in this Agreement. The provisions of this Section 3.14 shall survive the expiration or earlier termination of this Agreement and the issuance of a Certificate of Completion for the Development. Borrower's indemnification obligations under this Section 3.14 shall not apply to any Claim which arises as a result of an Indemnitee's gross negligence or willful misconduct.

3.15 Compliance with Laws. Borrower shall carry out and shall cause its contractors to carry out the construction of the Development in conformity with all applicable federal, state and local laws, rules, ordinances and regulations, including without limitation, all applicable federal and state labor laws and standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

3.16 Liens and Stop Notices. Until the expiration of the term of the City Regulatory Agreement and full repayment of the City Loan, Borrower shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Borrower. If a claim of a lien or stop notice is given or recorded affecting the Development, subject to Borrower's right to diligently and in good faith contest such lien or stop notice within a reasonable period of time, Borrower shall within thirty (30) days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount or provide other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged.

3.17 Right of City to Satisfy Liens on the Property. If Borrower fails to satisfy or discharge any lien or stop notice on the Property pursuant to Section 3.16 above, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Borrower's expense and without further notice to Borrower. In such event Borrower shall be liable for and shall immediately reimburse City for such paid lien or stop notice. Alternatively, the City may require Borrower to immediately deposit with City the amount necessary to satisfy such lien or claim pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Borrower. Borrower shall file a valid notice of cessation or notice of completion upon cessation of construction of the Development for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property or the Development. Subject to Borrower's rights hereunder, the City may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Property and the Development.

ARTICLE IV CITY FINANCIAL ASSISTANCE

4.1 City Loan. The City shall provide a loan in the amount of Two Million Seven Hundred Sixty-Five Thousand Dollars (\$2,765,000) (the “**City Loan**”) to Borrower upon the terms and conditions and for the purposes set forth in this Agreement. The City Loan shall be evidenced by a promissory note (the “**City Promissory Note**”) substantially in the form attached hereto as Exhibit C, and shall be secured by a deed of trust (the “**City Deed of Trust**”) executed by Borrower as Trustor substantially in the form attached hereto as Exhibit D and recorded against the Property and subordinate only to such liens as City shall approve in writing. The outstanding principal balance of the Note will accrue simple interest at the rate of three percent (3%) per annum.

Provided that Borrower has complied with all conditions precedent to disbursement of the City Loan set forth in Section 4.6, the proceeds of the City Loan (“**City Loan Proceeds**”) shall be disbursed in accordance with Section 4.2 hereof.

4.2 Use and Disbursement of Proceeds. The City Loan Proceeds shall be used to pay for the cost of construction of the Development, and development fees and other costs related to the construction of the Development, in accordance with the Project Budget included in the Financing Plan, to be funded through monthly City Loan draws after the Construction Loan Closing. City Loan Proceeds shall not be used or disbursed for developer fee, overhead or profit.

4.3 Security. As security for repayment of the City Promissory Note, Borrower shall execute the City Deed of Trust, pursuant to which City shall be provided a lien against the Property and the Improvements. The City Deed of Trust shall be recorded in the Official Records concurrently with the Construction Loan Closing. The City Deed of Trust may be subordinated to such construction and permanent financing which are designated as senior loans in the Financing Plan, pursuant to any subordination agreements agreed upon by the City and senior lenders, as applicable.

4.4 Title Policy. The Title Company shall issue a lender’s policy of title insurance naming City as the insured, in a policy amount not less than the principal amount of the City Loan, showing Borrower as holding fee title to the Property and insuring the City Deed of Trust to be a valid lien on the Property subject only to exceptions approved by City (the “**City Title Policy**”), together with such endorsements as are required by the City. The Borrower shall be responsible for the cost of the City Title Policy.

4.5 Financing Plan. As set forth in the attached Exhibit B, Borrower has provided City with a financing plan for the Development (“**Financing Plan**”) which describes (i) the estimated costs of development, including predevelopment costs and hard and soft construction costs, (ii) an operating pro forma which describes projected revenue and expenses for the Development, and (iii) identification of sources of construction and permanent financing.

4.6 Conditions to Disbursement of City Loan. City's obligation to fund the City Loan for the purposes of Section 4.2(a) above is conditioned upon the satisfaction of all of the following conditions:

(a) Borrower's delivery to City of each of the following: (i) certificate of good standing, certified by the Secretary of State indicating that Borrower is properly organized, in good standing, and authorized to do business in the State of California, and (ii) a certified resolution indicating that Borrower has authorized to consummate this transaction and that the persons executing this Agreement and the City Documents on Borrower's behalf have been duly authorized to do so.

(b) Borrower's delivery to the City of evidence of insurance coverage in accordance with the requirements set forth in Section 11.2.

(c) Borrower's delivery of the City Promissory Note, City Deed of Trust and City Regulatory Agreement, each fully executed and acknowledged as applicable.

(d) Recordation of the City Regulatory Agreement and the City Deed of Trust in the Official Records simultaneously with the disbursement of the first City Loan Proceeds.

(e) The Title Company's issuance of the City Title Policy, together with such endorsements as are required by the City, in accordance with Section 4.4 hereof.

(f) There exists no Event of Borrower Default nor any act, failure, omission or condition that would constitute an Event of Borrower Default under this Agreement.

(g) The City's receipt of a written draw request for disbursement of funds from Borrower specifying the amount and use of the requested funds, setting forth the proposed uses of funds consistent with the Financing Plan, the amount of funds needed, and, where applicable, a copy of the bill or invoice covering a cost incurred or to be incurred, and City's inspection of the work and determination that the work for which payment is requested has been performed in compliance with the requirements of this Agreement.

(h) The Borrower has submitted to the City all applications and materials for the permits and approvals necessary for the construction of any Improvements which are proposed to be funded through the City Loan, the application fees therefor have been paid to the City, and such applications shall have been approved by the City

(i) The proposed use of the funds is in accordance with the Project Budget in the Financing Plan.

4.7 No Obligation to Disburse Proceeds Upon Default. Notwithstanding any other provision of this Agreement, the City shall have no obligation to disburse or authorize the disbursement of any portion of the City Loan Proceeds following:

- (i) the failure of any of Borrower's representations and warranties made in this Agreement or in connection with the City Loan to be true and correct as of the date made in all material respects;
- (ii) the termination of this Agreement by mutual agreement of the Parties;
- (iii) the conditions to disbursement of the City Loan set forth in Section 4.6 have not been satisfied within the time frame set forth in the Schedule of Performance, unless an extension of such date is approved by City in writing; or
- (iv) the occurrence of a Borrower Event of Default under this Agreement, the City Regulatory Agreement, or any of the City Documents which remains uncured beyond any applicable cure period.

4.8 Repayment of the City Loan.

(a) Annual Payments. The Borrower shall make annual payments of principal and interest to the City in the amount of the City Prorata Percentage of seventy-five percent (75%) of the Residual Receipts. Such annual payments shall be due and payable in arrears no later than May 1 of each year with respect to the previous calendar year, commencing on May 1st of the first year after the City's issuance of a certificate of occupancy for the Development. The Borrower shall provide the City with any documentation reasonably requested by the City to substantiate the Borrower's determination of Residual Receipts. Repayments shall be credited first to interest, then to principal.

(b) Sharing of Residual Receipts with Other Lenders. The City acknowledges that the County of Alameda ("**County**") and the California Department of Housing and Community Development ("**HCD**") and other lenders to be set forth in the Financing Plan may provide additional financing for the Development. The City agrees to share pro rata in the Residual Receipts with such other lenders, in proportion to the amount of City Loan and the financing provided by the County, HCD and such other lenders (the "**City Prorata Percentage**"). In the event that any of such other lenders (such as HCD) is entitled to share in only fifty percent (50%) of Residual Receipts, the City shall share pro rata with all lenders in fifty percent (50%) of Residual Receipts, and shall additionally share pro rata in the next twenty-five percent (25%) of Residual Receipts with those lenders (such as the County) who are entitled to a share of seventy-five percent (75%) of the Residual Receipts.

(c) Payment of Remaining Balance. Borrower shall pay all outstanding principal and accrued interest on the City Loan, in full, on the earliest to occur of (i) a Borrower Event of Default for which the City exercises its right to cause the City Loan indebtedness to become immediately due and payable, and (ii) the expiration of the Term.

4.9 Prepayment; Acceleration

(a) Prepayment. Borrower shall have the right to prepay the City Loan at any time and from time to time, without penalty or premium, provided that any prepayment of

principal must be accompanied by interest accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. Any such prepayment shall have no effect upon Borrower's obligations under the City Regulatory Agreement which shall survive for the full term of the City Regulatory Agreement.

(b) Due On Sale or Encumbrance. Unless City agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the City Promissory Note shall be due and payable upon a Transfer (as defined in Section 7.2) absent the prior written consent of City of all or any part of or interest in the Property, except for a Transfer permitted under Section 7.3 of this Agreement or as otherwise permitted pursuant to this Agreement.

4.10 Nonrecourse. Except as expressly provided in this Section 4.10, Borrower and the general and limited partners of the Borrower shall have no personal liability for payment of the principal of, or interest on the City Promissory Note, and the sole recourse of City with respect to the payment of the principal of, and interest on the City Promissory Note shall be to the Property and the Improvements and any other collateral held by City as security for the City Promissory Note; provided however, nothing contained in the foregoing limitation of liability shall: (i) limit or impair the enforcement against all such security for the City Promissory Note of all the rights and remedies of the City thereunder; (ii) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the City Promissory Note as demand for money within the meaning and intendment of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto; or (iii) be deemed in any way to limit the rights of the City to obtain specific performance by the Borrower of its covenants under the City Documents, other than the covenants to pay the City principal and interest due under the City Promissory Note.

The foregoing limitation of liability is intended to apply only to the obligation for the repayment of the principal of, and payment of interest on the City Promissory Note; nothing contained herein is intended to relieve the Borrower of its obligation to indemnify the City under this Agreement, or liability to the extent of any loss for: (i) fraud or intentional misrepresentation, or bad faith, waste, willful misrepresentation by the Borrower; (ii) the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the City Deed of Trust (to the full extent of such taxes, assessments or other charges); (iii) the fair market value of any personal property or fixtures removed or disposed of by the Borrower other than in accordance with the City Deed of Trust; and/or the misappropriation of any proceeds by the Borrower under any insurance policies or awards resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Development.

ARTICLE V

MEASURE A-1 BOND ALLOCATION

5.1 Bond Allocation. City agrees to designate the Development as the recipient of the City's allocation of County of Alameda Measure A-1 funds in the amount of Five Million Four Hundred Twenty-Six Thousand Three Hundred Forty-Eight Dollars (\$5,426,348) (the "Measure

A-1 Allocation”). City agrees to take such further actions as may be necessary for the Development to obtain the Measure A-1 Allocation.

ARTICLE VI USE OF THE PROPERTY

6.1 Use; Affordable Housing. Borrower covenants and agrees for itself and its successors and assigns that the Property shall be used for the development and operation of the Development in accordance with the terms and conditions of this Agreement and the City Regulatory Agreement.

6.2 Affordable Housing. Borrower covenants and agrees for itself, its successors and assigns that seventy-eight (78) of the seventy-nine (79) residential units to be developed within the Development shall be occupied by and rented at an affordable rent to households of Extremely Low Income and Very Low Income (as defined in the Regulatory Agreement) in accordance with the terms hereof and the City Regulatory Agreement. The Parties shall execute the City Regulatory Agreement, substantially in the form attached hereto as Exhibit G, concurrently with the Construction Loan Closing. The City Regulatory Agreement shall be recorded in the Official Records of Alameda County (“**Official Records**”). Upon request of Borrower, City shall reasonably consider changes to or subordination of the Regulatory Agreement as proposed by the lender and/or Investor.

6.3 Maintenance. Borrower shall at its own expense, maintain the Property, the Improvements and related landscaping and common areas in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations, consistent with the standards of maintenance of similar multifamily apartment complexes in Alameda County. Without limiting the foregoing, Borrower agrees to maintain the Improvements and the Property (including without limitation, the residential units, common areas, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Development. Borrower shall prevent and/or rectify any physical deterioration of the Property and the Improvements and shall make all repairs, renewals and replacements necessary to keep the Property and the Improvements in good condition and repair. Borrower shall provide adequate security services for occupants of the Development.

6.4 Taxes and Assessments. Borrower shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Property and payable by Borrower, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Borrower shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Borrower exercises its right to contest any tax, assessment, or charge, the Borrower, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest. Borrower shall have the right to apply for all applicable tax exemptions, including, without limitation, the welfare exemption from property tax for low-

income housing.

6.5 Obligation to Refrain from Discrimination. Borrower shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development, or any portion thereof, on the basis of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, veteran or military status, or genetic information of any person. Borrower covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Development or part thereof, nor shall Borrower or any person claiming under or through Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Development or part thereof. Borrower shall include such provision in all deeds, leases, contracts and other instruments executed by Borrower, and shall enforce the same diligently and in good faith.

ARTICLE VII

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF DEVELOPER

7.1 Change Pursuant to this Agreement. Borrower has represented that it possesses the necessary expertise, skill and ability to carry out the development and operation of the Development on the Property pursuant to this Agreement. The qualifications, experience, financial capacity and expertise of Borrower is of particular concern to the City. It is because of these qualifications, experience, financial capacity and expertise that the City has entered into this Agreement with Borrower. No voluntary or involuntary successor, assignee or transferee of Borrower shall acquire any rights or powers under this Agreement, except as expressly provided herein.

7.2 Prohibition on Transfer. Prior to the later of expiration of the term of the City Regulatory Agreement and the payment in full of the City Promissory Note, Borrower shall not, except as expressly permitted by this Agreement or the Regulatory Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, “**Transfer**”) of the whole or any part of the Property, the Development, the Improvements, or this Agreement or any of the City Documents, without the prior written approval of City, which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without the City’s consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the later of expiration of the term of the City Regulatory Agreement and the payment in full of the City Promissory Note, except as expressly permitted by this Agreement, Borrower shall not undergo any significant change of ownership without the

prior written approval of City. For purposes of this Agreement, a “significant change of ownership” shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and/or control of Borrower, taking all transfers into account on a cumulative basis.

7.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article VII shall not be deemed to prevent: (i) the granting of utility easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to this Agreement; (iii) the lease of individual units to tenants for occupancy as their principal residence in accordance with the City Regulatory Agreement; (iv) assignments creating security interests for the purpose of financing the construction or permanent financing of the Development or the Property in accordance with the Financing Plan and subject to the requirements of Article VIII, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; and (v) a Transfer to an entity which is under the direct control or under common control with Eden Housing, or in which Eden Housing or one of its affiliates, is the general partner or sole member of the general partner (“**Controlled Affiliate**”).

The City hereby approves the initial Transfer, if any, of the limited partnership interest in Borrower to an investor limited partner (the “**Investor Limited Partner**”) and approves future Transfers of the limited partner interest in Borrower provided that: (i) such Transfers do not affect the timing and amount of the limited partner capital contributions provided for in the Partnership Agreement of Borrower approved by the City; and (ii) in subsequent Transfers, the initial limited partner or an affiliate of the initial limited partner retains a membership or partnership interest and the general partner of the Investor Limited Partner or a wholly-owned affiliate thereof serves as a managing member or managing general partner of the successor limited partner.

In the event the general partner of Borrower is removed by the Investor Limited Partner of Borrower for cause following default under the Partnership Agreement, the City hereby approves the Transfer of the general partner interest to a nonprofit corporation that is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (the “**Code**”), or a limited liability company whose sole member is a nonprofit corporation exempt from federal income taxation pursuant to Section 501(c)(3) of the Code, selected by the Investor Limited Partner and approved by the County in writing, which approval shall not be withheld unreasonably.

7.4 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property or portion thereof if all of the following requirements are met (provided however, the requirements of this Section 7.4 shall not apply to Transfers permitted by Section 7.3):

(i) The proposed transferee demonstrates to the City’s satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently complete construction and operation of the Development and to otherwise fulfill the obligations undertaken by the Borrower under this Agreement.

(ii) The Borrower and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of this Agreement, the Property or interest therein together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Borrower under this Agreement, the City Regulatory Agreement, the City Documents and all obligations of Borrower arising prior to the effective date of the Transfer (unless Borrower expressly remains responsible for such obligations) and shall agree to be subject to and assume all of Borrower's obligations pursuant to the Conditions of Approval and all other conditions, and restrictions set forth in this Agreement and the City Regulatory Agreement.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

Consent to any proposed Transfer may be given by the City Manager unless the City Manager, in his or her discretion, refers the matter of approval to the City Council. If the City rejects a proposed Transfer, the City, as applicable, shall provide the reasons for such rejection in writing within thirty (30) days following receipt of written request by Borrower, and representatives of the City shall meet with Borrower and the proposed transferee to discuss in good faith the reasons for the rejection and Borrower's and transferee's responses thereto.

7.5 Effect of Transfer without City Consent.

7.5.1 In the absence of specific written agreement by the City, no Transfer by Borrower shall be deemed to relieve the Borrower or any other party from any obligation under this Agreement or the City Regulatory Agreement.

7.5.2 Without limiting any other remedy City may have under this Agreement, or under law or equity, this Agreement may be terminated by City if without the prior written approval of the City, Borrower assigns or Transfers this Agreement or the Property. This Section 7.5.2 shall not apply to Transfers permitted under Section 7.3.

7.6 Recovery of City Costs. Borrower shall reimburse City for all costs, including but not limited to attorneys' fees, incurred in reviewing instruments and other legal documents proposed to affect a Transfer under this Agreement and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee within ten days following City's delivery to Borrower of an invoice detailing such costs. This Section 7.6 shall not apply to Transfers permitted under Section 7.3.

ARTICLE VIII SECURITY FINANCING AND RIGHTS OF MORTGAGEES

8.1 Mortgages and Deeds of Trust for Development. Mortgages and deeds of trust, or

any other reasonable security instrument are permitted to be placed upon the Property only for the purpose of securing loans approved pursuant to the Financing Plan for the purpose of financing the design and construction of the Improvements, other expenditures reasonably necessary for development of the Property pursuant to this Agreement, and the construction and/or refinancing of the Development. Borrower shall not enter into any conveyance for such financing without the prior written approval of the City Manager or his or her designee. As used herein, the terms “mortgage” and “deed of trust” shall mean any security instrument used in financing real estate acquisition, construction and land development.

8.2 Holder Not Obligated to Construct. The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated to construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to permit or authorize any such holder to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

8.3 Notice of Default and Right to Cure. Whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the Property, and the Investor Limited Partner, provided that City has been provided with the address for delivery of such notice. City shall have no liability to any such holder for any failure by the City to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, to cure or remedy any such default or breach, and City will accept tender of such cure as if delivered by the Borrower.

8.4 City Right to Cure Defaults. In the event of a breach or default by Borrower under a mortgage or deed of trust secured by the Property, City may (but has no obligation to) cure the default, without acceleration of the subject loan, following prior notice thereof to the holder of such instrument and Borrower. In such event, Borrower shall be liable for, and City shall be entitled to reimbursement from Borrower, for all costs and expenses incurred by City associated with and attributable to the curing of the default or breach and such sum shall constitute a part of the indebtedness secured by the City Deed of Trust.

8.5 Holder to be Notified. Borrower, for itself, its successors and assigns, hereby warrants and agrees that each term contained herein dealing with security financing and rights of holders shall be either inserted into the relevant deed of trust or mortgage or acknowledged by the holder prior to its creating any security right or interest in the Property.

8.6 Modifications to Agreement. City shall not unreasonably withhold its consent to modifications of this Agreement requested by Development lenders or investors, provided such modifications do not alter City’s substantive rights and obligations under this Agreement.

8.7 Estoppel Certificates. Any Party shall, at any time, and from time to time, within thirty (30) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case),

(ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

ARTICLE IX ENVIRONMENTAL MATTERS

9.1 No City Liability; Borrower's Covenants. City shall not be responsible for the cost of any soil, groundwater or other environmental remediation or other response activities for any Hazardous Materials, if any, existing or occurring on the Property or any portion thereof, and Borrower shall be solely responsible for all actions and costs associated with any such activities required by any regulatory agency with jurisdiction over the Property and/or required for the construction of the Development and the development of the Property, or any portion thereof. Upon receipt of any notice regarding the presence, release or discharge of Hazardous Materials in, on or under the Property, or any portion thereof, Borrower agrees to timely initiate and diligently pursue and complete all appropriate response, remediation and removal actions for the presence, release or discharge of such Hazardous Materials within such deadlines as specified by applicable Environmental Laws. Borrower hereby covenants and agrees that:

(1) Borrower shall not knowingly permit the Development or the Property or any portion of either to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence or release of Hazardous Materials in, on, under, about or from the Development or the Property with the exception of any previously disclosed existing conditions on the Property and cleaning supplies and other materials customarily used in construction, construction, use or maintenance of residential property and used, stored and disposed of in compliance with Environmental Laws, and

(2) Borrower shall keep and maintain the Development and the Property and each portion thereof in compliance with, and shall not cause or permit the Development or the Property or any portion of either to be in violation of, any Environmental Laws.

9.2 Environmental Indemnification. Borrower shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against any and all Claims, including without limitation any expenses associated with the investigation, assessment, monitoring, response, removal, treatment, abatement or remediation of Hazardous Materials and administrative, enforcement or judicial proceedings resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal or the alleged presence, release, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Property, or (ii) the failure of Borrower, Borrower's employees, agents, contractors, subcontractors, or any person acting on behalf of any of the foregoing to comply with Environmental Laws or the covenants set forth in Section 9.1. The foregoing indemnity shall further apply to any residual contamination in, on, under or about the Property or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any

such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Environmental Laws. The provisions of this Section 9.2 shall survive the issuance of a Certificate of Completion for the Development and the expiration or earlier termination of this Agreement. Borrower's indemnification obligation under this Section 9.2 shall not apply to acts described in clause (i) above caused by the gross negligence or willful misconduct of an Indemnitee.

9.2.1 No Limitation. Borrower hereby acknowledges and agrees that Borrower's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 9.2 above, are in no way limited or otherwise affected by any information the City may have concerning the Property and/or the presence in, on, under or about the Property of any Hazardous Materials, whether the City obtained such information from the Borrower or from its own investigations. It is further agreed that City does not and shall not waive any rights against Borrower that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Borrower, of any of the insurance policies described in this Agreement.

9.3 Hazardous Materials. As used herein, the term "**Hazardous Materials**" means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a "hazardous substance", "hazardous material", "hazardous waste", "toxic waste", "toxic pollutant", "toxic substance", "solid waste" or "pollutant or contaminant" in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any "Superfund" or "Superlien" law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

9.4 Environmental Laws. As used herein, the term "**Environmental Laws**" means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating

authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to Hazardous Materials (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (v) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwater or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as each of the foregoing now exist or are hereafter amended, together with any regulations promulgated thereunder.

ARTICLE X DEFAULTS, REMEDIES AND TERMINATION

10.1 Event of Borrower Default. The following events shall constitute an event of default on the part of Borrower ("**Event of Borrower Default**"):

(a) Subject to force majeure, Borrower fails to commence or complete construction of the Development within the times set forth in Section 3.4, or abandons or suspends construction of the Development prior to completion for a period of sixty (60) days or more;

(b) Borrower fails to pay when due the principal and interest (if any) payable under the City Promissory Note and such failure continues for thirty (30) days after City notifies Borrower thereof in writing;

(c) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VII;

(d) Borrower fails to maintain insurance on the Property and the Development as required pursuant to this Agreement, and Borrower fails to cure such default within ten (10) days following notice thereof from the City;

(e) Subject to Borrower's right to contest the following charges pursuant to

Section 6.4, if Borrower fails to pay prior to delinquency taxes or assessments due on the Property or the Development or fails to pay when due any other charge that may result in a lien on the Property or the Development, and Borrower fails to cure such default within thirty (30) days of date of delinquency, but in all events upon the imposition of any such tax or other lien;

(f) A default is declared in writing under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate payment of such loan;

(g) Any representation or warranty contained in this Agreement or in any financial statement, certificate or report submitted to the City in connection with this Agreement or Borrower's request for the City Loan proves to have been false in any material and adverse respect when made and continues to be materially adverse to the City;

(h) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(i) A court of competent jurisdiction shall have made or entered any decree or order:

(1) adjudging the Borrower to be bankrupt or insolvent,

(2) approving as properly filed a petition seeking reorganization of the Borrower or seeking any arrangement for Borrower under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction,

(3) appointing a receiver, trustee, liquidator, or assignee of the Borrower in bankruptcy or insolvency or for any of its properties, or

(4) directing the winding up or liquidation of the Borrower;

(j) Borrower shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure under any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(k) The Borrower shall have voluntarily suspended its business or Borrower shall have been dissolved or terminated;

(l) An event of default arises under this Agreement or any City Document and remains uncured beyond any applicable cure period; or

(m) Borrower defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 10.1 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Borrower; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, a Borrower Event of Default shall not arise hereunder if Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion and in no event later than ninety (90) days after receipt of notice of the default or such longer period as the City may allow.

10.2 City Default. An event of default on the part of City (“**Event of City Default**”) shall arise hereunder if City fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of thirty (30) days after written notice thereof from Borrower to City, or in the case of a default which cannot with due diligence be cured within thirty (30) days, City fails to commence to cure the default within thirty (30) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

10.3 City’s Right to Terminate Agreement. If an Event of Borrower Default shall occur and be continuing beyond any applicable cure period, then City shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement. If City makes such election, City shall give written notice to Borrower and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of Borrower under this Agreement, shall expire and terminate.

10.4 City’s Remedies and Rights Upon an Event of Borrower Default. Upon the occurrence of an Event of Borrower Default and the expiration of any applicable cure period, City shall have all remedies available to it under law or equity, including, but not limited to the following. City may, at its election, without notice to or demand upon Borrower, except for notices or demands required by law or expressly required pursuant to this Agreement or the City Documents, exercise one or more of the following remedies:

- (a) Accelerate and declare the balance of the City Promissory Note and interest accrued thereon immediately due and payable;
- (b) Seek specific performance to enforce the terms of this Agreement or City Documents;
- (c) Foreclose on the Property pursuant to the City Deed of Trust;

(d) Pursue any and all other remedies available under law to enforce the terms of the this Agreement and the City Documents and City's rights thereunder.

10.5 Borrower's Remedies Upon an Event of City Default. Upon the occurrence of an City Event of Default, in addition to pursuing any other remedy allowed at law or in equity or otherwise provided in this Agreement, Borrower may bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking to obtain any other remedy consistent with the purpose of this Agreement.

10.6 Remedies Cumulative; No Consequential Damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party. Notwithstanding anything to the contrary set forth herein, a party's right to recover damages in the event of a default shall be limited to actual damages and shall exclude consequential damages.

10.7 Inaction Not a Waiver of Default. No failure or delay by any Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive any Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

ARTICLE XI INDEMNITY AND INSURANCE.

11.1 Indemnity. Borrower shall indemnify, defend (with counsel approved by City, such approval not to be unreasonably withheld) and hold Indemnitees harmless from and against any and all Claims, including without limitation, Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Borrower or Borrower's contractors, subcontractors, agents or employees development, construction, improvement, operation, ownership or maintenance of the Development or the Property, or any part thereof or otherwise arising out of or in connection with Borrower's performance under this Agreement. Borrower's indemnification obligations under this Section 11.1 shall not extend to Claims resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 11.1 shall survive the issuance of a Certificate of Completion for the Development and the expiration or earlier termination of this Agreement. It is further agreed that City does not and shall not waive any rights against Borrower that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Borrower, of any of the insurance policies described in this Agreement.

11.2 Insurance.

(a) Borrower and all contractors working on behalf of Borrower on the Development shall maintain the insurance coverage as described in the City Insurance

Requirements attached hereto Exhibit I and incorporated herein.

(b) Prior to closing of the City Loan, Borrower shall furnish City with certificates of insurance in form acceptable to City evidencing the required insurance coverage and duly executed endorsements evidencing such additional insured status. Each certificate shall contain all provisions required in the City Insurance Requirements.

(c) If any insurance policy or coverage required hereunder is canceled or reduced, Borrower shall, within fifteen (15) days after receipt of notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, City may, without further notice and at its option, procure such insurance coverage at Borrower's expense, and Borrower shall promptly reimburse City for such expense upon receipt of billing from City.

ARTICLE XII MISCELLANEOUS PROVISIONS

12.1 Brokers. Borrower agrees to pay any real estate commission, brokerage fee, finder's fee, or other compensation due with respect to the acquisition of the Property, and agrees to defend, indemnify and hold harmless the City from any claims, expenses, costs or liabilities arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

12.2 Enforced Delay; Extension of Times of Performance. Subject to the limitations set forth below, performance by any Party shall not be deemed to be in default, and all performance and other dates specified in this Agreement shall be extended where delays are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions or priority, litigation, including court delays, unusually severe weather, acts or omissions of the other Parties, acts or failures to act of any other public or governmental agency or entity (other than the acts or failures to act of City which shall not excuse performance by City), or any other cause beyond the affected Party's reasonable control. An extension of time for any such cause 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 Parties within thirty (30) days of the commencement of the cause and such extension is not rejected in writing by the other Parties within ten (10) days of receipt of the notice. None of the Parties shall unreasonably withhold consent to an extension of time pursuant to this Section.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of Borrower and City (acting in the discretion of its City Manager unless he or she determines in his or her discretion to refer such matter to the City Council). City and Borrower acknowledge that adverse changes in economic conditions, either of the affected Party

specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing to complete the work of Improvements, shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

12.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

City:	City of Newark 37101 Newark Blvd. Newark, CA 94560 Attn: Community Development Director (with copy to City Attorney)
Borrower:	Timber Street Investors, L.P. c/o Eden Housing 22645 Grand Street Hayward, California 94541 Attn: Senior Vice President of Real Estate Development
With a copy to:	MCC Housing, LLC 1901 Harrison Street, Suite 1650 Oakland, California 94612 Attn: Ariel Beliak

The City agrees that it shall provide Borrower's Investor Limited Partner a duplicate copy of all notices of default that the City may give to or serve in writing upon Borrower pursuant to the terms of the Loan Documents, at the above address (or such other address provided to the City). The Investor Limited Partner shall have the right, but not the obligation, to cure any Default of Borrower set forth in such notice, during any applicable cure period described in the Loan Documents, and the City will accept tender of such cure as if delivered by Borrower.

12.4 Attorneys' Fees. If any Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable

attorneys' fees and disbursements.

12.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party. This Agreement may be amended or modified only by a written instrument executed by the Parties.

12.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VII, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named party shall be deemed to apply to any permitted successor and assign of such party who has acquired an interest in compliance with this Agreement or under law.

12.7 Construction. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since all of the Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it.

12.8 Action or Approval. Except as may be otherwise specifically provided in this Agreement, whenever any approval, notice, direction, finding, consent, request, waiver, or other action by the City is required or permitted under this Agreement, such action may be given, made, or taken by the City Manager, or by any person who shall have been designated in writing by the City, without further approval by the City Council. Any such action shall be in writing. The Borrower acknowledges that nothing in this Agreement (including any approval by the City Manager in accordance with this Agreement) shall limit, waive, or otherwise impair the authority and discretion of: (i) the City's Community Development Department, in connection with the review and approval of the proposed construction plans for the Development (or any change to such plans), or any use, or proposed use, of the Property, (ii) the City's issuance of a building permit, or (iii) any other office or department of the City acting in its capacity as a governmental regulatory authority with jurisdiction over the development, use, or operation of the Development.

12.9 Entire Agreement. This Agreement, including the exhibits listed below, which are attached hereto and incorporated herein by this reference, together with the other City Documents, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

Exhibit A	Legal Description of the Property
Exhibit B	Financing Plan
Exhibit C	City Promissory Note

Exhibit D	City Deed of Trust
Exhibit E	Schedule of Performance
Exhibit F	Scope of Development
Exhibit G	City Regulatory Agreement
Exhibit H	Certificate of Completion
Exhibit I	City Insurance Requirements

12.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Parties. Any executed counterpart of this Amendment may be delivered to the other Parties by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

12.11 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

12.12 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

12.13 Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

12.14 Non-Liability of Officials, Employees and Agents. No officer, official, employee or agent of City shall be personally liable to Borrower or its successors in interest in the event of any default or breach by City or for any amount which may become due to Borrower or its successors in interest pursuant to this Agreement.

12.15 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a "business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of California.

12.16 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of

California.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

DEVELOPER:

TIMBER STREET INVESTORS, L.P.,
a California limited partnership

By: Eden Timber, LLC,
a California limited liability company,
its sole general partner

By: Eden Housing, Inc.,
a California nonprofit public benefit
corporation,
its sole member/manager

By: _____
Tatiana Blank
Chief Financial Officer

CITY:

CITY OF NEWARK,
a California municipal corporation

By: _____
David Benoun, City Manager

ATTEST:

By: _____
Sheila Harrington, City Clerk

APPROVED AS TO FORM:

By: _____
Kristopher Kokotaylo, City
Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

A.P.N.: 92A-2125-010-02

A PORTION OF SURVEY NO. 119 OF THE LANDS OF THE EX-MISSION OF SAN JOSE, PATENTED TO ASHLEY CAMERON BY LETTERS PATENT, DATED APRIL 7, 1868 AND RECORDED IN BOOK "A" OF PATENTS, PAGE 463, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERN LINE OF CENTRAL AVENUE WITH THE NORTHEASTERN LINE OF TIMBER STREET, FORMERLY CEDAR ROAD, AS SAID AVENUE AND ROAD ARE SHOWN ON THE MAP OF "TRACT 1520", FILED DECEMBER 1, 1955, MAP BOOK 36, PAGES 73 AND 74, ALAMEDA COUNTY RECORDS, RUNNING THENCE ALONG THE SAID LAST MENTIONED LINE SOUTH 56° 49' 19" EAST 420.51 FEET TO A POINT ON THE SOUTHEASTERN LINE OF THAT CERTAIN 15 FOOT PUBLIC UTILITIES EASEMENT, AS SHOWN ON SAID MAP; THENCE ALONG THE SAID LAST MENTIONED LINE NORTH 51° 59' 59" EAST 17.96 FEET TO A POINT ON THE NORTHEASTERN LINE OF TIMBER STREET AS DESCRIBED IN INSTRUMENT TO CITY OF NEWARK, A MUNICIPAL CORPORATION, RECORDED MAY 18, 1964, REEL 1206, IMAGE 547, ALAMEDA COUNTY RECORDS, SAID LAST MENTIONED POINT BEING THE ACTUAL POINT OF BEGINNING, THENCE CONTINUING ALONG THE SAID SOUTHEASTERN LINE, NORTH 51°59'59" EAST 217.24 FEET TO THE SOUTHWESTERN LINE OF THE LAND CONVEYED TO STATE OF CALIFORNIA BY DEED RECORDED MARCH 27, 1966 IN BOOK 7979 OR, PAGE 471; THENCE NORTHWESTERLY, ALONG THE LAST NAMED LINE AND ALONG THE SOUTHWESTERN LINE OF THE LAND CONVEYED TO STATE OF CALIFORNIA, BY DEED RECORDED MARCH 21, 1956 IN BOOK 7973 OR, PAGE 501, THE TWO FOLLOWING COURSES AND DISTANCES: NORTH 42° 00' 16" WEST (STATE HIGHWAY BEARING NORTH 41° 27' 57" WEST) 133.79 FEET, AND ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 2400 FEET, A DISTANCE OF 88.87 FEET; THENCE SOUTH 33° 10' 41" WEST 264.11 FEET TO A POINT ON THE SAID NORTHEASTERN LINE OF TIMBER STREET AS DESCRIBED IN SAID INSTRUMENT TO CITY OF NEWARK; THENCE ALONG THE SAID LAST MENTIONED LINE SOUTH 56° 49' 19" EAST 144.79 FEET, MORE OR LESS TO THE ACTUAL POINT OF BEGINNING.

EXHIBIT B
FINANCING PLAN
[To Be Attached]



January 08, 2024

Community Development Department
City of Newark
37101 Newark Boulevard
Newark, CA 94560

RE: Project Overview for Loan Agreement

To Whom It May Concern:

Timber Senior Housing will provide 79 units of new affordable housing for seniors and is located at 37660 Timber Street, Newark, CA 95460. It is being developed by Eden Housing, Inc. Below are details on the schedule, project affordability breakdown, an explanation of city fund uses, a financing overview, and a management overview.

Anticipated Schedule

It will take six months to complete the predevelopment phase and reach construction closing, which will include NEPA approval, a plan check, securing the permits, finalizing regulatory agreements with lenders, and starting construction in early 2024. The project received its TCAC/CDLAC allocation on August 23rd, setting a deadline of February 19th to begin construction. A project schedule is included below.

Entitlements	11 / 2021
Plan Check Submittal	12/2022
HCD Super NOFA award	02 / 2023
TCAC/CDLAC application	05 / 2023
TCAC/CDLAC award	08 / 2023
Closing Date/Construction Start	02 / 2024
TCO	02 / 2026
Qualified Occupancy (95%/100%)	06/ 2026

22645 Grand Street | Hayward, CA 94541 | Tel: 510-582-1460 | edenhousing.org



Broker License No. 872400





Project Affordability Breakdown

As shown in the table below, twenty (20) units will be set aside for extremely low-income households that are homeless or at risk of homelessness. Another twenty (20) units will be paired with a Housing Authority of the County of Alameda (HACA) project-based voucher. Thirty-eight (38) units will be restricted to individuals and families earning less than 50% of the Area Median Income. One unit will be set aside as the manager's unit.

Timber Senior Housing Unit and Affordability Mix

Unit	Population	20% AMI	30% AMI	50% AMI	60% AMI	Manager	Total
<i>Studio</i>	Senior Homeless/PBV	-	-	-	-	-	
<i>Studio</i>	Senior Homeless/No PBV	-	-	-	-	-	
<i>1 BR</i>	Senior Homeless/NPLH	8	12	-	-	-	20
<i>1 BR</i>	General Senior Population/PBV	-	-	20	-	-	20
<i>1 BR</i>	General Senior Population	-	-	38	-	-	38
<i>2 BR</i>	Manager's Unit					1	1
Total		8	12	58	-	1	79

Financing Overview

The budget below may change slightly as we continue to develop the financing plan and finalize construction costs, but the following tables provide an overview of the project's sources. We have secured all the funding in the last 24 months, including the bonds and tax credits, which were the last pieces of financing.

PERMANENT SOURCES OF FINANCING

	Total
City of Newark	\$2,765,000
Measure A1 (County Base Allocation)	\$5,426,348
Alameda County HOME	\$3,258,866
Permanent Financing - Tenant Income	\$2,430,000
IIG – CA HCD	\$4,350,480
Deferred Developer Fee	\$1,300,000
NPLH – CA HCD	\$5,202,920
MHP -CA HCD	\$17,436,269

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Broker License No. 872400





Accrued Soft Loan Deferred Interest - County and City	\$409,395
General Partner Equity	\$2,000,000
LIHTC-LP Capital Contribution	\$32,178,093
TOTAL SOURCES OF FUNDS	\$76,787,371

CONSTRUCTION SOURCES OF FINANCING

City of Newark	\$2,765,000
Measure A1 (County Base Allocation)	\$5,426,348
Alameda County HOME	\$3,258,866
IIG – CA HCD	\$4,350,480
LIHTC-LP Capital Contribution	\$3,217,809
General Partner Equity	\$2,000,000
Construction Loan- Tax exempt	\$39,320,417
Construction Loan - Taxable	\$12,980,452
Accrued Soft Loan Deferred Interest - County and City	\$409,395
Deferred Cost	\$3,565,132
TOTAL SOURCES OF FUNDS	\$76,787,371

DEVELOPMENT BUDGET

	Total
Total Land & Improvements	\$7,276,274
Total Design & Consulting	\$1,752,125
Total Construction	\$46,077,119
Total Indirect Costs	\$4,780,167
Total Finance & Carry Costs	\$11,259,686
Total Developer Cost	\$5,500,000
Total TCAC/Syndication	\$142,000
TOTAL USES OF FUNDS	\$76,787,371

Financing Plan

The funds from the city, which are \$2,765,000, will be used to pay the impact fee, school board fee, and building permit fees to the city for the project at the construction closing. The estimated project impact fee stands at \$2,679,758, including \$58,687 for the school board fee, and the remaining funds will be used to pay the permit fees or any other city-related expense.

Management Overview

The property operations staff will consist of one full-time community manager, one full-time assistant community manager, and one full-time maintenance staff member. The ground

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Broker License No. 872400





floor will have an office for each manager as well as a maintenance shop. One unit will be set aside for live-in management staff, so the property is well managed day and night. Another office space will be exclusively available for service staff to meet privately and in small groups with residents. In addition, this project will have a community room and a flexible space for enrichment activities and workshops. Services will be provided free of charge to residents.

One full-time Eden Resident Services Coordinator will work out of the services office on-site to ensure that all residents are fully incorporated into community life and activities. The resident services coordination will be paid for through property cash flow. Additionally, the Alameda County Health Care Services Agency (HCSA) will provide services for the 20 PSH units on the property. HCSA has committed \$135k annually to support the needs of this population, which includes the salary of a Case Manager.

The project is on schedule to start construction by February 2024. We would like to request you to start the process of loan agreements.

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Broker License No. 872400



EXHIBIT C
CITY PROMISSORY NOTE
[To Be Attached]

EXHIBIT D
CITY DEED OF TRUST
[To Be Attached]

EXHIBIT E

SCHEDULE OF PERFORMANCE

Performance Milestones	Milestone Completion Date
Borrower satisfaction of Conditions Precedent to City Loan.	By February 28, 2024
Closing of Construction Financing	Within 30 days after Borrower satisfaction of Conditions Precedent to City Loan, and not later than March 4, 2024
Commencement of construction and development work on Development	Within 30 days after Construction Loan Closing, and not later than April 30, 2024
Completion of construction and development work on Development	Within 29 months after commencement of construction, and not later than August 31, 2026
Commencement of occupancy of apartment units	Within 30 days of completion of construction, and not later than September 30, 2026
Full occupancy of apartment units	Within 150 days of commencement of occupancy, and not later than February 27, 2027.

EXHIBIT F

SCOPE OF DEVELOPMENT

At 37660 Timber Street, Borrower proposes to build, own and manage a single five-story building with 79 rental apartments for seniors. One apartment will be occupied by Property Management staff and the remaining apartments will be affordable for households with incomes at or below 50% of the area median. The building will include 78 one-bedroom apartments and one two-bedroom apartment. The community will be programmed with services offices, a computer lab, fitness room, community room, exterior courtyard, outdoor cooking area, activity lawn and garden beds, and additional lobby and lounge spaces on residential floors to provide residents with socialization outside of their units.

EXHIBIT G
CITY REGULATORY AGREEMENT
[To Be Attached]

EXHIBIT H

CERTIFICATE OF COMPLETION

**Recording requested by
and when recorded mail to:**

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

CERTIFICATE OF COMPLETION

This Certificate of Completion (this "**Certificate**") is made by the City of Newark, a California municipal corporation ("**City**"), effective as of _____, 202__.

RECITALS

A. City and Timber Street Investors, L.P., a California limited partnership ("**Owner**"), entered into that certain Affordable Housing Loan Agreement dated as of _____, 2024 ("**Loan Agreement**") concerning the development of a seventy-nine (79) unit affordable housing development (the "**Development**") on certain real property located in the City of Newark, California and more particularly described in Exhibit A attached hereto (the "**Property**"). Capitalized terms used herein without definition shall have the meaning ascribed to such terms in the Loan Agreement.

B. Pursuant to Section 3.12 of the Loan Agreement, the City is required to furnish the Owner or its successors with a Certificate of Completion upon completion of construction and development of the Development in accordance with the Loan Agreement.

C. The City has determined that the construction and development of the Development has been satisfactorily completed in accordance with the Loan Agreement.

NOW, THEREFORE, the City hereby certifies as follows:

1. Construction and development of the Development has been satisfactorily completed in conformance with the Loan Agreement.

2. All use, maintenance and nondiscrimination covenants contained in the Loan Agreement and the City Regulatory Agreement recorded in the Official Records on

_____, 2024 as Instrument No. _____ in connection therewith shall remain in effect and enforceable in accordance therewith. This Certificate does not constitute evidence of Owner's compliance with those covenants in the Loan Agreement or City Regulatory Agreement that survive the issuance of this Certificate.

3. This Certificate does not constitute evidence of compliance with or satisfaction of any obligation of Owner to any holder of a deed of trust securing money loaned to finance the Improvements or any part thereof (except City) and does not constitute a notice of completion under the California Civil Code.

4. Nothing contained in this instrument shall modify any provisions of the Loan Agreement, City Regulatory Agreement or any other document executed in connection therewith.

IN WITNESS WHEREOF, City has executed and issued this Certificate of Completion as of the date first written above.

CITY OF NEWARK

By: _____

Name: _____
[Title]

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

SIGNATURES MUST BE NOTARIZED.

Exhibit A

LEGAL DESCRIPTION OF PROPERTY

A.P.N.: 92A-2125-010-02

A PORTION OF SURVEY NO. 119 OF THE LANDS OF THE EX-MISSION OF SAN JOSE, PATENTED TO ASHLEY CAMERON BY LETTERS PATENT, DATED APRIL 7, 1868 AND RECORDED IN BOOK "A" OF PATENTS, PAGE 463, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERN LINE OF CENTRAL AVENUE WITH THE NORTHEASTERN LINE OF TIMBER STREET, FORMERLY CEDAR ROAD, AS SAID AVENUE AND ROAD ARE SHOWN ON THE MAP OF "TRACT 1520", FILED DECEMBER 1, 1955, MAP BOOK 36, PAGES 73 AND 74, ALAMEDA COUNTY RECORDS, RUNNING THENCE ALONG THE SAID LAST MENTIONED LINE SOUTH 56° 49' 19" EAST 420.51 FEET TO A POINT ON THE SOUTHEASTERN LINE OF THAT CERTAIN 15 FOOT PUBLIC UTILITIES EASEMENT, AS SHOWN ON SAID MAP; THENCE ALONG THE SAID LAST MENTIONED LINE NORTH 51° 59' 59" EAST 17.96 FEET TO A POINT ON THE NORTHEASTERN LINE OF TIMBER STREET AS DESCRIBED IN INSTRUMENT TO CITY OF NEWARK, A MUNICIPAL CORPORATION, RECORDED MAY 18, 1964, REEL 1206, IMAGE 547, ALAMEDA COUNTY RECORDS, SAID LAST MENTIONED POINT BEING THE ACTUAL POINT OF BEGINNING, THENCE CONTINUING ALONG THE SAID SOUTHEASTERN LINE, NORTH 51°59'59" EAST 217.24 FEET TO THE SOUTHWESTERN LINE OF THE LAND CONVEYED TO STATE OF CALIFORNIA BY DEED RECORDED MARCH 27, 1966 IN BOOK 7979 OR, PAGE 471; THENCE NORTHWESTERLY, ALONG THE LAST NAMED LINE AND ALONG THE SOUTHWESTERN LINE OF THE LAND CONVEYED TO STATE OF CALIFORNIA, BY DEED RECORDED MARCH 21, 1956 IN BOOK 7973 OR, PAGE 501, THE TWO FOLLOWING COURSES AND DISTANCES: NORTH 42° 00' 16" WEST (STATE HIGHWAY BEARING NORTH 41° 27' 57" WEST) 133.79 FEET, AND ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 2400 FEET, A DISTANCE OF 88.87 FEET; THENCE SOUTH 33° 10' 41" WEST 264.11 FEET TO A POINT ON THE SAID NORTHEASTERN LINE OF TIMBER STREET AS DESCRIBED IN SAID INSTRUMENT TO CITY OF NEWARK; THENCE ALONG THE SAID LAST MENTIONED LINE SOUTH 56° 49' 19" EAST 144.79 FEET, MORE OR LESS TO THE ACTUAL POINT OF BEGINNING.

EXHIBIT I

CITY INSURANCE REQUIREMENTS

Prior to issuance of building permits for the Project and throughout the term of this Agreement, Owner shall obtain and maintain, at Owner's expense, the following policies of insurance.

- A. Property Insurance.** Insurance for the risks of direct physical loss, with minimum coverage being the perils insured under the standard Causes of Loss - Special form (ISO Form CP 10 30) or its equivalent, covering all improvements, all fixtures, equipment and personal property, located on or in, or constituting a part of, the Property ("Improvements"), in an amount equal to one hundred percent (100%) of the full replacement cost of all such property.
1. The insurance shall:
 - (a) Cover explosion of steam and pressure boilers and similar apparatus, if any, located on the Property,
 - (b) Cover floods if the Property is in a Special Hazard Area, as determined by the Federal Emergency Management City or as shown on a National Flood Insurance Program flood map;
 2. The insurance required hereunder shall be in amounts sufficient to prevent Owner from becoming a co-insurer under the terms of the applicable policies, with not more than a Ten Thousand Dollars (\$10,000) deductible (or such higher deductible approved by the City, which approval shall not be unreasonably withheld) from the loss payable for any casualty.
 3. The policies of insurance carried in accordance with this Paragraph A shall contain a "replacement cost endorsement" and an "increased cost of construction endorsement."
- B. Liability Insurance.** Commercial general liability insurance on an "occurrence basis" covering all claims with respect to injury or damage to persons or property occurring on, in or about the Property and the Improvements. The limits of liability under this Paragraph B shall be not less than Two Million Dollars (\$2,000,000) combined single limit per occurrence, with a deductible no greater than Ten Thousand Dollars (\$10,000) or such higher deductible as may be approved by City, which approval shall not be unreasonably withheld.
1. The insurance shall also include coverage for:
 - (a) Liability for bodily injury or property damage arising out of the use, by or on behalf of Owner, of any owned, non-owned, leased or hired automotive equipment in the conduct of any and all operations conducted in connection with the Project or the Property;

- (b) Premises and operations including, without limitation, bodily injury, personal injury, death or property damage occurring upon, in or about the Property or the Improvements on any elevators or any escalators therein and on, in or about the adjoining sidewalks, streets and passageways;
- (c) Environmental liability and indemnification of City therefore;
- (d) Broad form property damage liability;
- (e) Additional insured and primary insured endorsements protecting the City and its respective elected and appointed officials, officers, employees and agents;
- (f) Personal injury endorsement.

C. Worker's Compensation Insurance. Worker's compensation insurance, in the amount required under then applicable state law, covering Owner's employees, if any, at work in or upon the Property or engaged in services or operations in connection with the Project or the Property. Owner shall require that any contract entered into by Owner with regard to work to be undertaken on the Property include a contractual undertaking by the contractor to provide worker's compensation insurance for its employees in compliance with applicable state law.

D. Course of Construction Insurance. Course of construction insurance in the same amount as required in Paragraph A above for property insurance, covering all construction activities on the Property.

E. General Insurance Provisions.

1. All policies of insurance provided for in this Exhibit shall be provided under valid and enforceable policies, in such forms and amounts as hereinbefore specified, issued by insurers licensed to do business in the State of California (or approved to do business in California and listed on the California Department of Insurance list of Eligible Surplus Lines Insurers or successor listing) and having a rating of A-VII or better in Best Insurance Guide or, if Best Insurance Guide is no longer in existence, a comparable rating from a comparable rating service. Prior to the issuance of building permits for the Project, and thereafter, not less than thirty (30) days prior to the expiration date of each policy furnished pursuant to this Exhibit D, Owner shall deliver to City certificates evidencing the insurance required to be carried by Owner under this Exhibit D. If requested by City, Owner shall deliver within ten (10) days following such request, certified, complete copies of the insurance policies required hereunder. Insurance policies to be provided hereunder shall meet the following requirements:
2. Each policy of insurance obtained pursuant to this Agreement, other than worker's compensation insurance, shall contain endorsements which provide:

- (a) A waiver by the insurer of the right of subrogation against City, Owner or any tenant of the Project for negligence of any such person,
 - (b) A statement that the insurance shall not be invalidated should any insured waive in writing prior to the loss any or all right of recovery against any party for loss accruing to the property described in the insurance policy, and
 - (c) A provision that no act or omission of Owner which would otherwise result in forfeiture or reduction of the insurance therein provided shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained.
 - (d) By endorsements, City, and its elected and appointed officials, officers, employees and agents shall be named as additional insured under the liability insurance required to be maintained by Owner hereunder. City shall be named as loss payee on the property insurance policies required to be maintained hereunder.
 - 3. Each policy required hereunder shall include a Notice of Cancellation or Change in Coverage Endorsement which shall provide that such policy shall not be cancelled or materially changed without at least thirty (30) days' prior written notice by registered or certified mail to City.
 - 4. All insurance policies shall provide that there shall be no exclusion from coverage for cross liability among the listed insureds.
 - 5. Any certificate of insurance applicable to course of construction insurance to be maintained shall be deposited with City prior to commencement of construction of any Improvements.
 - 6. Each policy shall contain an endorsement that provides that the insurance applies separately to each insured that is seeking coverage or against whom a claim is made, except with respect to the limits of liability
 - 7. Each policy shall be written as a primary policy not contributing with and not in excess of coverage that City may carry.
 - 8. Each policy shall expressly provide that City shall not be required to give notice of accidents or claims and that City shall have no liability for premiums.
- F.** Blanket Policies. Any insurance provided for in this Exhibit F-3 may be placed by a policy or policies of blanket insurance; provided, however, that such policy or policies provide that the amount of the total insurance allocated to the Property and the Project shall be such as to furnish protection the equivalent of separate policies in the amounts herein required, and provided further that in all other respects any such policy or policies shall comply with the other provisions of this Agreement

G. Waiver of Subrogation. To the extent permitted by law and the policies of insurance required to be maintained hereunder, and without affecting such insurance coverage, City and Owner each waive any right to recover against the other:

1. Damages for injury or death of persons,
2. Damage to property,
3. Damage to the Property or the Improvements or any part thereof, or
4. Claims arising by reason of any of the foregoing, to the extent that such damages and/or claims are covered (and only to the extent of such coverage) by insurance actually carried by either City or Owner.

This provision is intended to restrict each party (as permitted by law) to recover against insurance carriers to the extent of such coverage, and waive fully, and for the benefit of each, any rights and/or claims which might give rise to a right of subrogation in any insurance carrier.

Compliance with Policy Requirements. Owner shall observe and comply with the requirements of all policies of public liability, fire and other policies of insurance at any time in force with respect to the Property, and Owner shall so perform and satisfy the requirements of the companies writing such policies that at all times companies of good standing shall be willing to write or to continue such insurance.

5496181.4

ATTACHMENT E

PROMISSORY NOTE (Timber Street Senior Apartments)

\$2,765,000

Newark, California
_____, 2024

FOR VALUE RECEIVED, the undersigned Timber Street Investors, L.P., a California limited partnership ("Borrower"), hereby promises to pay to the order of the City of Newark, a California municipal corporation ("Holder"), 37101 Newark Blvd., Newark, California, 94560, Attn: Community Development Director, the principal amount of Two Million Seven Hundred Sixty-Five Thousand Dollars (\$2,765,000), plus interest thereon pursuant to Section 2 below (the "City Loan").

1. Borrower's Obligation. This promissory note (the "Note") evidences Borrower's obligation to pay Holder the principal amount of up to Two Million Seven Hundred Sixty-Five Thousand Dollars (\$2,765,000) with interest for the funds loaned to Borrower by Holder pursuant to the Affordable Housing Loan Agreement between Borrower and Holder dated _____, 2024 (the "AHLA"). The source of funds for the City Loan is the City of Newark Affordable Housing Fund, from affordable housing impact fees received by the City pursuant to the City's inclusionary housing ordinance. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the AHLA.

2. Interest. The City Loan bears interest from the date of this Note at three percent (3%) interest, until full repayment of the outstanding balance of the City Loan.

3. Term and Repayment Requirements. Principal and interest under this Note in the amount of the City Prorata Percentage of Seventy-Five Percent (75%) of the Residual Receipts is due and payable as set forth in Section 4.8 of the AHLA. The City acknowledges that the County of Alameda ("County") and the California Department of Housing and Community Development ("HCD") and other lenders may provide additional financing for the Development (as defined in the AHLA). The City agrees to share pro rata in the Residual Receipts with such other lenders, in proportion to the amount of City Loan and the financing provided by the County, HCD and such other lenders (the "City Prorata Percentage"). In the event that any of such other lenders (such as HCD) is entitled to share in only fifty percent (50%) of Residual Receipts, the City shall share pro rata with all lenders in fifty percent (50%) of Residual Receipts, and shall additionally share pro rata in the next twenty-five percent (25%) of Residual Receipts with those lenders (such as the County) who are entitled to a share of seventy-five percent (75%) of the Residual Receipts. The unpaid principal balance hereunder, together with accrued interest thereon, is due and payable no later than the fifty-fifth (55th) anniversary of the date that a final certificate of occupancy is issued by the City of Newark to certify that the construction of the Development is complete and the Development may be legally occupied (the "Completion Date"); provided, however, if a record of the Completion Date cannot be located or established, the City Loan is due and payable on the fifty-seventh (57th) anniversary of the date of this Note.

4. Prepayment. Borrower may prepay the City Loan at any time without penalty or fee.

5. Assumption. This Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of Holder unless the assignment complies with Section 7.3 of the AHILA. Holder may assign its interest in the Note to any person or entity in Holder's sole discretion.

6. Security. This Note shall be secured by the Deed of Trust on the Property, wherein Borrower is the trustor and Holder is the beneficiary. The terms of the Deed of Trust are hereby incorporated into this Note and made a part hereof. This Note is nonrecourse to Borrower and the general and limited partners of the Borrower, and the sole recourse of Holder with respect to the payment of the principal of, and interest on this Note shall be to the Property and the Improvements and any other collateral held by Holder as security for this Note; provided however, nothing contained herein is intended to relieve the Borrower of liability to the extent of any loss for fraud or intentional misrepresentation, or bad faith, waste, willful misrepresentation by the Borrower; or the failure to pay taxes, assessments or other charges which may create liens on the Property that are payable or applicable prior to any foreclosure under the Deed of Trust (to the full extent of such taxes, assessments or other charges); or be deemed in any way to limit the rights of the Holder to obtain specific performance by the Borrower of its covenants under the City Documents, other than the covenants to pay the Holder principal and interest due under this Note.

7. Terms of Payment.

(a) All payments due under this Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note shall be paid to Holder at the address set forth in the first paragraph of this Note, or to such other place as Holder of this Note may from time to time designate.

(c) All payments on this Note shall be without expense to Holder, and Borrower agrees to pay all costs and expenses, including reconveyance fees and reasonable attorney's fees of Holder, incurred in connection with the payment of this Note and the release of any security hereof.

(d) Notwithstanding any other provision of this Note, or any instrument securing the obligations of Borrower under this Note, if, for any reason whatsoever, the payment of any sums by Borrower pursuant to the terms of this Note would result in the payment of interest which would exceed the amount that Holder may legally charge under the laws of the State of California, then the amount by which payments exceed the lawful interest rate shall automatically be deducted from the principal balance owing on this Note, so that in no event shall Borrower be obligated under the terms of this Note to pay any interest which would exceed the lawful rate.

8. Default.

(a) Any of the following shall constitute an event of default under this Note:

(i) Any failure to pay, in full, any payment required under this Note when due following written notice by the Holder of such failure and ten (10) days opportunity to cure;

(ii) Any failure in the performance by Borrower of any term, condition, provision or covenant set forth in this Note subject to the notice and cure period set forth in Section 10.1 of the AHLA; and

(iii) The occurrence of any Borrower event of default under the AHLA, the Deed of Trust, the Regulatory Agreement, or other instrument securing the obligations of Borrower under this Note or under any other promissory notes hereafter issued by Borrower to Holder pursuant to the AHLA or the Deed of Trust (the "City Loan Documents"), subject to notice and cure periods, if any, set forth therein.

(b) Upon the occurrence of one or more of the foregoing events of default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note and the Deed of Trust shall at the option of Holder become immediately due and payable upon written notice by Holder to Borrower without further demand.

(c) Holder's failure to exercise the remedy set forth in Subsection 9(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by Holder hereof of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of Holder, except as and to the extent otherwise provided by law.

(d) Notwithstanding anything herein to the contrary, Holder hereby agrees that any cure of any default made or tendered by one or more of Borrower's limited partners shall be deemed a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower. Copies of all notices which are sent hereunder to Borrower shall be sent to Borrower's limited partners at the address provided pursuant to Section 12.3 of the AHLA.

9. Waivers.

(a) Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, notice of dishonor and notice of non-payment of this Note. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that Holder may accept further security or release any security for this Note, all without in any way affecting the liability of Borrower.

(b) Any extension of time for payment of this Note or any installment hereof made by agreement of Holder with any person now or hereafter liable for payment of this Note shall not operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

(c) The obligations of Borrower under this Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

10. Miscellaneous Provisions.

(a) All notices to Holder or Borrower shall be given in the manner and at the addresses set forth in the AHLA, or to such addresses as Holder and Borrower may therein designate.

(b) Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by Holder in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the City Loan Documents, contains the entire agreement between the parties as to the City Loan. It may not be modified except upon written consent of the parties.

IN WITNESS WHEREOF, Borrower is executing this Promissory Note as of the date first above written.

TIMBER STREET INVESTORS, L.P.,
a California limited partnership

By: Eden Timber, LLC,
a California limited liability company,
its sole general partner

By: Eden Housing, Inc.,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Tatiana Blank
Chief Financial Officer

ATTACHMENT F

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Newark
37101 Newark Blvd.
Newark, CA 94560
Attn: Community Development Director

No fee for recording pursuant to
Government Code Section 27383 and 27388.1

DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT, AND FIXTURE FILING (Timber Street Senior Apartments)

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Deed of Trust") is made as of _____, 2024, by and among Timber Street Investors, L.P., a California limited partnership ("Trustor"), WFG Title Company ("Trustee"), and the City of Newark, a California municipal corporation ("Beneficiary").

FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness herein recited and the trust herein created, the receipt of which is hereby acknowledged, Trustor hereby irrevocably grants, transfers, conveys and assigns to Trustee, IN TRUST, WITH POWER OF SALE, for the benefit and security of Beneficiary, under and subject to the terms and conditions hereinafter set forth, Trustor's interest in the property located in the County of Alameda, State of California, that is described in the attached Exhibit A, incorporated herein by this reference (the "Property");

TOGETHER WITH all interest, estates or other claims, both in law and in equity which Trustor now has or may hereafter acquire in the Property and the rents;

TOGETHER WITH all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, including (without limiting the generality of the foregoing) all tenements, hereditaments and appurtenances thereof and thereto;

TOGETHER WITH any and all buildings and improvements of every kind and description now or hereafter erected thereon, and all property of the Trustor now or hereafter affixed to or placed upon the Property;

TOGETHER WITH all building materials and equipment now or hereafter delivered to said property and intended to be installed therein;

TOGETHER WITH all right, title and interest of Trustor, now owned or hereafter acquired, in and to any land lying within the right-of-way of any street, open or proposed,

adjoining the Property, and any and all sidewalks, alleys and strips and areas of land adjacent to or used in connection with the Property;

TOGETHER WITH all estate, interest, right, title, other claim or demand, of every nature, in and to such property, including the Property, both in law and in equity, including, but not limited to, all deposits made with or other security given by Trustor to utility companies, the proceeds from any or all of such property, including the Property, claims or demands with respect to the proceeds of insurance in effect with respect thereto, which Trustor now has or may hereafter acquire, any and all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the whole or any part of such property, including without limitation, any awards resulting from a change of grade of streets and awards for severance damages to the extent Beneficiary has an interest in such awards for taking as provided in Paragraph 4.1 herein;

TOGETHER WITH all of Trustor's interest in all articles of personal property or fixtures now or hereafter attached to or used in and about the building or buildings now erected or hereafter to be erected on the Property which are necessary to the complete and comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including all other goods and chattels and personal property as are ever used or furnished in operating a building, or the activities conducted therein, similar to the one herein described and referred to, and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are, or shall be attached to said building or buildings in any manner; and

TOGETHER WITH all of Trustor's interest in all building materials, fixtures, equipment, work in process and other personal property to be incorporated into the Property; all goods, materials, supplies, fixtures, equipment, machinery, furniture and furnishings, signs and other personal property now or hereafter appropriated for use on the Property, whether stored on the Property or elsewhere, and used or to be used in connection with the Property; all rents, issues and profits, and all inventory, accounts, accounts receivable, contract rights, general intangibles, chattel paper, instruments, documents, notes drafts, letters of credit, insurance policies, insurance and condemnation awards and proceeds, trade names, trademarks and service marks arising from or related to the Property and any business conducted thereon by Trustor; all replacements, additions, accessions and proceeds; and all books, records and files relating to any of the foregoing.

All of the foregoing, together with the Property, is herein referred to as the "Security." To have and to hold the Security together with acquittances to the Trustee, its successors and assigns forever.

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS (the "Secured Obligations"):

(a) Payment to Beneficiary of all sums at any time owing under or in connection with the Note (defined in Section 1.3 below) until paid or cancelled and any other amounts owing under the Loan Documents (defined in Section 1.2 below). Said principal and other payments shall be due and payable as provided in the Note or other Loan Documents, as applicable. The

Note and all its terms are incorporated herein by reference, and this conveyance shall secure any and all extensions thereof, however evidenced;

(b) Payment of any sums advanced by Beneficiary to protect the Security pursuant to the terms and provisions of this Deed of Trust following a breach of Trustor's obligation to advance said sums and the expiration of any applicable cure period, with interest thereon as provided herein;

(c) Performance of every obligation, covenant or agreement of Trustor contained herein and in the Loan Documents; and

(d) All modifications, extensions and renewals of any of the Secured Obligations (including without limitation, (i) modifications, extensions or renewals at a different rate of interest, or (ii) deferrals or accelerations of the required principal payment dates or interest payment dates or both, in whole or in part), however evidenced, whether or not any such modification, extension or renewal is evidenced by a new or additional promissory note or notes.

AND TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR
COVENANTS AND AGREES:

ARTICLE 1 DEFINITIONS

In addition to the terms defined elsewhere in this Deed of Trust, the following terms shall have the following meanings in this Deed of Trust:

Section 1.1 The term "Loan Agreement" means that certain Affordable Housing Loan Agreement between Trustor and Beneficiary, dated _____, 2024, providing for the Beneficiary to loan to Trustor Two Million Seven Hundred Sixty-Five Thousand Dollars (\$2,765,000).

Section 1.2 The term "Loan Documents" means this Deed of Trust, the Note, the Loan Agreement, the Regulatory Agreement, and any other debt, loan or security instruments between Trustor and the Beneficiary relating to the Property.

Section 1.3 The term "Note" means the promissory note in the original principal amount of Two Million Seven Hundred Sixty-Five Thousand Dollars (\$2,765,000), of even date herewith, executed by Trustor in favor of the Beneficiary, as it may be amended or restated, the payment of which is secured by this Deed of Trust. (A copy of the Note is on file with the Beneficiary and terms and provisions of the Note are incorporated herein by reference.)

Section 1.4 The term "Principal" means the amount required to be paid under the Note.

Section 1.5 The term "Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants of even date herewith by and between the Beneficiary and the Trustor.

ARTICLE 2 MAINTENANCE AND MODIFICATION OF THE PROPERTY AND SECURITY

Section 2.1 Maintenance and Modification of the Property by Trustor.

The Trustor agrees that at all times prior to full payment and performance of the Secured Obligations, the Trustor will, at the Trustor's own expense, maintain, preserve and keep the Security or cause the Security to be maintained and preserved in good condition, reasonable wear and tear excepted. The Trustor will from time to time make or cause to be made all repairs, replacements and renewals deemed proper and necessary by it. The Beneficiary shall have no responsibility in any of these matters or for the making of improvements or additions to the Security.

Trustor agrees to pay fully and discharge (or cause to be paid fully and discharged) all claims for labor done and for material and services furnished in connection with the Security, diligently to file or procure the filing of a valid notice of cessation upon the event of a cessation of labor on the work or construction on the Security for a continuous period of thirty (30) days or more, and to take all other reasonable steps to forestall the assertion of claims of lien against the Security of any part thereof. Trustor irrevocably appoints, designates and authorizes Beneficiary as its agent (said agency being coupled with an interest) with the authority, but without any obligation, to file for record any notices of completion or cessation of labor or any other notice that Beneficiary deems necessary or desirable to protect its interest in and to the Security or the Loan Documents; provided, however, that Beneficiary shall exercise its rights as agent of Trustor only in the event that Trustor shall fail to take, or shall fail to diligently continue to take, those actions as hereinbefore provided.

Upon demand by Beneficiary, Trustor shall make or cause to be made such demands or claims as Beneficiary shall specify upon laborers, materialmen, subcontractors or other persons who have furnished or claim to have furnished labor, services or materials in connection with the Security. Nothing herein contained shall require Trustor to pay any claims for labor, materials or services which Trustor in good faith disputes and is diligently contesting provided that Trustor shall, within thirty (30) days after the filing of any claim of lien, record in the Office of the Recorder of Alameda County, a surety bond in an amount 1 and 1/2 times the amount of such claim item to protect against a claim of lien.

Section 2.2 Granting of Easements.

Trustor may not grant easements, licenses, rights-of-way or other rights or privileges in the nature of easements with respect to any property or rights included in the Security except those required or desirable for installation and maintenance of public utilities including, without

limitation, water, gas, electricity, sewer, telephone and telegraph, or those otherwise required by law, and as approved, in writing, by Beneficiary.

Section 2.3 Assignment of Rents.

As part of the consideration for the indebtedness evidenced by the Note, Trustor hereby absolutely and unconditionally assigns and transfers to Beneficiary all the rents and revenues of the Property including those now due, past due, or to become due by virtue of any lease or other agreement for the occupancy or use of all or any part of the Property, regardless of to whom the rents and revenues of the Property are payable. Trustor hereby authorizes Beneficiary or Beneficiary's agents to collect the aforesaid rents and revenues and hereby directs each tenant of the Property to pay such rents to Beneficiary or Beneficiary's agents; provided, however, that prior to written notice given by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, Trustor shall collect and receive all rents and revenues of the Property as trustee for the benefit of Beneficiary and Trustor to apply the rents and revenues so collected to the Secured Obligations with the balance, so long as no such breach has occurred, to the account of Trustor, it being intended by Trustor and Beneficiary that this assignment of rents constitutes an absolute assignment and not an assignment for additional security only. Upon delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to possession of all rents and revenues of the Property as specified in this Section 2.3 as the same becomes due and payable, including but not limited to rents then due and unpaid, and all such rents shall immediately upon delivery of such notice be held by Trustor as trustee for the benefit of Beneficiary only; provided, however, that the written notice by Beneficiary to Trustor of the breach by Trustor shall contain a statement that Beneficiary exercises its rights to such rents. Trustor agrees that commencing upon delivery of such written notice of Trustor's breach by Beneficiary to Trustor, each tenant of the Property shall make such rents payable to and pay such rents to Beneficiary or Beneficiary's agents on Beneficiary's written demand to each tenant therefor, delivered to each tenant personally, by mail or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of a default by Trustor.

Trustor hereby covenants that Trustor has not executed any prior assignment of said rents, that Trustor has not performed, and will not perform, any acts or has not executed and will not execute, any instrument which would prevent Beneficiary from exercising its rights under this Section 2.3, and that at the time of execution of this Deed of Trust, there has been no anticipation or prepayment of any of the rents of the Property for more than two (2) months prior to the due dates of such rents. Trustor covenants that Trustor will not hereafter collect or accept payment of any rents of the Property more than two (2) months prior to the due dates of such rents. Trustor further covenant that Trustor will execute and deliver to Beneficiary such further assignments of rents and revenues of the Property as Beneficiary may from time to time request.

Upon Trustor's breach of any covenant or agreement of Trustor in the Loan Documents, Beneficiary may in person, by agent or by a court-appointed receiver, regardless of the adequacy of Beneficiary's security, enter upon and take and maintain full control of the Property in order to

perform all acts necessary and appropriate for the operation and maintenance thereof including, but not limited to, the execution, cancellation or modification of leases, the collection of all rents and revenues of the Property, the making of repairs to the Property and the execution or termination of contracts providing for the management or maintenance of the Property, all on such terms as are deemed best to protect the security of this Deed of Trust. In the event Beneficiary elects to seek the appointment of a receiver for the Property upon Trustor's breach of any covenant or agreement of Trustor in this Deed of Trust, Trustor hereby expressly consents to the appointment of such receiver. Beneficiary or the receiver shall be entitled to receive a reasonable fee for so managing the Property.

All rents and revenues collected subsequent to delivery of written notice by Beneficiary to Trustor of the breach by Trustor of any covenant or agreement of Trustor in the Loan Documents shall be applied first to the costs, if any, of taking control of and managing the Property and collecting the rents, including, but not limited to, attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Property, premiums on insurance policies, taxes, assessments and other charges on the Property, and the costs of discharging any obligation or liability of Trustor as lessor or landlord of the Property and then to the sums secured by this deed of Trust. Beneficiary or the receiver shall have access to the books and records used in the operation and maintenance of the Property and shall be liable to account only for those rents actually received. Beneficiary shall not be liable to Trustor, anyone claiming under or through Trustor or anyone having an interest in the Property by reason of anything done or left undone by Beneficiary under this Section 2.3.

If the rents of the Property are not sufficient to meet the costs, if any, of taking control of and managing the Property and collecting the rents, any funds expended by Beneficiary for such purposes shall become part of the Secured Obligations pursuant to Section 3.3 hereof. Unless Beneficiary and Trustor agree in writing to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof and shall bear interest from the date of disbursement at the rate stated in Section 3.3.

Any entering upon and taking and maintaining of control of the Property by Beneficiary or the receiver and any application of rents as provided herein shall not cure or waive any default hereunder or invalidate any other right or remedy of Beneficiary under applicable law or provided herein. This assignment of rents of the Property shall terminate at such time as this Deed of Trust ceases to secure the Secured Obligations.

ARTICLE 3

TAXES AND INSURANCE; ADVANCES

Section 3.1 Taxes, Other Governmental Charges and Utility Charges.

Trustor shall pay, or cause to be paid, prior to the date of delinquency, all taxes, assessments, charges and levies imposed by any public authority or utility company which are or may become a lien affecting the Security or any part thereof; provided, however, that Trustor shall not be required to pay and discharge any such tax, assessment, charge or levy so long as (a) the legality thereof shall be promptly and actively contested in good faith and by appropriate

proceedings, and (b) Trustor maintains reserves adequate to pay any liabilities contested pursuant to this Section 3.1. With respect to taxes, special assessments or other similar governmental charges, Trustor shall pay such amount in full prior to the attachment of any lien therefor on any part of the Security; provided, however, if such taxes, assessments or charges may be paid in installments, Trustor may pay in such installments. Except as provided in clause (b) of the first sentence of this paragraph, the provisions of this Section 3.1 shall not be construed to require that Trustor maintain a reserve account, escrow account, impound account or other similar account for the payment of future taxes, assessments, charges and levies.

In the event that Trustor shall fail to pay any of the foregoing items required by this Section to be paid by Trustor, Beneficiary may (but shall be under no obligation to) pay the same, after the Beneficiary has notified the Trustor of such failure to pay and the Trustor fails to fully pay such items within seven (7) business days after receipt of such notice. Any amount so advanced therefor by Beneficiary, together with interest thereon from the date of such advance at the maximum rate permitted by law, shall become part of the Secured Obligations secured hereby, and Trustor agrees to pay all such amounts.

Section 3.2 Provisions Respecting Insurance.

Trustor agrees to provide insurance conforming in all respects to that required under the Loan Documents during the course of construction and following completion, and at all times until all amounts secured by this Deed of Trust have been paid and all Secured Obligations secured hereunder fulfilled, and this Deed of Trust reconveyed.

All such insurance policies and coverages shall be maintained at Trustor's sole cost and expense. Certificates of insurance for all of the above insurance policies, showing the same to be in full force and effect, shall be delivered to the Beneficiary upon demand therefor at any time prior to Trustor's satisfaction of the Secured Obligations.

Section 3.3 Advances.

In the event the Trustor shall fail to maintain the full insurance coverage required by this Deed of Trust or shall fail to keep the Security in accordance with the Loan Documents, the Beneficiary, after at least seven (7) days prior notice to Trustor, may (but shall be under no obligation to) take out the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by the Beneficiary shall become part of the Secured Obligations (together with interest as set forth below) and shall be secured hereby, which amounts the Trustor agrees to pay on the demand of the Beneficiary, and if not so paid, shall bear interest from the date of the advance at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

ARTICLE 4
DAMAGE, DESTRUCTION OR CONDEMNATION

Section 4.1 Awards and Damages.

All judgments, awards of damages, settlements and compensation made in connection with or in lieu of (1) taking of all or any part of or any interest in the Property by or under assertion of the power of eminent domain, (2) any damage to or destruction of the Property or in any part thereof by insured casualty, and (3) any other injury or damage to all or any part of the Property (collectively, the "Funds") shall be used to repair or restore the Property, but if the property cannot be repaired or restored such Funds are hereby assigned to and shall be paid to the Beneficiary by a check made payable to the Beneficiary. The Beneficiary is authorized and empowered (but not required) to collect and receive any Funds and is authorized to apply them in whole or in part upon any indebtedness or obligation secured hereby, in such order and manner as the Beneficiary shall determine at its sole option. The Beneficiary shall be entitled to settle and adjust all claims under insurance policies provided under this Deed of Trust and may deduct and retain from the proceeds of such insurance the amount of all expenses incurred by it in connection with any such settlement or adjustment. All or any part of the amounts so collected and recovered by the Beneficiary may be released to Trustor upon such conditions as the Beneficiary may impose for its disposition. Application of all or any part of the Funds collected and received by the Beneficiary or the release thereof shall not cure or waive any default under this Deed of Trust. The rights of the Beneficiary under this Section 4.1 are subject to the rights of any senior mortgage lender. The Beneficiary shall release the Funds to Trustor to be used to reconstruct the improvements on the Property provided that Beneficiary reasonably determines that Trustor (taking into account the Funds) has sufficient funds to rebuild the improvements in substantially the form they existed prior to the casualty or condemnation.

ARTICLE 5
AGREEMENTS AFFECTING THE PROPERTY; FURTHER
ASSURANCES; PAYMENT OF PRINCIPAL AND INTEREST

Section 5.1 Other Agreements Affecting Property.

The Trustor shall duly and punctually perform all terms, covenants, conditions and agreements binding upon it under the Loan Documents and any other agreement of any nature whatsoever now or hereafter involving or affecting the Security or any part thereof.

Section 5.2 Agreement to Pay Attorneys' Fees and Expenses.

In the event of any Event of Default (as defined in Section 7.1) hereunder, and if the Beneficiary should employ attorneys or incur other expenses for the collection of amounts due or the enforcement of performance or observance of an obligation or agreement on the part of the Trustor in this Deed of Trust, the Trustor agrees that it will, on demand therefor, pay to the Beneficiary the reasonable fees of such attorneys and such other reasonable expenses so incurred by the Beneficiary; and any such amounts paid by the Beneficiary shall be added to the Secured

Obligations, and shall bear interest from the date such expenses are incurred at the lesser of ten percent (10%) per annum or the maximum rate permitted by law.

Section 5.3 Payment of the Principal.

The Trustor shall pay to the Beneficiary the Principal and any other payments as set forth in the Note in the amounts and by the times set out therein.

Section 5.4 Personal Property.

To the maximum extent permitted by law, the personal property subject to this Deed of Trust shall be deemed to be fixtures and part of the real property and this Deed of Trust shall constitute a fixtures filing under the California Commercial Code. As to any personal property not deemed or permitted to be fixtures, this Deed of Trust shall constitute a security agreement under the California Commercial Code.

Section 5.5 Financing Statement.

The Trustor shall execute and deliver to the Beneficiary such financing statements pursuant to the appropriate statutes, and any other documents or instruments as are required to convey to the Beneficiary a valid perfected security interest in the Security. The Trustor agrees to perform all acts which the Beneficiary may reasonably request so as to enable the Beneficiary to maintain such valid perfected security interest in the Security in order to secure the payment of the Note in accordance with its terms. The Beneficiary is authorized to file a copy of any such financing statement in any jurisdiction(s) as it shall deem appropriate from time to time in order to protect the security interest established pursuant to this instrument.

Section 5.6 Operation of the Security.

The Trustor shall operate the Security (and, in case of a transfer of a portion of the Security subject to this Deed of Trust, the transferee shall operate such portion of the Security) in full compliance with the Loan Documents.

Section 5.7 Inspection of the Security.

At any and all reasonable times upon seventy-two (72) hours' notice, the Beneficiary and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right, without payment of charges or fees, to inspect the Security.

Section 5.8 Nondiscrimination.

The Trustor herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, age, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Security, nor shall the Trustor itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or

occupancy of tenants, lessees, subtenants, sublessees or vendees in the Security. The foregoing covenants shall run with the land.

ARTICLE 6 HAZARDOUS WASTE

Trustor shall keep and maintain the Property in compliance with, and shall not cause or permit the Property to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions ("Environmental Laws") on, under or about the Property including, but not limited to, soil and ground water conditions. Trustor shall not use, generate, manufacture, store or dispose of on, under, or about the Property or transport to or from the Property any flammable explosives, radioactive materials, hazardous wastes, toxic substances or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," hazardous wastes," "hazardous materials," or "toxic substances" under any applicable federal or state laws or regulations (collectively referred to hereinafter as "Hazardous Materials") except (a) as permitted under Environmental Laws; or (b) such of the foregoing as may be customarily used in construction or operation of a multi-family residential development.

Trustor shall immediately advise Beneficiary in writing if at any time it receives written notice of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against Trustor or the Property pursuant to any applicable federal, state or local laws, ordinances, or regulations relating to any Hazardous Materials, ("Hazardous Materials Law"); and (ii) all claims made or threatened by any third party against Trustor or the Property relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims").

Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims. Beneficiary shall have its reasonable attorneys' fees in connection therewith paid by Trustor, provided Trustor has failed, based on reasonable evidence produced by Beneficiary, to adequately defend such Hazardous Materials Claims. Trustor shall indemnify, defend, and hold harmless Beneficiary and its councilmembers, supervisors, directors, officers, employees, agents, successors and assigns from and against any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence of Hazardous Materials on, under, or about the Property, including without limitation: (a) all foreseeable consequential damages; (b) the costs of any required or necessary repair, cleanup or detoxification of the Property and the preparation and implementation of any closure, remedial or other required plans; and (c) all reasonable costs and expenses incurred by Beneficiary in connection with clauses (a) and (b), including but not limited to reasonable attorneys' fees and consultant's fees. This indemnification applies whether or not any government agency has issued a cleanup order. Losses, claims, costs, suits, liability, and expenses covered by this indemnification provision include, but are not limited to: (1) losses attributable to diminution in the value of the Property; (2) loss or restriction of use of rentable space on the Property; (3) adverse effect on the marketing of any rental space on the Property; and (4) penalties and fines levied by, and remedial or enforcement actions of any kind issued by

any regulatory agency (including but not limited to the costs of any required testing, remediation, repair, removal, cleanup or detoxification of the Property and surrounding properties).

Without Beneficiary's prior written consent, which shall not be unreasonably delayed or withheld, Trustor shall not take any Environmental Measure or other remedial action in response to the presence of any Hazardous Materials on, under or about the Property, nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Material Claims, which remedial action, settlement, consent decree or compromise might, in Beneficiary's reasonable judgement, impair the value of the Beneficiary's security hereunder; provided, however, that Beneficiary's prior consent shall not be necessary in the event that the presence of Hazardous Materials on, under, or about the Property either poses an immediate threat to the health, safety or welfare of any individual or is of such a nature that an immediate remedial response is necessary and it is not reasonably possible to obtain Beneficiary's consent before taking such action, provided that in such event Trustor shall notify Beneficiary as soon as practicable of any action so taken. Beneficiary agrees not to withhold its consent, where such consent is required hereunder, if (i) a particular remedial action is ordered by a court of competent jurisdiction, (ii) Trustor will or may be subjected to civil or criminal sanctions or penalties if it fails to take a required action; (iii) Trustor establishes to the reasonable satisfaction of Beneficiary that there is no reasonable alternative to such remedial action which would result in less impairment of Beneficiary's security hereunder; or (iv) the action has been agreed to by Beneficiary.

The Trustor hereby acknowledges and agrees that (i) this Article is intended as the Beneficiary's written request for information (and the Trustor's response) concerning the environmental condition of the Property as required by California Code of Civil Procedure Section 726.5, and (ii) each representation and warranty in this Deed of Trust or any of the other Loan Documents (together with any indemnity applicable to a breach of any such representation and warranty) with respect to the environmental condition of the property is intended by the Beneficiary and the Trustor to be an "environmental provision" for purposes of California Code of Civil Procedure Section 736.

In the event that any portion of the Property is determined to be "environmentally impaired" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(3)) or to be an "affected parcel" (as that term is defined in California Code of Civil Procedure Section 726.5(e)(1)), then, without otherwise limiting or in any way affecting the Beneficiary's or the Trustee's rights and remedies under this Deed of Trust, the Beneficiary may elect to exercise its rights under California Code of Civil Procedure Section 726.5(a) to (1) waive its lien on such environmentally impaired or affected portion of the Property and (2) exercise (a) the rights and remedies of an unsecured creditor, including reduction of its claim against the Trustor to judgment, and (b) any other rights and remedies permitted by law. For purposes of determining the Beneficiary's right to proceed as an unsecured creditor under California Code of Civil Procedure Section 726.5(a), the Trustor shall be deemed to have willfully permitted or acquiesced in a release or threatened release of hazardous materials, within the meaning of California Code of Civil Procedure Section 726.5(d)(1), if the release or threatened release of hazardous materials was knowingly or negligently caused or contributed to by any lessee, occupant, or user of any portion of the Property and the Trustor knew or should have known of the activity by such lessee, occupant, or user which caused or contributed to the release or

threatened release. All costs and expenses, including (but not limited to) attorneys' fees, incurred by the Beneficiary in connection with any action commenced under this paragraph, including any action required by California Code of Civil Procedure Section 726.5(b) to determine the degree to which the Property is environmentally impaired, plus interest thereon at the default rate specified in the Loan Agreement until paid, shall be added to the indebtedness secured by this Deed of Trust and shall be due and payable to the Beneficiary upon its demand made at any time following the conclusion of such action.

ARTICLE 7 EVENTS OF DEFAULT AND REMEDIES

Section 7.1 Events of Default.

The following shall constitute events of default ("Events of Default") following the expiration of any applicable notice and cure periods: (1) failure to make any payment to be paid by Trustor under the Loan Documents; (2) failure to observe or perform any of Trustor's other covenants, agreements or obligations under the Loan Documents, including, without limitation, the provisions concerning discrimination; (3) failure to make any payment or observe or perform any of Trustor's other covenants, agreements, or obligations under any other debt instrument or regulatory agreement secured by the Property, which default shall not be cured within the times and in the manner provided therein; or (4) a default is declared under the Approved Financing by the lender of such Approved Financing. Notwithstanding anything to the contrary contained herein, Beneficiary hereby agrees that any cure of any default made or tendered by one or more of Trustor's limited partners shall be deemed a cure by the Trustor and shall be accepted or rejected on the same basis as if made or tendered by Trustor. Copies of all notices which are sent to Trustor hereunder shall be sent to Investor Limited Partner at the address set forth in the Loan Agreement, and the Investor Limited Partner shall have the right, but not the obligation to cure an Event of Default hereunder, and Beneficiary will accept tender of such cure as if delivered by Trustor.

Section 7.2 Acceleration of Maturity.

If an Event of Default shall have occurred and be continuing, then at the option of the Beneficiary, the amount of any payment related to the Event of Default and all unpaid Secured Obligations shall immediately become due and payable, upon written notice by the Beneficiary to the Trustor (or automatically where so specified in the Loan Documents), and no omission on the part of the Beneficiary to exercise such option when entitled to do so shall be construed as a waiver of such right.

Section 7.3 The Beneficiary's Right to Enter and Take Possession.

If an Event of Default shall have occurred and be continuing, the Beneficiary may:

(a) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon the Security and take possession thereof (or any part thereof) and of any of

the Security, in its own name or in the name of Trustee, and do any acts which it deems necessary or desirable to preserve the value or marketability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security thereof. The entering upon and taking possession of the Security shall not cure or waive any Event of Default or Notice of Sale (as defined below) hereunder or invalidate any act done in response to such Event of Default or pursuant to such Notice of Sale, and, notwithstanding the continuance in possession of the Security, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust, or by law upon occurrence of any Event of Default, including the right to exercise the power of sale;

(b) Commence an action to foreclose this Deed of Trust as a mortgage, appoint a receiver, or specifically enforce any of the covenants hereof;

(c) Deliver to Trustee a written declaration of default and demand for sale, and a written notice of default and election to cause Trustor's interest in the Security to be sold ("Notice of Sale"), which notice Trustee or Beneficiary shall cause to be duly filed for record in the Official Records of Alameda County; or

(d) Exercise all other rights and remedies provided herein, in the instruments by which the Trustor acquires title to any Security, or in any other document or agreement now or hereafter evidencing, creating or securing the Secured Obligations.

Section 7.4 Foreclosure By Power of Sale.

Should the Beneficiary elect to foreclose by exercise of the power of sale herein contained, the Beneficiary shall deliver to the Trustee the Notice of Sale and shall deposit with Trustee this Deed of Trust which is secured hereby (and the deposit of which shall be deemed to constitute evidence that the Secured Obligations are immediately due and payable), and such receipts and evidence of any expenditures made that are additionally secured hereby as Trustee may require.

(a) Upon receipt of the Notice of Sale from the Beneficiary, Trustee shall cause to be recorded, published and delivered to Trustor such Notice of Sale as then required by law and by this Deed of Trust. Trustee shall, without demand on Trustor, after lapse of such time as may then be required by law and after recordation of such Notice of Sale having been given as required by law, sell the Security, at the time and place of sale fixed by it in the Notice of Sale, whether as a whole or in separate lots or parcels or items as Trustee shall deem expedient and in such order as it may determine unless specified otherwise by the Trustor according to California Civil Code Section 2924g(b), at public auction to the highest bidder, for cash in lawful money of the United States payable at the time of sale. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed or any matters of facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustor, Trustee or Beneficiary, may purchase at such sale.

(b) After deducting all reasonable costs, fees and expenses of Trustee, including costs of evidence of title in connection with such sale, Trustee shall apply the proceeds

of sale to payment of: (i) the unpaid Principal amount of the Note; (ii) all other Secured Obligations owed to Beneficiary under the Loan Documents; (iii) all other sums then secured hereby; and (iv) the remainder, if any, to Trustor.

(c) Trustee may postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter, and without further notice make such sale at the time fixed by the last postponement, or may, in its discretion, give a new Notice of Sale.

Section 7.5 Receiver.

If an Event of Default shall have occurred and be continuing, Beneficiary, as a matter of right and without further notice to Trustor or anyone claiming under the Security, and without regard to the then value of the Security or the interest of Trustor therein, shall have the right to apply to any court having jurisdiction to appoint a receiver or receivers of the Security (or a part thereof), and Trustor hereby irrevocably consents to such appointment and waives further notice of any application therefor. Any such receiver or receivers shall have all the usual powers and duties of receivers in like or similar cases, and all the powers and duties of Beneficiary in case of entry as provided herein, and shall continue as such and exercise all such powers until the date of confirmation of sale of the Security, unless such receivership is sooner terminated.

Section 7.6 Remedies Cumulative.

No right, power or remedy conferred upon or reserved to the Beneficiary by this Deed of Trust is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity.

Section 7.7 No Waiver.

(a) No delay or omission of the Beneficiary to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Deed of Trust to the Beneficiary may be exercised from time to time and as often as may be deemed expeditious by the Beneficiary. Beneficiary's express or implied consent to breach, or waiver of, any obligation of the Trustor hereunder shall not be deemed or construed to be a consent to any subsequent breach, or further waiver, of such obligation or of any other obligations of the Trustor hereunder. Failure on the part of the Beneficiary to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by the Beneficiary of its right hereunder or impair any rights, power or remedies consequent on any Event of Default by the Trustor.

(b) If the Beneficiary (i) grants forbearance or an extension of time for the payment or performance of any Secured Obligation, (ii) takes other or additional security or the payment of any sums secured hereby, (iii) waives or does not exercise any right granted in the Loan Documents, (iv) releases any part of the Security from the lien of this Deed of Trust, or

otherwise changes any of the terms, covenants, conditions or agreements in the Loan Documents, (v) consents to the granting of any easement or other right affecting the Security, or (vi) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under this Deed of Trust, or any other obligation of the Trustor or any subsequent purchaser of the Security or any part thereof, or any maker, co-signer, endorser, surety or guarantor (unless expressly released); nor shall any such act or omission preclude the Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in any Event of Default then made or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Beneficiary shall the lien of this Deed of Trust be altered thereby.

Section 7.8 Suits to Protect the Security.

The Beneficiary shall have power to (a) institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Security and the rights of the Beneficiary as may be unlawful or any violation of this Deed of Trust, (b) preserve or protect its interest (as described in this Deed of Trust) in the Security, and (c) restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement for compliance with such enactment, rule or order would impair the Security thereunder or be prejudicial to the interest of the Beneficiary.

Section 7.9 Trustee May File Proofs of Claim.

In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting the Trustor, its creditors or its property, the Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of the Beneficiary allowed in such proceedings and for any additional amount which may become due and payable by the Trustor hereunder after such date.

Section 7.10 Waiver.

The Trustor waives presentment, demand for payment, notice of dishonor, notice of protest and nonpayment, protest, notice of interest on interest and late charges, and diligence in taking any action to collect any Secured Obligations or in proceedings against the Security, in connection with the delivery, acceptance, performance, default, endorsement or guaranty of this Deed of Trust.

ARTICLE 8 MISCELLANEOUS

Section 8.1 Amendments.

This Deed of Trust cannot be waived, changed, discharged or terminated orally, but only by an instrument in writing signed by Beneficiary and Trustor.

Section 8.2 Reconveyance by Trustee.

Upon written request of Beneficiary stating that all Secured Obligations have been paid or forgiven, and all obligations under the Loan Documents have been performed in full, and upon surrender of this Deed of Trust to Trustee for cancellation and retention, and upon payment by Trustor of Trustee's reasonable fees, Trustee shall reconvey the Security to Trustor, or to the person or persons legally entitled thereto.

Section 8.3 Notices.

Formal notices, demands, and communications between the Parties shall be sufficiently given if and shall not be deemed given unless (a) dispatched by registered or certified mail, postage prepaid, return receipt requested, (b) delivered by express delivery service, return receipt requested, (c) delivered personally, or (d) sent by electronic mail, provided that any notice sent by electronic mail must be followed by notice delivered under either (a), (b), or (c) within 2 business days. All such notices shall be delivered to the principal office of the Parties as follows:

Borrower:	Timber Street Investors, L.P. c/o Eden Housing 22645 Grand Street Hayward, CA 94541 Attn: Senior Vice President of Real Estate Development
City:	City of Newark 37101 Newark Blvd. Newark, CA 94560 Attn: Community Development Director

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable) except that any electronic mail received after 5:00 p.m. shall be deemed to have been received on the next business day.

Section 8.4 Successors and Joint Trustors.

Where an obligation created herein is binding upon Trustor, the obligation shall also apply to and bind any transferee or successors in interest. Where the terms of the Deed of Trust

have the effect of creating an obligation of the Trustor and a transferee, such obligation shall be deemed to be a joint and several obligation of the Trustor and such transferee. Where Trustor is more than one entity or person, all obligations of Trustor shall be deemed to be a joint and several obligation of each and every entity and person comprising Trustor.

Section 8.5 Captions.

The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 8.6 Invalidity of Certain Provisions.

Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court or other body of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the debt, or if the lien is invalid or unenforceable as to any part of the Security, the unsecured or partially secured portion of the debt, and all payments made on the debt, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid or applied to the full payment of that portion of the debt which is not secured or partially secured by the lien of this Deed of Trust.

Section 8.7 Governing Law.

This Deed of Trust shall be governed by and construed in accordance with the laws of the State of California.

Section 8.8 Gender and Number.

In this Deed of Trust the singular shall include the plural and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 8.9 Deed of Trust, Mortgage.

Any reference in this Deed of Trust to a mortgage shall also refer to a deed of trust and any reference to a deed of trust shall also refer to a mortgage.

Section 8.10 Actions.

Trustor agrees to appear in and defend any action or proceeding purporting to affect the Security.

Section 8.11 Substitution of Trustee.

Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers, and duties

conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Deed of Trust and its place of record, which, when duly recorded in the proper office of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor trustee.

Section 8.12 Statute of Limitations.

The pleading of any statute of limitations as a defense to any and all obligations secured by this Deed of Trust is hereby waived to the full extent permissible by law.

Section 8.13 Acceptance by Trustee.

Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action of proceeding in which Trustor, Beneficiary, or Trustee shall be a party unless brought by Trustee.

Section 8.14 Tax Credit Provisions.

Notwithstanding anything to the contrary contained herein or in any documents secured by this Deed of Trust or contained in any subordination agreement, the Beneficiary acknowledges and agrees that in the event of a foreclosure or deed-in-lieu of foreclosure (collectively, "Foreclosure") with respect to the Security encumbered by this Deed of Trust, the following rule contained in Section 42(h)(6)(E)(ii) of the Internal Revenue Code of 1986 (26 USC 42 (h)(6)(E)(ii)), as amended, shall apply:

For a period of three (3) years from the date of Foreclosure, with respect to any unit that had been regulated by a Regulatory Agreement with the California Tax Credit Allocation Committee, (i) none of the tenants occupying those units at the time of Foreclosure may be evicted or their tenancy terminated (other than for good cause), (ii) nor may any rent be increased except as otherwise permitted under Section 42 of the Code.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the day and year first above written.

TRUSTOR:

TIMBER STREET INVESTORS, L.P.,
a California limited partnership

By: Eden Timber, LLC,
a California limited liability company,
its sole general partner

By: Eden Housing, Inc.,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Tatiana Blank
Chief Financial Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public,
personally appeared _____, who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

EXHIBIT A

LEGAL DESCRIPTION

A.P.N.: 92A-2125-010-02

A PORTION OF SURVEY NO. 119 OF THE LANDS OF THE EX-MISSION OF SAN JOSE, PATENTED TO ASHLEY CAMERON BY LETTERS PATENT, DATED APRIL 7, 1868 AND RECORDED IN BOOK "A" OF PATENTS, PAGE 463, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERN LINE OF CENTRAL AVENUE WITH THE NORTHEASTERN LINE OF TIMBER STREET, FORMERLY CEDAR ROAD, AS SAID AVENUE AND ROAD ARE SHOWN ON THE MAP OF "TRACT 1520", FILED DECEMBER 1, 1955, MAP BOOK 36, PAGES 73 AND 74, ALAMEDA COUNTY RECORDS, RUNNING THENCE ALONG THE SAID LAST MENTIONED LINE SOUTH 56° 49' 19" EAST 420.51 FEET TO A POINT ON THE SOUTHEASTERN LINE OF THAT CERTAIN 15 FOOT PUBLIC UTILITIES EASEMENT, AS SHOWN ON SAID MAP; THENCE ALONG THE SAID LAST MENTIONED LINE NORTH 51° 59' 59" EAST 17.96 FEET TO A POINT ON THE NORTHEASTERN LINE OF TIMBER STREET AS DESCRIBED IN INSTRUMENT TO CITY OF NEWARK, A MUNICIPAL CORPORATION, RECORDED MAY 18, 1964, REEL 1206, IMAGE 547, ALAMEDA COUNTY RECORDS, SAID LAST MENTIONED POINT BEING THE ACTUAL POINT OF BEGINNING, THENCE CONTINUING ALONG THE SAID SOUTHEASTERN LINE, NORTH 51°59'59" EAST 217.24 FEET TO THE SOUTHWESTERN LINE OF THE LAND CONVEYED TO STATE OF CALIFORNIA BY DEED RECORDED MARCH 27, 1966 IN BOOK 7979 OR, PAGE 471; THENCE NORTHWESTERLY, ALONG THE LAST NAMED LINE AND ALONG THE SOUTHWESTERN LINE OF THE LAND CONVEYED TO STATE OF CALIFORNIA, BY DEED RECORDED MARCH 21, 1956 IN BOOK 7973 OR, PAGE 501, THE TWO FOLLOWING COURSES AND DISTANCES: NORTH 42° 00' 16" WEST (STATE HIGHWAY BEARING NORTH 41° 27' 57" WEST) 133.79 FEET, AND ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 2400 FEET, A DISTANCE OF 88.87 FEET; THENCE SOUTH 33° 10' 41" WEST 264.11 FEET TO A POINT ON THE SAID NORTHEASTERN LINE OF TIMBER STREET AS DESCRIBED IN SAID INSTRUMENT TO CITY OF NEWARK; THENCE ALONG THE SAID LAST MENTIONED LINE SOUTH 56° 49' 19" EAST 144.79 FEET, MORE OR LESS TO THE ACTUAL POINT OF BEGINNING.

5496817.3

ATTACHMENT G

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Newark
37101 Newark Blvd
Newark, CA 94560
Attn: Community Development Director

No fee for recording pursuant to
Government code Section 27383

REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (Timber Street Senior Apartments)

This Regulatory Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of _____, 2024, by and between the City of Newark, a California municipal corporation (the "City"), and Timber Street Investors, L.P., a California limited partnership (the "Owner"). City and Owner are hereinafter collectively referred to as the "Parties."

RECITALS

A. Owner owns that certain property located at 37660 Timber Street in the City of Newark, as more particularly described in Exhibit A (the "Property"). Owner intends to construct an approximately seventy-nine (79) unit multifamily rental housing development on the Property for rental to extremely low and very low income senior households, including one (1) manager's unit that is not subject to affordability restrictions. Together the Property and its improvements are referred to herein as the "Development."

B. City has entered into an Affordable Housing Loan Agreement with Owner dated _____, 2024 ("AHLA"), pursuant to which the City agreed to loan to the Owner Two Million Seven Hundred Sixty-Five Thousand Dollars (\$2,765,000) ("City Loan") to assist with the construction of the Development.

C. City has agreed to make the City Loan on the condition that the Owner construct, maintain and operate the Development in accordance with restrictions set forth in this Regulatory Agreement for a fifty-five (55) year term, and in related documents including the AHLA.

D. In consideration for the City Loan at an interest rate substantially below the market rate, Owner agrees to observe all of the terms and conditions set forth below.

THEREFORE, City and Owner hereby agree as follows.

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "Actual Household Size" shall mean the actual number of persons in the applicable household.

(b) "Affordable Units" shall mean the Extremely Low Income Units and the Very Low Income Units.

(c) "Agreement" shall mean this Regulatory Agreement and Declaration of Restrictive Covenants.

(d) "Affiliate" means any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Owner which, if Owner is a partnership or limited liability company, shall include each of the constituent members or partners, respectively thereof. The term "control" as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, of more than fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation, with respect to a person that is a nonprofit corporation, the right to appoint more than fifty percent of the board of directors, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

(e) "AHLA" shall mean the Affordable Housing Loan Agreement entered into by and between the City and Owner and dated of _____, 2024.

(f) "Area Median Income" shall mean the median gross yearly income adjusted for Actual Household Size or Assumed Household Size as specified herein, in Alameda County, California, as published from time to time and periodically updated in Title 25, California Code of Regulations, Section 6932 (or successor provision) by HCD. In the event that such income determinations are no longer published or are not updated for a period of at least eighteen (18) months, City shall provide the Owner with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HCD.

(g) "Assumed Household Size" means the household size "adjusted for family size appropriate to the unit" in accordance with California Health and Safety Code Section 50053.

(h) "City" shall mean the City of Newark, a California municipal corporation.

(i) "City Loan" shall mean all funds loaned to Owner pursuant to the AHLA.

(j) "Completion Date" means the date a final certificate of occupancy is issued by the City to certify that the construction of the Development is complete and the Development may be legally occupied.

(k) "Deed of Trust" shall mean the Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing of even date herewith by and among Owner, as trustor, WFG Title Company, as trustee, and the City as beneficiary, that encumbers the Property to secure repayment of the City Loan and Owner's performance of the Loan Documents.

(l) "Development" shall mean the Property and the seventy-nine (79) units to be developed on the Property, and any additional improvements and all landscaping, roads and parking spaces existing thereon, as the same may from time to time exist.

(m) "Extremely Low Income Household" shall mean a household with a Household Income that does not exceed thirty percent (30%) of Area Median Income.

(n) "Extremely Low Income Units" shall mean the Units which, pursuant to Section 2.1(a) below, are required to be occupied by Extremely Low Income Households.

(o) "Fifteen Year Compliance Period" means the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.

(p) "Household Income" shall mean the total anticipated annual income of all persons in a household, as calculated in accordance with the California Tax Credit Allocation Committee rules and regulations or pursuant to a successor State housing program that utilizes a reasonably similar method of calculation of adjusted income. In the event that no such program exists, City shall provide the Owner with a reasonably similar method of calculation of gross income as provided in 25 California Code of Regulations Section 6914.

(q) "Investor Limited Partner" means the limited partner or partners of the Owner.

(r) "Loan Documents" shall mean this Agreement, the AHLA, the Note, and the Deed of Trust.

(s) "Low Income Units" shall mean the Units which, pursuant to Section 2.4(a) hereof, are occupied by tenants earning up to eighty percent (80%) of Area Median Income.

(t) "Note" shall mean the promissory note from Owner to City evidencing all or any part of the City Loan.

(u) "Owner" shall mean Timber Street Investors, L.P., a California limited partnership, and its successors and assigns to the Development.

(v) "Partnership Agreement" means the Agreement of Limited Partnership, as it may be amended and restated from time to time, which governs the operation and organization of Owner, as a California limited partnership.

(w) "Property" shall mean the real property described in Exhibit A attached hereto and incorporated herein.

(x) "Rent" shall mean the total of monthly payments by the tenants of a Unit for the following: use and occupancy of the Unit and land and associated facilities (including

parking if applicable), any separately charged fees or service charges assessed by Owner which are required of all tenants, other than security deposits; the cost of an adequate level of service for utilities paid by the tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Tenant. Utility allowances may be determined by use of the utility allowance published by the local public housing authority or the California Utility Allowance Calculator ("CUAC") model allowed by the California Tax Credit Allocation Committee regulations, if the Property qualifies.

(y) "Senior Household" shall mean a household consisting of Senior Citizens, Qualified Permanent Residents and/or Permitted Health Care Residents, as defined in Civil Code Section 51.3(b).

(z) "Tenant" shall mean a household occupying a Unit.

(aa) "Term" means the term of this Regulatory Agreement, which commences as of the date of this Regulatory Agreement and shall remain in effect until the fifty-fifth (55th) anniversary of the Completion Date.

(bb) "Units" shall mean the seventy-nine (79) rental units to be constructed by the Owner on the Property.

(cc) "Very Low Income Household" shall mean a household with a Household Income that does not exceed fifty percent (50%) of Area Median Income.

(dd) "Very Low Income Units" shall mean the Units which, pursuant to Section 2.1(b) below, are required to be occupied by Very Low Income Households.

ARTICLE 2. AFFORDABILITY COVENANTS

Section 2.1 Occupancy Requirements.

(a) Extremely Low Income Units. Twenty (20) of the Units shall be rented to and occupied by or, if vacant, available for occupancy by Extremely Low Income Households.

(b) Very Low Income Units. Fifty-eight (58) of the Units shall be rented to and occupied by or, if vacant, available for occupancy by Very Low Income Households.

(c) Manager's Unit. One (1) Unit shall be reserved for an on-site manager and shall not be subject to affordability or occupancy restrictions.

(d) Intermingling of Units. All Affordable Units shall be intermingled and of comparable quality. Tenants in all Affordable Units shall have equal access to and enjoyment of all common facilities of the Development.

(e) Senior Households. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Development shall be used solely for the operation of an affordable residential rental development which qualifies as a Senior Citizen Housing Development pursuant to California Civil Code Section 51.3, consisting of the Development and related improvements, in compliance with the Loan Agreement and the requirements set forth herein. All Units (excluding the manager's unit) shall be occupied only by Senior Households.

(f) Disabled Persons Occupancy.

(1) Owner shall cause the Development to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) the United States Fair Housing Act, as amended, (iv) the Americans With Disabilities Act of 1990, and (v) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(2) Owner shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the City) the City, and its city council, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Owner's failure to comply with the Accessibility Requirements. This obligation to indemnify survives termination of this Regulatory Agreement, repayment of the City Loan, cancellation of the Promissory Note, and the reconveyance of the Deed of Trust.

Section 2.2 Allowable Rent.

(a) Extremely Low Income Rent. Subject to the provisions of Section 2.3 below, the Rent charged to Tenants of the Extremely Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of Area Median Income, adjusted for Assumed Household Size.

(b) Very Low Income Rent. Subject to the provisions of Section 2.3 below, the Rent charged to Tenants of the Very Low Income Units shall not exceed one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of Area Median Income, adjusted for Assumed Household Size.

(c) Compliance with TCAC Requirements. During the term of any regulatory agreement associated with the provision of low income housing tax credits by the California Tax Credit Allocation Committee ("TCAC") and recorded against the Property (the "TCAC Regulatory Agreement"), Owner may use the occupancy standards, assumed household sizes, income limits, rent levels and rent increases that are permitted by TCAC in the TCAC Regulatory Agreement, in place of such requirements imposed by this Regulatory Agreement. During the term of the TCAC Regulatory Agreement, compliance with the TCAC Regulatory Agreement as it pertains to occupancy standards, assumed household sizes, income limits, rent levels and rent increases shall be deemed compliance with such requirements of this Agreement.

Section 2.3 Rent Increases.

(a) Rent Amount. The initial Rent for all Affordable Units must be approved by the City prior to occupancy. The utility allowance schedule will be determined either by use of the CUAC or local public housing authority schedule. Notwithstanding the approved schedule of maximum rents, Owner shall not be obligated to reduce rents for any existing tenants should maximum rents decrease, or utility allowances increase for any Units which must conform to the approved schedule of maximum rents.

(b) Rent Increases. No later than sixty (60) days prior to the proposed implementation of any Rent increase affecting an Affordable Unit, Owner shall submit to the City a schedule of any proposed increase in the Rent charged for the Affordable Units. The Rent for such Affordable Units may be increased no more than once annually based upon updated rent schedules corresponding to the updated Area Median Income. Any rent increase resulting from use of the CUAC model for utility allowances shall comply with the TCAC limitation. Owner shall give Tenants of Affordable Units written notice at least thirty (30) days prior to any Rent increase, following completion of the City approval process set forth above. Notwithstanding the above, in no event will any annual rent increase exceed the annual rent increase allowed pursuant to Civil Code Section 1947.12, although the parties acknowledge that the Affordable Units are not subject to such restrictions pursuant to Civil Code Section 1947.13. For purposes of this Agreement, if any rent subsidy is terminated or reduced, an increase in the tenant's total monthly payment toward rent to offset the terminated or reduced rent subsidy shall not constitute a Rent increase as long as the Rent for the Affordable Unit is not increased above the maximum allowable Rent.

(c) Rent During Term of TCAC Regulatory Agreement. Notwithstanding the foregoing, Section 2.2(c) shall apply to the rent amounts and rent increases during the term of the TCAC Regulatory Agreement.

Section 2.4 Increased Income of Occupying Households.

(a) Increased Income Below 80% of Area Median Income. In the event that, upon recertification of an occupant household's income, the income of a Very Low Income Household increases above the qualifying limit for a Very Low Income Household, but not above eighty percent (80%) of Area Median Income, the rent shall increase to thirty percent (30%) of sixty percent (60%) of Area Median Income, the Unit shall qualify as a Low Income Unit, and the next available Unit shall be rented to a Very Low Income Household, as applicable, as necessary to meet the requirements of Section 2.1 above.

(b) Non-Qualifying Household. If, upon recertification of a Tenant's income, the Owner determines that a Tenant has an Adjusted Income exceeding the qualifying income for Low Income Household, adjusted for Actual Household Size, such Tenant shall be permitted to continue to occupy the Unit at a Rent not exceeding one-twelfth of thirty percent (30%) of one hundred ten percent (110%) of Area Median Income, and the Unit shall continue to be classified as a Low Income Unit until the Tenant vacates the Unit, at which time the Unit shall be re-rented to a Very Low Income Household or Extremely Low Income Household as applicable, to meet the requirements of Section 2.1 above.

(c) Termination of Occupancy. Upon termination of occupancy of an Affordable Unit by a Tenant, such Unit shall be deemed to be continuously occupied by a household of the same income level (e.g., Extremely Low Income Household or Very Low Income Household) as the initial income level of the vacating Tenant, until such Affordable Unit is reoccupied, at which time the income character of the Affordable Unit (e.g., Extremely Low Income Unit, Very Low Income Unit, or Low Income Unit) shall be redetermined.

(d) Continued Compliance. In the event an occupant household's income increases and the rent is increased as set forth in Sections (a) and (b) above, the Affordable Unit shall continue to be classified as an Extremely Low Income Unit or Very Low Income Unit, as applicable, until such time as the Affordable Unit is either vacated by the occupant or another Affordable Unit is rented at the applicable income limit.

(e) Income Limits During Term of TCAC Regulatory Agreement. Notwithstanding the foregoing, during the term of the TCAC Regulatory Agreement, compliance with the TCAC Regulatory Agreement as it pertains to increased income of occupying households shall be deemed compliance with this Agreement.

Section 2.5 Lease Provisions. Owner shall include in leases for all Affordable Units provisions which authorize Owner to immediately terminate the tenancy of any household one or more of whose members has misrepresented any fact material to the household's qualification as an Extremely Low Income Tenant or Very Low Income Household. Each lease or rental agreement shall also provide that the household is subject to annual certification in accordance with Section 3.1 below, and that, if the household's income increases above the applicable limits for a Very Low Income Household or Low Income Household, as applicable, such household's Rent may be subject to increase.

Section 2.6 Condominium Conversion. The Owner shall not convert the Development or any Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property during the Term of this Agreement.

Section 2.7 Loss of Subsidy.

(a) It is anticipated that certain Affordable Units in the Development will receive rental subsidies throughout the Term from governmental project based vouchers or other sources ("Subsidy Units"), as reflected in the operating pro forma contained in the Financing Plan attached to the AHLA. If any change in federal law occurs, or any action (or inaction) by Congress or any federal or state agency occurs, which results in a material reduction, termination, or nonrenewal of the rental subsidy through no fault of the Borrower, such that the rental subsidy shown on the annual operating pro forma in the Financing Plan is no longer available, Borrower shall, in anticipation of such loss of rental subsidy, use good faith efforts for a period of sixty (60) days, to obtain alternative sources of rental subsidies and shall provide the City weekly progress reports on Borrower's efforts to obtain alternative sources of rental subsidies. If at the end of such sixty (60) day period Borrower is unable to secure an alternate source of rental subsidy, notwithstanding Section 2.3, Borrower may increase the Rent on one or more of the Affordable Units that are Subsidy Units, to the TCAC rent limit for a 60% AMI unit, subject to the following requirements:

(1) Any such Rent increase must be pursuant to a transition plan approved by the City showing how the Rent increase will be phased in, and which Affordable Units will be subject to the increase, and if applicable, be consistent with remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(3) or such successor regulation applicable to California's Federal and State Low Income Housing Tax Credit Program.

(2) At the time Borrower requests an increase in the Rent, Borrower shall provide the City with a copy of the proposed annual, operating budget showing the impact of the loss or reduction of the rental subsidy.

(3) Any subsequent Rent increases remain subject to Section 2.3 above.

(4) The number of Affordable Units subject to the Rent increases and the level of Rent increase may not be greater than the amount required to ensure that the Development generates sufficient income to cover its operating costs and debt service as shown in the annual operating pro forma, and as is necessary to maintain the financial stability of the Development.

(b) Borrower shall continue to use good faith efforts to obtain alternative sources of rental subsidies and shall provide the City with annual progress reports on efforts to obtain alternative sources of rental subsidies that would allow the Rents on the Affordable Units to be reduced back to the Rents set forth in Section 2.2. Upon receipt of any alternative rental subsidies, Borrower shall reduce the Rents on the Affordable Units back to the Rents set forth in Section 2.2, to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs and debt service of the Development as shown in the annual operating pro forma.

Section 2.8 Foreclosure. After a foreclosure of a loan or deed in lieu of foreclosure, the City agrees to meet and confer with the successor owner of the Development upon its request to determine if the maximum Rent on one or more of the Affordable Units needs to be increased to the TCAC 60% AMI rent (together with rent increases on Units other than the Affordable Units) in order to cover operating costs and debt service, and maintain the financial stability of the Development, subject to a mutually acceptable transition plan approved by the City showing how the Rent increase will be phased in and which Affordable Units would be subject to the increase. The City agrees to reasonably consider and shall not unreasonably disapprove such changes to the Rent requirements of this Agreement, consistent with the foregoing, as necessary to maintain the financial stability of the Development.

ARTICLE 3.

INCOME CERTIFICATION AND REPORTING

Section 3.1 Income and Senior Household Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Affordable Unit, and on every anniversary thereafter, a written certificate containing all of the following in

such format and with such supporting documentation as City may reasonably require: (a) The identity and age of each member of the household; and (b) Total Household Income.

(a) Owner shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income tax return for the most recent tax year; (3) conduct a credit agency or similar search; (4) obtain an income verification form from the applicant's current employer; (5) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of such agencies; or (6) if the applicant is unemployed and has no such tax return, obtain another form of independent verification or utilize a self-certified statement.

(b) Owner shall retain such certificates for not less than three (3) years, and upon City's request, shall make the original available for inspection by the City and shall provide copies of such certificates to the City.

(c) During such time that the Development is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing City with a copy of tenant income certifications in connection with such financing.

Section 3.2 Annual Report to City. No later than July 1 of each year during the Term, commencing with the year following the initial leasing of the Affordable Units, Owner shall submit an annual report ("Annual Report") to the City in form satisfactory to City, together with a certification that the Development is in compliance with the requirements of this Agreement.

The Annual Report shall, at a minimum, include the following information for each dwelling Affordable Unit in the Development:

- (a) Unit number;
- (b) Current rent and other charges;
- (c) Dates of any vacancies during the previous year;
- (d) Number of people residing in the unit;
- (e) Total Household Income of residents;
- (f) Documentation of source of household income; and
- (g) The information required by Section 3.1.1.
- (h) Any other information reasonable requested by City.

Upon City's request, Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as City may reasonably request from time to time in order to show compliance with this Agreement. The Annual Report shall conform to the format requested by City; provided however, during such time that the Development is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing City with a copy of compliance reports required in connection with such financing.

Section 3.3 Onsite Inspection. Owner shall permit representatives of City to enter and inspect the Property and the Development during reasonable business hours in order to monitor compliance with this Agreement upon 24-hours written advance notice of such visit to Owner or to Owner's management agent.

Section 3.4 Additional Information. Owner shall provide any additional information reasonably requested by City to monitor compliance with this Agreement. The City shall have the right to examine and make copies of all books, records, or other documents of the Owner that pertain to the Owner's compliance with its obligations under this Agreement.

Section 3.5 Records.

(a) Owner shall keep and maintain at the principal place of business of the Owner set forth in Section 6.10 below, or elsewhere with the City's written consent, full, complete and appropriate books, records and accounts relating to the Development. Owner shall cause all books, records and accounts relating to the Development to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and to be consistent with requirements of this Regulatory Agreement. Owner shall cause all books, records, and accounts to be open to and available for inspection and copying by the City, its auditors or other authorized representatives at reasonable intervals during normal business hours. Owner shall cause copies of all tax returns and other reports that Owner may be required to furnish to any government agency to be open for inspection by the City at all reasonable times at the place that the books, records and accounts of Owner are kept. Owner shall preserve such records for a period of not less than five (5) years after their creation. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Development is pending at the end of the record retention period stated herein, then Owner shall retain the records until such action and all related issues are resolved. Such records are to include but are not limited to:

- (1) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements;
- (2) Financial records; and
- (3) Records demonstrating compliance with the marketing, tenant selection, affordability, and income requirements.

(b) The City shall notify Owner of any records it deems insufficient. Owner has fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Owner must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

ARTICLE 4. OPERATION OF THE DEVELOPMENT

Section 4.1 Residential Use. The Development shall be operated only for residential use. No part of the Development shall be operated as transient housing.

Section 4.2 Compliance with Loan Documents and Development Regulatory Agreements. Owner shall comply with all the terms and provisions of the Loan Documents and any other regulatory requirement imposed on the Development, including but not limited to regulatory agreements associated with the Low Income Housing Tax Credits provided by the California Tax Credit Allocation Committee (the "Development Regulatory Documents"). Owner shall promptly notify the City in writing of the existence of any default under any Development Regulatory Documents and provide the City with copies of any such notice of default.

Section 4.3 Property Tax Exemption. Owner shall not apply for a property tax exemption for the Property under any provision of law other than Revenue and Taxation Section 214(g) without City's prior written consent.

Section 4.4 Taxes and Assessments. Owner shall pay all real and personal property taxes, assessments, if any, and charges and all franchise, income, employment, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Owner shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Owner exercises its right to contest any tax, assessment, or charge against it, Owner, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Section 4.5 Nondiscrimination. All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. Owner shall comply with state and federal fair housing laws in the marketing and rental of the Units in the Development. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, disability, veteran or military status, or genetic information, or any other basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Owner or any person claiming under or through the Owner,

establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the operation and management of the Development. All deeds, leases or contracts made or entered into by Owner as to the Units or the Development or portion thereof, shall contain covenants concerning discrimination as prescribed by the AHLA.

Section 4.6 City Preference. City has caused a displacement study to be prepared and submitted to the County of Alameda which analyzes the impact of a local preference requirement for the selection of the tenants of affordable housing developments within the City. If the displacement study is approved by the County of Alameda, and to the extent otherwise permitted by law and permitted by the program regulations for funding sources obtained for the development of the Units, Owner shall give a preference in the rental of any Units (excluding Subsidy Units) to eligible households in which at least one member lives or works in the City. The preference stated in this section applies to the rentals of Units throughout the Term.

Section 4.7 Section 8 Certificate Holders. The Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor, or similar programs. The Owner shall not apply selection criteria to holders of Section 8 certificate or similar certificates or vouchers that is more burdensome than criteria applied to all other prospective tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of Units by such prospective tenants.

Section 4.8 Marketing Plan. No later than nine (9) months prior to the date construction of the Development is projected to be complete, Owner shall submit to the City for approval its plan for marketing the Development to income-eligible Senior Households as required by this Regulatory Agreement (the "Marketing Plan"). The Marketing Plan shall be in compliance with all applicable fair housing, equal opportunity and affirmative fair marketing laws and requirements.

Upon receipt of the Marketing Plan, the City shall promptly review the Marketing Plan and shall approve or disapprove it within fifteen (15) days after receipt. If the Marketing Plan is not approved, the City shall give Owner specific reasons for such disapproval and Owner shall submit a revised Marketing Plan within fifteen (15) days of notification of the City's disapproval. Owner shall follow this procedure for resubmission of a revised Marketing Plan until the Marketing Plan is approved by the City. The City understands that the Owner needs to have the Marketing Plan approved at least six (6) months prior to the date construction of the Development is projected to be complete in order to timely lease up the Development. If the Owner does not submit a revised Marketing Plan that is approved by the City at least three (3) months prior to the date construction of the Development is projected to be complete, Owner will be in default of this Regulatory Agreement.

Section 4.9 Environmental Requirements. Owner shall comply with the environmental requirements set forth in Article IX of the AHLA and Article 6 of the Deed of Trust, which are incorporated herein.

ARTICLE 5.
PROPERTY MANAGEMENT AND MAINTENANCE

Section 5.1 Management Responsibilities. The Owner is responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification of household size and income and Senior Household status, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility over management of the Development. The Owner shall retain a professional property management company approved by City in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required.

Section 5.2 Approval of Management Agent. The Development shall at all times be managed by an experienced management agent reasonably acceptable to City, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Owner shall submit for City's approval the identity of any proposed Management Agent. The City has approved Eden Housing Management, Inc. as the Management Agent. The Owner shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, City shall approve the proposed Management Agent by notifying the Owner in writing. Unless the proposed Management Agent is disapproved by City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

Section 5.3 Performance Review. City reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by City) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Owner shall cooperate with City in such reviews.

Section 5.4 Replacement of Management Agent. If, as a result of a periodic review, City determines in its reasonable judgement that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, City shall deliver notice to Owner of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by Owner of such written notice, City staff and Owner shall meet in good faith to consider methods for improving the financial and operating status of the Development. If after a reasonable period as determined by City (not to exceed sixty (60) days), City determines that the Owner is not operating and managing the Development in accordance with the material requirements and standards of this Agreement, City may require replacement of the Management Agent.

If, after the above procedure, City requires in writing the replacement of the Management Agent, Owner shall promptly dismiss the then Management Agent, and shall appoint as the

Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 5.2 above and approved by City pursuant to Section 5.2 above.

Any contract for the operation or management of the Development entered into by Owner shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute default under this Agreement, and City may enforce this provision through legal proceedings as specified in Section 6.5.

Section 5.5 Management Policies. The Owner shall submit its written management plan with respect to the Development to City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

Section 5.6 Property Maintenance. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Development in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Development and the Property (including without limitation, the Units, common meeting rooms, common areas, landscaping, driveways and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Development. Owner shall prevent and/or rectify any physical deterioration of the Property and the Development and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate safety and security services for occupants of the Development, including without limitation parking lot and pathway lighting and security cameras. To the extent feasible, Owner shall employ defensible space design principles and crime prevention measures in the operation of the Development. Owner shall conduct a yearly security inspection, employing Crime Prevention Through Environmental Design (CPTED) principles, and shall participate in an illegal activity review with Newark Police Department (provided that the Newark Police Department agrees to participate in such review). Owner shall maintain an on-site contact, during normal business hours, to receive complaints and concerns from the community, and Owner shall promptly respond to and address such complaints and concerns. Documents and reports relating to security inspections, community complaints and concerns, and illegal activities on the Property shall be maintained and available for inspection by the City.

a. Yard Area. Owner shall not leave any yard areas on the Property unmaintained, including broken or discarded furniture, appliances and other, household equipment stored in yard areas for a period exceeding one (1) week; packing boxes, lumber trash, dirt and other debris in areas visible from public property or neighboring properties; and vehicles parked or stored in other than approved parking areas.

b. Buildings. Owner shall not leave any buildings located on the Property in an unmaintained condition so that any of the following exist: violations of state law, uniform codes, or City ordinances; conditions that constitute an unsightly appearance that detracts from the aesthetics or value of the Property or constitutes a private or public nuisance; broken

windows; graffiti (must be removed within 72 hours); and, conditions constituting hazards and/or inviting trespassers, or malicious mischief.

c. Safety and Security. Owner acknowledges that it is a priority of the City to facilitate the security and safety of the residents and surrounding community. Owner shall implement and maintain throughout the Term the following security measures in the Development:

i. Owner shall provide adequate safety and security services for occupants of the Development, including without limitation parking areas and pathway lighting and security cameras.

ii. Owner shall use best efforts to work with the City of Newark Police Department to implement and operate an effective neighborhood watch program.

iii. Owner shall provide added security including dead-bolt locks for every entry door, and where entry doors are damaged, replace them with solid-core doors.

d. City Right to Enter Property. The City shall have the right to enter on the Property and/or contact the City of Newark Police Department if it becomes aware of or is notified of any conditions that pose a danger to the peace, health, welfare or safety of the Tenants and/or the surrounding community, and to perform or cause to be performed such acts as are necessary to correct the condition. The City shall provide Owner notice of its contact with the City of Newark Police Department.

e. Documents and Reports. Documents and reports relating to security inspections, community complaints and concerns, and illegal activities on the Property shall be maintained and available for inspection by the City.

In the event that Owner breaches any of the covenants contained in this Section 5.6, and such default continues for a period of ten (10) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the rate of 10% per annum.

Section 5.7 Social Services. Owner shall provide a variety of social services at the Development. Such social services are subject to the prior written approval of the City, in its reasonable discretion. Owner shall use its best efforts to create a comprehensive social service program that is targeted to the needs of the residents of the Development, which may include the availability of a bona fide services coordinator to the tenants. Owner shall ensure that all personnel providing or coordinating all social services shall be adequately trained and counseled,

including with respect to the appropriate means and methods of communicating and interacting with residents. Any substantive decrease in the amount of social services to be provided at the Property shall be subject to prior reasonable approval of City and approval shall not be unreasonably withheld.

ARTICLE 6. MISCELLANEOUS

Section 6.1 Transfers.

(a) For purposes of this Agreement, "Transfer" means any sale, assignment, or transfer, whether voluntary or involuntary, of: (i) any rights and/or duties under the Loan Documents; and/or (ii) any interest in the Development, including (but not limited to) a fee simple interest, a joint tenancy interest, a life estate, a partnership interest, a leasehold interest, a security interest, or an interest evidenced by a land contract by which possession of the Development is transferred and Owner retains title. The term "Transfer" excludes the leasing of any single Unit in the Development to an occupant in compliance with this Regulatory Agreement.

(b) Except as otherwise permitted in this Section 6.1, no Transfer is permitted without the prior written consent of the City, which the City may withhold in its sole discretion. The City Loan shall automatically accelerate and be due in full upon any Transfer made without the prior written consent of the City.

(c) The City hereby approves the admission of the Investor Limited Partner to Owner as limited partner. The City hereby approves future Transfers of the limited partner interest of Owner provided that: (i) such Transfers do not affect the timing and amount of the Investor Limited Partner capital contributions provided for in the Partnership Agreement (as such capital contributions may be adjusted pursuant to the terms of the Partnership Agreement); and (ii) in subsequent Transfers, the Investor Limited Partner or an Affiliate thereof, retains a membership or partnership interest and serves as a managing member or managing general partner of the successor limited partner.

(d) The City hereby approves a Transfer of the Property from Owner to Eden Housing, or a non-profit Affiliate of Eden Housing, and an assumption of the City Loan by such transferee at or prior to the end of the Fifteen Year Compliance Period, provided that: (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, (ii) the assignment and assumption agreement evidencing such Transfer requires the transferee to expressly assume the obligations of Owner under the Loan Documents, and (iii) the City is provided executed copies of all documents evidencing the Transfer.

(e) The City hereby approves the purchase of the Investor Limited Partner interest by Eden Housing, or a non-profit Affiliate of Eden Housing, at or prior to the end of the Fifteen Year Compliance Period, provided that (i) such Transfer is pursuant to an option or right of first refusal agreement referenced in the Partnership Agreement, and (ii) the City is provided executed copies of all documents evidencing the Transfer.

(f) In the event the general partner of Owner is removed by the limited partner of Owner for cause following default under the Partnership Agreement, the City hereby approves the Transfer of the general partner interest to (i) a 501(c)(3) tax exempt nonprofit corporation or other entity with a 501(c)(3) tax exempt nonprofit corporation member or partner, with significant experience in the ownership and operation of affordable housing projects similar to the Development, and with financial resources sufficient for the ownership of the Development, as selected by the Investor Limited Partner and approved by the City, and (ii) the Investor Limited Partner or an Affiliate thereof, but only for a period not to exceed ninety (90) days from the date of removal of the general partner, during which time such entity shall diligently seek a replacement general partner meeting the requirements of subsection (i) above.

(g) The City hereby approves the grant of the security interests in the Development for financing approved pursuant to the AHLA.

Section 6.2 Term. The provisions of this Agreement shall apply to the Property for the entire Term even if the entire City Loan is paid in full prior to the end of the Term. This Agreement shall bind any successor, heir or assign of Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by City. City makes the City Loan on the condition, and in consideration of, this provision, and would not do so otherwise.

Section 6.3 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Owner shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (a) the anticipated date of the expiration of the Term, (b) any anticipated increase in Rent upon the expiration of the Term, (c) a statement that a copy of such notice will be sent to City, and (d) a statement that a public hearing may be held by City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. The Owner shall also file a copy of the above-described notice with City.

(b) In addition to the notice required above, Owner shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11. Such notice requirements include: (i) a three (3) year notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a)) prior to the expiration of the Term, (ii) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term, (iii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iv) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; and (v) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

Section 6.4 Covenants to Run with the Land. City and Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the

expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

Section 6.5 Enforcement by the City.

(a) If Owner fails to perform any obligation under this Agreement, and fails to cure the default within 30 days after City has notified the Owner in writing of the default or, if the default cannot be cured within 30 days, fails to commence to cure within 30 days and thereafter diligently pursue such cure, City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(1) Calling the Loan. City may declare a default under the Note, accelerate the indebtedness evidenced by the Note, and proceed with foreclosure under the Deed of Trust.

(2) Action to Compel Performance or for Damage. City may bring an action at law or in equity to compel Owner's performance of its obligations under this Agreement, and/or for damages.

(3) Remedies Provided Under Loan Documents. City may exercise any other remedy available at law or provided under the Loan Documents.

(b) The City shall provide notice of a default to the Investor Limited Partner and any limited partner of Owner who has requested written notice from the City in the manner set forth in Section 6.1 of the Loan Agreement, and the Investor Limited Partner shall have the right, but not the obligation to cure such event of default.

Section 6.6 Attorney's Fees and Costs. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including reasonable attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

Section 6.7 Recording and Subordination. City and Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded against the Property in the Official Records of the County of Alameda. City agrees that it will reasonably consider requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders identified in the Financing Plan (as defined in the AHILA), provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

Section 6.8 Governing Law. This Agreement shall be governed by the laws of the State of California.

Section 6.9 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Alameda, California.

Section 6.10 Notice. All notices given or certificates delivered under this Agreement shall be in writing and be deemed received on the delivery or refusal date shown on the delivery receipt, if: (i) personally delivered by a commercial service which furnishes signed receipts of delivery or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed as shown on the signature page. Any of the parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent. Notices shall be sent to:

City:	City of Newark 37101 Newark Blvd. Newark, CA 94560 Attn: Community Development Director (with copy to City Attorney)
Developer:	Timber Street Investors, L.P. c/o Eden Housing 22645 Grand Street Hayward, California 94541 Attn: Senior Vice President of Real Estate Development

Section 6.11 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

Section 6.12 Multiple Originals; Counterparts. This Regulatory Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 6.13 Revival of Agreement after Foreclosure. In the event there is a foreclosure of the Property, this Regulatory Agreement will revive according to its original terms if, during the Term, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the Development or a leasehold interest in the Property.

Section 6.14. Indemnification. Owner shall defend, indemnify and hold the City and its officials, officers, directors, employees, and agents (collectively, the "Indemnified Parties") harmless from and against any and all losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) which an Indemnified Party may incur as a result of Owner's failure to perform any obligation as and when required by this Agreement, or any act or omission by Owner, or any of Owner's contractors, subcontractors, agents, employees, licensees or suppliers with respect to the Development or the

Property, except to the extent that such losses are caused by the gross negligence or willful misconduct of such Indemnified Party. Owner shall pay immediately upon an Indemnified Party's demand any amounts owing under the indemnity provided under this Section 6.14. The duty of Owner to indemnify includes the duty to defend the Indemnified Party in any court action, administrative action, or other proceeding brought by any third party arising in connection with the Development or the Property with counsel reasonably approved by City. Owner's duty to indemnify the Indemnified Parties shall survive the expiration or earlier termination of this Agreement.

Section 6.15. Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

Section 6.16. Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or designee, without further approval by the City Council.

Section 6.17. Time is of the Essence. Time is of the essence in the performance of this Agreement.

Section 6.18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the City and Owner have executed this Agreement by duly authorized representatives, all on the date first written above.

[signatures on following page]

CITY:

CITY OF NEWARK, a California municipal
corporation

By: _____
David Benoun, City Manager

Attest:

By: _____
Sheila Harrington, City Clerk

Approved as to Form:

By: _____
Kristopher Kokotaylo, City
Attorney

OWNER:

TIMBER STREET INVESTORS, L.P.,
a California limited partnership

By: Eden Timber, LLC,
a California limited liability company,
its sole general partner

By: Eden Housing, Inc.,
a California nonprofit public
benefit corporation,
its sole member/manager

By: _____
Tatiana Blank
Chief Financial Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

EXHIBIT A
Property Description

A.P.N.: 92A-2125-010-02

A PORTION OF SURVEY NO. 119 OF THE LANDS OF THE EX-MISSION OF SAN JOSE, PATENTED TO ASHLEY CAMERON BY LETTERS PATENT, DATED APRIL 7, 1868 AND RECORDED IN BOOK "A" OF PATENTS, PAGE 463, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERN LINE OF CENTRAL AVENUE WITH THE NORTHEASTERN LINE OF TIMBER STREET, FORMERLY CEDAR ROAD, AS SAID AVENUE AND ROAD ARE SHOWN ON THE MAP OF "TRACT 1520", FILED DECEMBER 1, 1955, MAP BOOK 36, PAGES 73 AND 74, ALAMEDA COUNTY RECORDS, RUNNING THENCE ALONG THE SAID LAST MENTIONED LINE SOUTH 56° 49' 19" EAST 420.51 FEET TO A POINT ON THE SOUTHEASTERN LINE OF THAT CERTAIN 15 FOOT PUBLIC UTILITIES EASEMENT, AS SHOWN ON SAID MAP; THENCE ALONG THE SAID LAST MENTIONED LINE NORTH 51° 59' 59" EAST 17.96 FEET TO A POINT ON THE NORTHEASTERN LINE OF TIMBER STREET AS DESCRIBED IN INSTRUMENT TO CITY OF NEWARK, A MUNICIPAL CORPORATION, RECORDED MAY 18, 1964, REEL 1206, IMAGE 547, ALAMEDA COUNTY RECORDS, SAID LAST MENTIONED POINT BEING THE ACTUAL POINT OF BEGINNING, THENCE CONTINUING ALONG THE SAID SOUTHEASTERN LINE, NORTH 51°59'59" EAST 217.24 FEET TO THE SOUTHWESTERN LINE OF THE LAND CONVEYED TO STATE OF CALIFORNIA BY DEED RECORDED MARCH 27, 1966 IN BOOK 7979 OR, PAGE 471; THENCE NORTHWESTERLY, ALONG THE LAST NAMED LINE AND ALONG THE SOUTHWESTERN LINE OF THE LAND CONVEYED TO STATE OF CALIFORNIA, BY DEED RECORDED MARCH 21, 1956 IN BOOK 7973 OR, PAGE 501, THE TWO FOLLOWING COURSES AND DISTANCES: NORTH 42° 00' 16" WEST (STATE HIGHWAY BEARING NORTH 41° 27' 57" WEST) 133.79 FEET, AND ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 2400 FEET, A DISTANCE OF 88.87 FEET; THENCE SOUTH 33° 10' 41" WEST 264.11 FEET TO A POINT ON THE SAID NORTHEASTERN LINE OF TIMBER STREET AS DESCRIBED IN SAID INSTRUMENT TO CITY OF NEWARK; THENCE ALONG THE SAID LAST MENTIONED LINE SOUTH 56° 49' 19" EAST 144.79 FEET, MORE OR LESS TO THE ACTUAL POINT OF BEGINNING.

5496833.5

ATTACHMENT H

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Newark
37101 Newark Blvd
Newark, CA 94560
Attn: Community Development Director

No fee for recording pursuant to
Government code Section 27383

DENSITY BONUS AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (Timber Street Senior Apartments)

This Density Bonus Agreement and Declaration of Restrictive Covenants (the "Agreement") is made and entered into as of _____, 2024, by and between the City of Newark, a California municipal corporation (the "City"), and Timber Street Investors, L.P., a California limited partnership (the "Owner"). City and Owner are hereinafter collectively referred to as the "Parties."

RECITALS

A. Owner owns that certain property located at 37660 Timber Street in the City of Newark, as more particularly described in Exhibit A (the "Property"). Owner intends to construct an approximately seventy-nine (79) unit multifamily rental housing development on the Property for rental to lower income senior households, including one (1) manager's unit that is not subject to affordability restrictions. Together the Property and its improvements are referred to herein as the "Development."

B. The Development has qualified for a density bonus and other benefits pursuant to Government Code Section 65915(b)(1)(G), as a housing development in which one hundred percent of all units in the Development, including total units and density bonus units, but exclusive of manager's units, are for lower income households.

C. Owner has applied for and received City approval of a 33.9% density bonus, two incentives and concessions, and three waivers and modifications of development standards, pursuant to City Municipal Code Chapter 17.19 and the State Density Bonus Law (Government Code Sections 65915-65918). The two incentives and concessions are the reduction of the City's minimum parking requirements from 99 to 65 spaces, and the reduction of certain City setback requirements for the first floor parking podium. The three waivers and modifications of development standards are an increase in the City's maximum lot coverage limits from 55% to 67%, the allowance of 9,217 square feet of open space on top of the parking podium to count toward the City's minimum landscape area requirement, and the reduction of the City's minimum open space requirement from 200 to 145 square feet per unit.

D. As a condition of receiving the density bonus, incentives and concessions, and development standard waivers and modifications, Owner has agreed to ensure the continued affordability of all of the apartment units (except for managers' units) within the Development to lower income households at an affordable rent. This Agreement sets forth the affordability standards which will satisfy the density bonus requirements and is intended to satisfy City Condition of Approval (d).

NOW, THEREFORE, City and Owner hereby agree as follows.

ARTICLE 1. DEFINITIONS

Section 1.1 Definitions. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this Article 1.

(a) "Actual Household Size" shall mean the actual number of persons in the applicable household.

(b) "Affordable Units" shall mean the Lower Income Units.

(c) "Agreement" shall mean this Density Bonus Agreement and Declaration of Restrictive Covenants.

(d) "Affiliate" means any person or entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Owner which, if Owner is a partnership or limited liability company, shall include each of the constituent members or partners, respectively thereof. The term "control" as used in the immediately preceding sentence, means, with respect to a person that is a corporation, the right to the exercise, directly or indirectly, of more than fifty percent (50%) of the voting rights attributable to the shares of the controlled corporation, with respect to a person that is a nonprofit corporation, the right to appoint more than fifty percent of the board of directors, and, with respect to a person that is not a corporation, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the controlled person.

(e) "Area Median Income" shall mean the median gross yearly income adjusted for Actual Household Size or Assumed Household Size as specified herein, in Alameda County, California, as published from time to time and periodically updated in Title 25, California Code of Regulations, Section 6932 (or successor provision) by HCD. In the event that such income determinations are no longer published or are not updated for a period of at least eighteen (18) months, City shall provide the Owner with other income determinations which are reasonably similar with respect to methods of calculation to those previously published by HCD.

(f) "Assumed Household Size" means the household size "adjusted for family size appropriate to the unit" in accordance with California Health and Safety Code Section 50053.

(g) "City" shall mean the City of Newark, a California municipal corporation.

(h) "Completion Date" means the date a final certificate of occupancy is issued by the City to certify that the construction of the Development is complete and the Development may be legally occupied.

(i) "Fifteen Year Compliance Period" means the fifteen (15) year compliance period as described in Section 42(i)(1) of the Internal Revenue Code of 1986, as amended.

(j) "Household Income" shall mean the total anticipated annual income of all persons in a household, as calculated in accordance with the California Tax Credit Allocation Committee rules and regulations or pursuant to a successor State housing program that utilizes a reasonably similar method of calculation of adjusted income. In the event that no such program exists, City shall provide the Owner with a reasonably similar method of calculation of gross income as provided in 25 California Code of Regulations Section 6914.

(k) "Investor Limited Partner" means the limited partner or partners of the Owner.

(l) "Low Income Household" shall mean a household whose gross income does not exceed the income limits for low income households, adjusted for household size, as annually published by the California Department of Housing and Community Development.

(m) "Low Income Units" shall mean the Units which are occupied by Low Income Household tenants.

(n) "Moderate Income Household" shall mean a household whose gross income does not exceed the income limits for moderate income households, adjusted for household size, as annually published by the California Department of Housing and Community Development.

(o) "Moderate Income Units" shall mean the Units which are occupied by Moderate Income Household tenants.

(p) "Owner" shall mean Timber Street Investors, L.P., a California limited partnership, and its successors and assigns to the Development.

(q) "Partnership Agreement" means the Agreement of Limited Partnership, as it may be amended and restated from time to time, which governs the operation and organization of Owner, as a California limited partnership.

(r) "Property" shall mean the real property described in Exhibit A attached hereto and incorporated herein.

(s) "Rent" shall mean the total of monthly payments by the tenants of a Unit for the following: use and occupancy of the Unit and land and associated facilities (including parking if applicable), any separately charged fees or service charges assessed by Owner which are required of all tenants, other than security deposits; the cost of an adequate level of service for utilities paid by the tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not cable or telephone service; any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Tenant. Utility allowances may be

determined by use of the utility allowance published by the local public housing authority or the California Utility Allowance Calculator ("CUAC") model allowed by the California Tax Credit Allocation Committee regulations, if the Property qualifies.

(t) "Senior Household" shall mean a household consisting of Senior Citizens, Qualified Permanent Residents and/or Permitted Health Care Residents, as defined in Civil Code Section 51.3(b).

(u) "Tenant" shall mean a household occupying a Unit.

(v) "Term" means the term of this Regulatory Agreement, which commences as of the date of this Regulatory Agreement and shall remain in effect until the fifty-fifth (55th) anniversary of the Completion Date.

(w) "Units" shall mean the seventy-nine (79) rental units to be constructed by the Owner on the Property.

ARTICLE 2. AFFORDABILITY COVENANTS

Section 2.1 Occupancy Requirements.

(a) Compliance with State Density Bonus Law Requirements. At all times during the Term, all of the Units other than the Manager's Unit (the "Affordable Units") shall meet the income standards for Lower Income Households as defined by Health and Safety Code Section 50079.5, provided that not more than twenty percent (20%) of the Affordable Units may be occupied by Moderate Income Households at any time during the Term.

(b) Manager's Unit. One (1) Unit shall be reserved for an on-site manager and shall not be subject to affordability or occupancy restrictions.

(c) Intermingling of Units. All Affordable Units shall be intermingled and of comparable quality. Tenants in all Affordable Units shall have equal access to and enjoyment of all common facilities of the Development.

(d) Senior Households. Owner hereby covenants and agrees, for itself and its successors and assigns, that the Development shall be used solely for the operation of an affordable residential rental development which qualifies as a Senior Citizen Housing Development pursuant to California Civil Code Section 51.3, consisting of the Development and related improvements, in compliance with the Loan Agreement and the requirements set forth herein. All Units (excluding the manager's unit) shall be occupied only by Senior Households.

(e) Disabled Persons Occupancy.

(1) Owner shall cause the Development to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the

California Fair Employment and Housing Act, (iii) the United States Fair Housing Act, as amended, (iv) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(2) Owner shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the City) the City, and its city council, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Owner's failure to comply with the Accessibility Requirements.

Section 2.2 Allowable Rent.

(a) Low Income Rent. The Rent charged to all tenants who are Low Income Households shall not exceed one-twelfth (1/12th) of thirty percent (30%) of sixty percent (60%) of Area Median Income, adjusted for Assumed Household Size.

(b) Moderate Income Rent. The Rent charged to all tenants who are Moderate Income Households shall not exceed one-twelfth (1/12th) of thirty percent (30%) of one hundred ten percent (110%) of Area Median Income, adjusted for Assumed Household Size.

(c) Compliance with TCAC Requirements. During the term of any regulatory agreement associated with the provision of low income housing tax credits by the California Tax Credit Allocation Committee ("TCAC") and recorded against the Property (the "TCAC Regulatory Agreement"), Owner may use the occupancy standards, assumed household sizes, rent levels and rent increases that are permitted by TCAC in the TCAC Regulatory Agreement, in place of such requirements imposed by this Regulatory Agreement, for up to eighty percent (80%) of the Affordable Units. During the term of the TCAC Regulatory Agreement, compliance with the TCAC Regulatory Agreement as it pertains to occupancy standards, assumed household sizes, rent levels and rent increases shall be deemed compliance with such requirements of this Agreement for up to eighty percent (80%) of the Affordable Units.

Section 2.3 Rent Increases.

(a) Rent Amount. The initial Rent for all Affordable Units must be approved by the City prior to occupancy. The utility allowance schedule will be determined either by use of the CUAC or local public housing authority schedule. Notwithstanding the approved schedule of maximum rents, Owner shall not be obligated to reduce rents for any existing tenants should maximum rents decrease, or utility allowances increase for any Units which must conform to the approved schedule of maximum rents.

(b) Rent Increases. No later than sixty (60) days prior to the proposed implementation of any Rent increase affecting an Affordable Unit, Owner shall submit to the City a schedule of any proposed increase in the Rent charged for the Affordable Units. The Rent for such Affordable Units may be increased no more than once annually based upon updated rent schedules corresponding to the updated Area Median Income. Any rent increase resulting from use of the CUAC model for utility allowances shall comply with the TCAC limitation. Owner shall give Tenants of Affordable Units written notice at least thirty (30) days prior to any Rent increase, following completion of the City approval process set forth above. For purposes of this

Agreement, if any rent subsidy is terminated or reduced, an increase in the tenant's total monthly payment toward rent to offset the terminated or reduced rent subsidy shall not constitute a Rent increase as long as the Rent for the Affordable Unit is not increased above the maximum allowable Rent.

Section 2.4 Increased Income of Occupying Households.

(a) Non-Qualifying Household. If, upon recertification of a Tenant's income, the Owner determines that a Tenant has an Adjusted Income exceeding the qualifying income for Moderate Income Households, such Tenant shall be permitted to continue to occupy the Unit at a Rent not exceeding the maximum Rent for Moderate Income Households, and the Unit shall continue to be classified as a Moderate Income Unit until the Tenant vacates the Unit, at which time the Unit shall be re-rented to a Tenant which meets the requirements of Section 2.1(a) above.

(b) Income Limits During Term of TCAC Regulatory Agreement. Notwithstanding the foregoing, during the term of the TCAC Regulatory Agreement, compliance with the TCAC Regulatory Agreement as it pertains to increased income of occupying households shall be deemed compliance with this Agreement.

Section 2.5 Lease Provisions. Owner shall include in leases for all Affordable Units provisions which authorize Owner to immediately terminate the tenancy of any household one or more of whose members has misrepresented any fact material to the household's qualification as a Low Income Household or Moderate Income Household. Each lease or rental agreement shall also provide that the household is subject to annual certification in accordance with Section 3.1 below, and that, if the household's income increases above the applicable income limits, such household's Rent may be subject to increase.

Section 2.6 Condominium Conversion. The Owner shall not convert the Development or any Units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Property during the Term of this Agreement.

ARTICLE 3. INCOME CERTIFICATION AND REPORTING

Section 3.1 Income and Senior Household Certification. Owner or Owner's authorized agent shall obtain from each household prior to initial occupancy of each Affordable Unit, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require: (a) The identity and age of each member of the household; and (b) Total Household Income.

(a) Owner shall make a good faith effort to verify that the income provided by an applicant or occupying household in an income certification is accurate by taking one or more of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income tax return for the most recent tax year; (3) conduct a credit agency or similar search; (4) obtain an income verification form from the applicant's current employer; (5) obtain an income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives

assistance from either of such agencies; or (6) if the applicant is unemployed and has no such tax return, obtain another form of independent verification or utilize a self-certified statement.

(b) Owner shall retain such certificates for not less than three (3) years, and upon City's request, shall make the original available for inspection by the City and shall provide copies of such certificates to the City.

(c) During such time that the Development is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing City with a copy of tenant income certifications in connection with such financing.

Section 3.2 Annual Report to City. No later than July 1 of each year during the Term, commencing with the year following the initial leasing of the Affordable Units, Owner shall submit an annual report ("Annual Report") to the City in form satisfactory to City, together with a certification that the Development is in compliance with the requirements of this Agreement.

The Annual Report shall, at a minimum, include the following information for each dwelling Affordable Unit in the Development:

- (a) Unit number;
- (b) Current rent and other charges;
- (c) Dates of any vacancies during the previous year;
- (d) Number of people residing in the unit;
- (e) Total Household Income of residents;
- (f) Documentation of source of household income; and
- (g) The information required by Section 3.1(a).
- (h) Any other information reasonable requested by City.

Upon City's request, Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as City may reasonably request from time to time in order to show compliance with this Agreement. The Annual Report shall conform to the format requested by City; provided however, during such time that the Development is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of federal low-income housing tax credits or tax-exempt financing, Owner may satisfy the requirements of this Section by providing City with a copy of compliance reports required in connection with such financing.

Section 3.3 Onsite Inspection. Owner shall permit representatives of City to enter and inspect the Property and the Development during reasonable business hours in order to monitor

compliance with this Agreement upon 24-hours written advance notice of such visit to Owner or to Owner's management agent.

Section 3.4 Additional Information. Owner shall provide any additional information reasonably requested by City to monitor compliance with this Agreement. The City shall have the right to examine and make copies of all books, records, or other documents of the Owner that pertain to the Owner's compliance with its obligations under this Agreement.

Section 3.5 Records.

(a) Owner shall keep and maintain at the principal place of business of the Owner set forth in Section 6.10 below, or elsewhere with the City's written consent, full, complete and appropriate books, records and accounts relating to the Development. Owner shall cause all books, records and accounts relating to the Development to be kept and maintained in accordance with generally accepted accounting principles consistently applied, and to be consistent with requirements of this Agreement. Owner shall cause all books, records, and accounts to be open to and available for inspection and copying by the City, its auditors or other authorized representatives at reasonable intervals during normal business hours. Owner shall cause copies of all tax returns and other reports that Owner may be required to furnish to any government agency to be open for inspection by the City at all reasonable times at the place that the books, records and accounts of Owner are kept. Owner shall preserve such records for a period of not less than five (5) years after their creation. If any litigation, claim, negotiation, audit exception, monitoring, inspection or other action relating to the use of the Development is pending at the end of the record retention period stated herein, then Owner shall retain the records until such action and all related issues are resolved. Such records are to include but are not limited to:

- (1) Records documenting compliance with the fair housing, equal opportunity, and affirmative fair marketing requirements;
- (2) Financial records; and
- (3) Records demonstrating compliance with the marketing, tenant selection, affordability, and income requirements.

(b) The City shall notify Owner of any records it deems insufficient. Owner has fifteen (15) calendar days after the receipt of such a notice to correct any deficiency in the records specified by the City in such notice, or if a period longer than fifteen (15) days is reasonably necessary to correct the deficiency, then Owner must begin to correct the deficiency within fifteen (15) days and correct the deficiency as soon as reasonably possible.

ARTICLE 4.
OPERATION OF THE DEVELOPMENT

Section 4.1 Residential Use. The Development shall be operated only for residential use. No part of the Development shall be operated as transient housing.

Section 4.2 Compliance with Other Regulatory Agreements. Owner shall comply with all the terms and provisions of any other regulatory requirement imposed on the Development, including but not limited to regulatory agreements associated with the Low Income Housing Tax Credits provided by the California Tax Credit Allocation Committee (the "Development Regulatory Documents"). Owner shall promptly notify the City in writing of the existence of any default under any Development Regulatory Documents and provide the City with copies of any such notice of default.

Section 4.3 Property Tax Exemption. Owner shall not apply for a property tax exemption for the Property under any provision of law other than Revenue and Taxation Section 214(g) without City's prior written consent.

Section 4.4 Taxes and Assessments. Owner shall pay all real and personal property taxes, assessments, if any, and charges and all franchise, income, employment, withholding, sales, and other taxes assessed against it, or payable by it, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, that Owner shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event Owner exercises its right to contest any tax, assessment, or charge against it, Owner, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

Section 4.5 Nondiscrimination. All of the Units shall be available for occupancy on a continuous basis to members of the general public who are income eligible. Owner shall comply with state and federal fair housing laws in the marketing and rental of the Units in the Development. There shall be no discrimination against or segregation of any person or group of persons, on account of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, disability, veteran or military status, or genetic information, or any other basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of any Unit nor shall Owner or any person claiming under or through the Owner, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees of any Unit or in connection with the employment of persons for the operation and management of the Development. All deeds, leases or contracts made or entered into by Owner as to the Units or the Development or portion thereof, shall contain covenants concerning discrimination as prescribed by the AHILA.

Section 4.6 City Preference. City has caused a displacement study to be prepared and submitted to the County of Alameda which analyzes the impact of a local preference requirement for the selection of the tenants of affordable housing developments within the City. If the displacement study is approved by the County of Alameda, and to the extent otherwise permitted by law and permitted by the program regulations for funding sources obtained for the development of the Units, Owner shall give a preference in the rental of any Units (excluding

Subsidy Units) to eligible households in which at least one member lives or works in the City. The preference stated in this section applies to the rentals of Units throughout the Term.

Section 4.7 Section 8 Certificate Holders. The Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the United States Housing Act, or its successor, or similar programs. The Owner shall not apply selection criteria to holders of Section 8 certificate or similar certificates or vouchers that is more burdensome than criteria applied to all other prospective tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of Units by such prospective tenants.

Section 4.8 Marketing Plan. No later than nine (9) months prior to the date construction of the Development is projected to be complete, Owner shall submit to the City for approval its plan for marketing the Development to income-eligible Senior Households as required by this Regulatory Agreement (the "Marketing Plan"). The Marketing Plan shall be in compliance with all applicable fair housing, equal opportunity and affirmative fair marketing laws and requirements.

Upon receipt of the Marketing Plan, the City shall promptly review the Marketing Plan and shall approve or disapprove it within fifteen (15) days after receipt. If the Marketing Plan is not approved, the City shall give Owner specific reasons for such disapproval and Owner shall submit a revised Marketing Plan within fifteen (15) days of notification of the City's disapproval. Owner shall follow this procedure for resubmission of a revised Marketing Plan until the Marketing Plan is approved by the City. The City understands that the Owner needs to have the Marketing Plan approved at least six (6) months prior to the date construction of the Development is projected to be complete in order to timely lease up the Development. If the Owner does not submit a revised Marketing Plan that is approved by the City at least three (3) months prior to the date construction of the Development is projected to be complete, Owner will be in default of this Regulatory Agreement.

ARTICLE 5. PROPERTY MANAGEMENT AND MAINTENANCE

Section 5.1 Management Responsibilities. The Owner is responsible for all management functions with respect to the Development, including without limitation the selection of tenants, certification and recertification of household size and income and Senior Household status, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility over management of the Development. The Owner shall retain a professional property management company approved by City in its reasonable discretion to perform its management duties hereunder. A resident manager shall also be required.

Section 5.2 Approval of Management Agent. The Development shall at all times be managed by an experienced management agent reasonably acceptable to City, with demonstrated ability to operate residential facilities like the Development in a manner that will provide decent, safe, and sanitary housing (as approved, the "Management Agent"). The Owner shall submit for

City's approval the identity of any proposed Management Agent. The City has approved Eden Housing Management, Inc. as the Management Agent. The Owner shall also submit such additional information about the background, experience and financial condition of any proposed Management Agent as is reasonably necessary for the City to determine whether the proposed Management Agent meets the standard for a qualified Management Agent set forth above. If the proposed Management Agent meets the standard for a qualified Management Agent set forth above, City shall approve the proposed Management Agent by notifying the Owner in writing. Unless the proposed Management Agent is disapproved by City within thirty (30) days, which disapproval shall state with reasonable specificity the basis for disapproval, it shall be deemed approved.

Section 5.3 Performance Review. City reserves the right to conduct an annual (or more frequently, if deemed reasonably necessary by City) review of the management practices and financial status of the Development. The purpose of each periodic review will be to enable City to determine if the Development is being operated and managed in accordance with the requirements and standards of this Agreement. The Owner shall cooperate with City in such reviews.

Section 5.4 Replacement of Management Agent. If, as a result of a periodic review, City determines in its reasonable judgement that the Development is not being operated and managed in accordance with any of the material requirements and standards of this Agreement, City shall deliver notice to Owner of its intention to cause replacement of the Management Agent, including the reasons therefor. Within fifteen (15) days of receipt by Owner of such written notice, City staff and Owner shall meet in good faith to consider methods for improving the financial and operating status of the Development. If after a reasonable period as determined by City (not to exceed sixty (60) days), City determines that the Owner is not operating and managing the Development in accordance with the material requirements and standards of this Agreement, City may require replacement of the Management Agent.

If, after the above procedure, City requires in writing the replacement of the Management Agent, Owner shall promptly dismiss the then Management Agent, and shall appoint as the Management Agent a person or entity meeting the standards for a Management Agent set forth in Section 5.2 above and approved by City pursuant to Section 5.2 above.

Any contract for the operation or management of the Development entered into by Owner shall provide that the contract can be terminated as set forth above. Failure to remove the Management Agent in accordance with the provisions of this Section shall constitute default under this Agreement, and City may enforce this provision through legal proceedings as specified in Section 6.5.

Section 5.5 Management Policies. The Owner shall submit its written management plan with respect to the Development to City for its review, and shall amend such policies in any way necessary to ensure that such policies comply with the provisions of this Agreement.

Section 5.6 Property Maintenance. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Development in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in

conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Development and the Property (including without limitation, the Units, common meeting rooms, common areas, landscaping, driveways and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Development. Owner shall prevent and/or rectify any physical deterioration of the Property and the Development and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate safety and security services for occupants of the Development, including without limitation parking lot and pathway lighting and security cameras. To the extent feasible, Owner shall employ defensible space design principles and crime prevention measures in the operation of the Development. Owner shall conduct a yearly security inspection, employing Crime Prevention Through Environmental Design (CPTED) principles, and shall participate in an illegal activity review with Newark Police Department (provided that the Newark Police Department agrees to participate in such review). Owner shall maintain an on-site contact, during normal business hours, to receive complaints and concerns from the community, and Owner shall promptly respond to and address such complaints and concerns. Documents and reports relating to security inspections, community complaints and concerns, and illegal activities on the Property shall be maintained and available for inspection by the City.

a. Yard Area. Owner shall not leave any yard areas on the Property unmaintained, including broken or discarded furniture, appliances and other, household equipment stored in yard areas for a period exceeding one (1) week; packing boxes, lumber trash, dirt and other debris in areas visible from public property or neighboring properties; and vehicles parked or stored in other than approved parking areas.

b. Buildings. Owner shall not leave any buildings located on the Property in an unmaintained condition so that any of the following exist: violations of state law, uniform codes, or City ordinances; conditions that constitute an unsightly appearance that detracts from the aesthetics or value of the Property or constitutes a private or public nuisance; broken windows; graffiti (must be removed within 72 hours); and, conditions constituting hazards and/or inviting trespassers, or malicious mischief.

c. Safety and Security. Owner acknowledges that it is a priority of the City to facilitate the security and safety of the residents and surrounding community. Owner shall implement and maintain throughout the Term the following security measures in the Development:

i. Owner shall provide adequate safety and security services for occupants of the Development, including without limitation parking areas and pathway lighting and security cameras.

ii. Owner shall use best efforts to work with the City of Newark Police Department to implement and operate an effective neighborhood watch program.

iii. Owner shall provide added security including dead-bolt locks for every entry door, and where entry doors are damaged, replace them with solid-core doors.

d. City Right to Enter Property. The City shall have the right to enter on the Property and/or contact the City of Newark Police Department if it becomes aware of or is notified of any conditions that pose a danger to the peace, health, welfare or safety of the Tenants and/or the surrounding community, and to perform or cause to be performed such acts as are necessary to correct the condition. The City shall provide Owner notice of its contact with the City of Newark Police Department.

e. Documents and Reports. Documents and reports relating to security inspections, community complaints and concerns, and illegal activities on the Property shall be maintained and available for inspection by the City.

In the event that Owner breaches any of the covenants contained in this Section 5.6, and such default continues for a period of ten (10) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the rate of 10% per annum.

Section 5.7 Social Services. Owner shall provide a variety of social services at the Development. Such social services are subject to the prior written approval of the City, in its reasonable discretion. Owner shall use its best efforts to create a comprehensive social service program that is targeted to the needs of the residents of the Development, which may include the availability of a bona fide services coordinator to the tenants. Owner shall ensure that all personnel providing or coordinating all social services shall be adequately trained and counseled, including with respect to the appropriate means and methods of communicating and interacting with residents. Any substantive decrease in the amount of social services to be provided at the Property shall be subject to prior reasonable approval of City and approval shall not be unreasonably withheld.

ARTICLE 6. MISCELLANEOUS

Section 6.1 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Owner shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (a) the anticipated date of the expiration of the Term, (b) any anticipated increase in Rent upon the expiration of the Term, (c) a statement that a copy of such notice will be sent to City, and (d) a statement that a public hearing may be held by City on the issue and that the Tenant will receive notice of the

hearing at least fifteen (15) days in advance of any such hearing. The Owner shall also file a copy of the above-described notice with City.

(b) In addition to the notice required above, Owner shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11. Such notice requirements include: (i) a three (3) year notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a)) prior to the expiration of the Term, (ii) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term, (iii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iv) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; and (v) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

Section 6.2 Covenants to Run with the Land. This Agreement shall bind any successor, heir or assign of Owner, whether a change in interest occurs voluntarily or involuntarily, by operation of law or otherwise, except as expressly released by City. City and Owner hereby declare their express intent that the covenants and restrictions set forth in this Agreement shall run with the land, and shall bind all successors in title to the Property, provided, however, that on the expiration of the Term of this Agreement said covenants and restrictions shall expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Property or any portion thereof shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless City expressly releases such conveyed portion of the Property from the requirements of this Agreement.

Section 6.3 Enforcement by the City.

(a) If Owner fails to perform any obligation under this Agreement, and fails to cure the default within 30 days after City has notified the Owner in writing of the default or, if the default cannot be cured within 30 days, fails to commence to cure within 30 days and thereafter diligently pursue such cure, City shall have the right to enforce this Agreement by any or all of the following actions, or any other remedy provided by law:

(1) Action to Compel Performance or for Damage. City may bring an action at law or in equity to compel Owner's performance of its obligations under this Agreement, and/or for damages.

(b) The City shall provide notice of a default to the Investor Limited Partner and any limited partner of Owner who has requested written notice from the City, and the Investor Limited Partner shall have the right, but not the obligation to cure such event of default.

Section 6.4 Attorney's Fees and Costs. In any action brought to enforce this Agreement, the prevailing party shall be entitled to all costs and expenses of suit, including

reasonable attorneys' fees. This section shall be interpreted in accordance with California Civil Code Section 1717 and judicial decisions interpreting that statute.

Section 6.5 Recording; Nonsubordination. City and Owner shall cause this Agreement, and all amendments and supplements to it, to be recorded against the Property in the Official Records of the County of Alameda. This Agreement shall be senior and superior to all financing obtained for the Development, and shall not be subordinated.

Section 6.6 Governing Law. This Agreement shall be governed by the laws of the State of California.

Section 6.7 Amendments. This Agreement may be amended only by a written instrument executed by all the parties hereto or their successors in title, and duly recorded in the real property records of the County of Alameda, California.

Section 6.8 Notice. All notices given or certificates delivered under this Agreement shall be in writing and be deemed received on the delivery or refusal date shown on the delivery receipt, if: (i) personally delivered by a commercial service which furnishes signed receipts of delivery or (ii) mailed by certified mail, return receipt requested, postage prepaid, addressed as shown on the signature page. Any of the parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or communications shall be sent. Notices shall be sent to:

City: City of Newark
37101 Newark Blvd.
Newark, CA 94560
Attn: Community Development Director
(with copy to City Attorney)

Developer: Timber Street Investors, L.P.
c/o Eden Housing
22645 Grand Street
Hayward, California 94541
Attn: Senior Vice President of Real Estate Development

Section 6.9 Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions of this Agreement shall not in any way be affected or impaired thereby.

Section 6.10 Multiple Originals; Counterparts. This Regulatory Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

Section 6.11 Revival of Agreement after Foreclosure. In the event there is a foreclosure of the Property, this Regulatory Agreement will revive according to its original terms if, during the Term, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had

family or business ties, obtains an ownership interest in the Development or a leasehold interest in the Property.

Section 6.14. Indemnification. Owner shall defend, indemnify and hold the City and its officials, officers, directors, employees, and agents (collectively, the “Indemnified Parties”) harmless from and against any and all losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including reasonable attorneys' fees) which an Indemnified Party may incur as a result of Owner's failure to perform any obligation as and when required by this Agreement, or any act or omission by Owner, or any of Owner's contractors, subcontractors, agents, employees, licensees or suppliers with respect to the Development or the Property, except to the extent that such losses are caused by the gross negligence or willful misconduct of such Indemnified Party. Owner shall pay immediately upon an Indemnified Party's demand any amounts owing under the indemnity provided under this Section 6.14. The duty of Owner to indemnify includes the duty to defend the Indemnified Party in any court action, administrative action, or other proceeding brought by any third party arising in connection with the Development or the Property with counsel reasonably approved by City. Owner's duty to indemnify the Indemnified Parties shall survive the expiration or earlier termination of this Agreement.

Section 6.15. Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

Section 6.16. Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or designee, without further approval by the City Council.

Section 6.17. Time is of the Essence. Time is of the essence in the performance of this Agreement.

Section 6.18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the City and Owner have executed this Agreement by duly authorized representatives, all on the date first written above.

[signatures on following page]

CITY:

CITY OF NEWARK, a California municipal
corporation

By: _____
David Benoun, City Manager

Attest:

By: _____
Sheila Harrington, City Clerk

Approved as to Form:

By: _____
Kristopher Kokotaylo, City Attorney

OWNER:

TIMBER STREET INVESTORS, L.P.,
a California limited partnership

By: Eden Timber, LLC,
a California limited liability company,
its sole general partner

By: Eden Housing, Inc.,
a California nonprofit public
benefit corporation,
its sole member/manager

By: _____
Tatiana Blank
Chief Financial Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

EXHIBIT A
Property Description

A.P.N.: 92A-2125-010-02

A PORTION OF SURVEY NO. 119 OF THE LANDS OF THE EX-MISSION OF SAN JOSE, PATENTED TO ASHLEY CAMERON BY LETTERS PATENT, DATED APRIL 7, 1868 AND RECORDED IN BOOK "A" OF PATENTS, PAGE 463, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTHEASTERN LINE OF CENTRAL AVENUE WITH THE NORTHEASTERN LINE OF TIMBER STREET, FORMERLY CEDAR ROAD, AS SAID AVENUE AND ROAD ARE SHOWN ON THE MAP OF "TRACT 1520", FILED DECEMBER 1, 1955, MAP BOOK 36, PAGES 73 AND 74, ALAMEDA COUNTY RECORDS, RUNNING THENCE ALONG THE SAID LAST MENTIONED LINE SOUTH 56° 49' 19" EAST 420.51 FEET TO A POINT ON THE SOUTHEASTERN LINE OF THAT CERTAIN 15 FOOT PUBLIC UTILITIES EASEMENT, AS SHOWN ON SAID MAP; THENCE ALONG THE SAID LAST MENTIONED LINE NORTH 51° 59' 59" EAST 17.96 FEET TO A POINT ON THE NORTHEASTERN LINE OF TIMBER STREET AS DESCRIBED IN INSTRUMENT TO CITY OF NEWARK, A MUNICIPAL CORPORATION, RECORDED MAY 18, 1964, REEL 1206, IMAGE 547, ALAMEDA COUNTY RECORDS, SAID LAST MENTIONED POINT BEING THE ACTUAL POINT OF BEGINNING, THENCE CONTINUING ALONG THE SAID SOUTHEASTERN LINE, NORTH 51°59'59" EAST 217.24 FEET TO THE SOUTHWESTERN LINE OF THE LAND CONVEYED TO STATE OF CALIFORNIA BY DEED RECORDED MARCH 27, 1966 IN BOOK 7979 OR, PAGE 471; THENCE NORTHWESTERLY, ALONG THE LAST NAMED LINE AND ALONG THE SOUTHWESTERN LINE OF THE LAND CONVEYED TO STATE OF CALIFORNIA, BY DEED RECORDED MARCH 21, 1956 IN BOOK 7973 OR, PAGE 501, THE TWO FOLLOWING COURSES AND DISTANCES: NORTH 42° 00' 16" WEST (STATE HIGHWAY BEARING NORTH 41° 27' 57" WEST) 133.79 FEET, AND ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 2400 FEET, A DISTANCE OF 88.87 FEET; THENCE SOUTH 33° 10' 41" WEST 264.11 FEET TO A POINT ON THE SAID NORTHEASTERN LINE OF TIMBER STREET AS DESCRIBED IN SAID INSTRUMENT TO CITY OF NEWARK; THENCE ALONG THE SAID LAST MENTIONED LINE SOUTH 56° 49' 19" EAST 144.79 FEET, MORE OR LESS TO THE ACTUAL POINT OF BEGINNING.

5567735.1

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING THE CITY MANAGER TO
EXECUTE THE AFFORDABLE HOUSING AGREEMENT AND
ALL RELATED LOAN DOCUMENTS FOR DEVELOPMENT
OF A MULTIFAMILY SENIOR AFFORDABLE RENTAL
HOUSING DEVELOPMENT AT 37660 TIMBER STREET

WHEREAS, in November 2016, Alameda County voters passed a \$580 million Countywide Housing Bond (Measure A1) to fund countywide affordable housing development programs; and

WHEREAS, \$425 million of the Countywide Housing Bond is allocated to the Rental Housing Development fund to assist in the creation and preservation of affordable rental housing for vulnerable populations; and of that \$225 million is allocated as “Base City Allocation” and \$200 million is allocated as “Regional Pool Allocation” funding to Alameda County jurisdictions based on a geographical allocation formula; and

WHEREAS, the City of Newark’s Base City Allocation is approximately \$5.4 million and the Regional Pool Allocation for South County, which is shared between Fremont, Union City and Newark, was approximately \$30 million; and

WHEREAS, \$5,426,348 of the Base City Allocation for Newark was available to be assigned to future affordable rental housing projects; and

WHEREAS, Timber Street Investors, L.P. (controlled by Eden Housing as managing partner) acquired a site at 37660 Timber Street (the “Property”) and planned to seek approvals for a 79-unit senior affordable housing project (the “Project”); and

WHEREAS, on October 10, 2019 the City Council approved Resolution 10,993 authorizing the assignment of (1) up to \$2,713,174 of Measure A1 Base City Allocation and (2) \$2,765,000 of City of Newark Affordable Housing Impact Fee Funds to Timber Street Investors, L.P. for development of the Project; and

WHEREAS, Timber Street Investors, L.P.’s application for the South County Regional Pool Allocation was not selected for funding; and

WHEREAS, Timber Street Investors, L.P. requested \$5,426,348, the full amount of the Base City Allocation; and

WHEREAS, on November 12, 2020, the City Council approved Resolution 11,141 authorizing the assignment of \$5,426,348 of the Base City Allocation to the Project; and

WHEREAS, on October 28, 2021, the City Council approved the Project through Resolution No. 11,273 which included adopting a Mitigated Negative Declaration, amending the

Newark General Plan, approving a Conditional Use Permit, and Design Review for the Project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark as follows:

Section 1. That the forgoing recitals are true and correct and made part of this Resolution.

Section 2. The City Council hereby authorizes and directs City staff to negotiate and prepare such documents as are necessary and appropriate to provide a loan to the developer of the Project \$2,765,000 of City of Newark Affordable Housing Impact Fee Funds to Timber Street Investors, L.P. for development of the Project, and related documents including subordination agreements, escrow and title instructions and other closing documents, in such form as may be approved by the City Community Development Director and the City Attorney.

Section 3. The City Council authorizes the City Manager (or his designee), on behalf of the City, to execute the foregoing loan documents, and to take such other actions as are necessary to carry out the City's obligations under such documents, including the execution of related documents.

Section 4. The City Council finds that the City's provision of financial assistance pursuant hereto is exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) of the CEQA Guidelines, as the Project has previously undergone City review under CEQA, the City has approved a Mitigated Negative Declaration determining that the Project will not have a significant negative effect upon the environment, there has been no substantial change in the Project since the City's CEQA finding was made, and the City loan will not change the scope of the Project as previously approved. Therefore, the City's provision of financial assistance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, as an activity covered by the common sense exemption to CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. City staff is authorized and directed to file a Notice of Exemption from CEQA with the California Office of Planning and Research and the County Clerk of the County of Alameda in the manner specified in Subdivisions (b) and (c) of Section 21152 of the Public Resources Code.

This Resolution was introduced at the City of Newark City Council's January 25, 2024 regular meeting by Council Member _____, seconded by Council Member _____, and passed as follows:



STAFF REPORT

Item E. 1.

DATE 01/25/2024
TO Honorable Mayor and City Council Members
FROM Carmelisa Lopez, Senior Planner
SUBJECT Public Hearing to consider adopting a resolution approving a plan of finance for the issuance of revenue bonds by the California Municipal Finance Authority to finance and refinance a 79-unit qualified residential rental project for low-income seniors located at 37660 Timber Street.

SUMMARY AND RECOMMENDATION

On October 28, 2021, the City Council approved a 79-unit affordable rental housing project for seniors located at 37660 Timber Street proposed by Timber Street Investors, L.P. (a.k.a. Eden Housing, Inc.) (the "Project"). The City has committed over \$8 million towards the Project via the assignment of approximately \$2.7 million of its Affordable Housing Impact Fee Fund and \$5.4 million from the Alameda County Measure A1 Housing General Obligation Bond. Since receiving entitlement approval, Eden Housing, Inc. (the "Applicant"), has been working to obtain the necessary financing from local, state, federal, and private funding sources, completing the building design, and obtaining all required permits, including building permits.

As part of the financing process, the City of Newark must conduct a public hearing under the Tax and Equity Fiscal Responsibility Act ("TEFRA") to provide members of the public with an opportunity to speak in favor of or against the use of tax-exempt bonds for the financing of the Project.

Staff recommends that the City Council conduct a public hearing under TEFRA in connection with the proposed issuance of revenue bonds by the California Municipal Finance Authority ("CMFA"), a joint exercise of powers authority and public entity of the State of California, in an amount not to exceed \$50,000,000, (the "Bonds"), to finance and refinance the acquisition, construction, development and equipping the Project to be owned and operated by Timber Street Investors, L.P., a California limited partnership, or another ownership entity to be created by its general partner, Eden Timber, LLC, a California limited liability company, or by another affiliate of the Sponsor (such limited partnership or other ownership entity, the "Borrower") and located at 37660 Timber Street within the City of Newark (the "City").

Staff also recommends that the City Council adopt a resolution (see Attachment 1)

approving the issuance of the Bonds by the CMFA for the benefit of Eden Housing, Inc., a California nonprofit public benefit corporation (the “Sponsor”), on behalf of the Borrower for the financing of the Project. Such adoption is solely for the purposes of satisfying the requirements of TEFRA and California Government Code Section 6500, et seq.

BACKGROUND

Proposed Project

On October 28, 2021, the City Council approved Resolution No. 11,273 approving a 79-unit, affordable rental housing project for senior (the “Project”) proposed at 37660 Timber Street (the “Property”). The project approval included an amendment to the General Plan land use designation from Medium Density Residential to High Density Residential to allow for higher density multi-unit development on the site, a zoning change from RM Residential Medium Density to RH Residential High Density to conform with the General Plan land use designation, a Conditional Use Permit to allow for a building height greater than 35 feet, and Design Review.

As a 100 percent affordable housing project, the Project was eligible for an up to 80 percent density bonus, up to four incentives or concessions, and the waiver or reduction of an unlimited number of development standards that would have the effect of physically precluding the construction of the development with the density bonus and incentives/concessions requested. The Project included a density bonus of approximately 34 percent, two incentives and concessions for the reduction of the City’s minimum parking requirements and the reduction of certain City setback requirements for the first floor parking podium, and three waivers and modifications of development standards for the increase in the City’s maximum lot coverage limit, the allowance of open space on top of the parking podium to count toward the City’s minimum landscape area requirement, and the reduction of the City’s minimum open space requirement per unit.

The Borrower is currently in the process of securing financing and obtaining the building permit(s) for the Project. Construction closing, the date upon which all financing necessary for the construction of the Project on the Property closes, and any deeds of trust related to such financing are recorded against the Property, is scheduled for March 2024 and construction will start shortly after. The Applicant anticipates that the Project will complete construction by August 2026 and the building will be fully occupied by February 2027.

CMFA and TEFRA Hearing Requirements

The CMFA was created on January 1, 2004 pursuant to a joint exercise of powers agreement to promote economic, cultural and community development, through the financing of economic development and charitable activities throughout California. To date, over 350 municipalities, including the City of Newark, have become members of the CMFA.

The CMFA was formed to assist local governments, non-profit organizations, and businesses with the issuance of taxable and tax-exempt bonds aimed at improving the standard of living in California. The CMFA's representatives and its Board of Directors have considerable experience in bond financing.

The Borrower requested that the CMFA serve as the municipal issuer of the Bonds in an aggregate principal amount not to exceed \$50,000,000 of tax-exempt revenue bonds. The proceeds of the Bonds will be used for the acquisition, construction, development and equipping of the Project to be owned and operated by the Borrower and located at the Property.

DISCUSSION/ANALYSIS

The Borrower requested that the CMFA serve as the municipal issuer of the Bonds in an aggregate principal amount not to exceed \$50,000,000 of tax-exempt revenue bonds. The proceeds of the Bonds will be used for the acquisition, construction, development and equipping of the Project to be owned and operated by the Borrower and located at 37660 Timber Street within the City of Newark, California.

In order for all or a portion of the Bonds to qualify as tax-exempt bonds, the City of Newark must conduct a public hearing (the "TEFRA Hearing") providing for the members of the community an opportunity to speak in favor of or against the use of tax-exempt bonds for the financing of the Project. Prior to the TEFRA Hearing, reasonable notice must be provided to the members of the community. The City published a TEFRA Hearing notice in the The Tri City Voice on January 9, 2024.

Following the close of the TEFRA Hearing, an "applicable elected representative" of the governmental unit hosting the Project must provide its approval of the issuance of the Bonds for the financing of the Project. In this context, the City Council is the "applicable elected representative" to consider staff's recommendation.

Staff recommends that the City Council conduct a public hearing under TEFRA in connection with the proposed issuance of revenue bonds by the CMFA to finance and refinance the acquisition, construction, development and equipping the Project and adopt a resolution (see Attachment 1) approving the issuance of the Bonds by the CMFA for the benefit of the Sponsor or Borrower for the financing of the Project.

FISCAL IMPACT

The Bonds to be issued by the CMFA for the Project will be the sole responsibility of the Borrower, and the City will have no financial, legal, moral obligation, liability or responsibility for the Project or the repayment of the Bonds for the financing of the Project. All financing documents with respect to the issuance of the Bonds will contain clear disclaimers that the Bonds are not obligations of the City or the State of California, but are to be paid for solely from funds provided by the Borrower.

The Board of Directors of the California Foundation for Stronger Communities, a California non-profit public benefit corporation (the "Foundation"), acts as the Board of Directors for the CMFA. Through its conduit issuance activities, the CMFA shares a

portion of the issuance fees it receives with its member communities. With respect to the City of Newark, it is expected that 25% of the final issuance fee attributable to the City will be granted by the CMFA to the City's General Fund.

ENVIRONMENTAL/PLANNING COMMISSION REVIEW

The Project has previously undergone City review under the California Environmental Quality Act ("CEQA"), and the City has approved a Mitigated Negative Declaration determining that the Project will not have a significant negative effect upon the environment. There has been no substantial change in the Project since the City's CEQA finding was made, and the issuance of the bonds will not change the scope of the Project as previously approved. Therefore, the issuance of revenue bonds by the CMFA to finance the Project is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, as an activity covered by the common sense exemption to CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

REVIEW AND APPROVAL

Prepared by - Carmelisa Lopez, Senior Planner

Reviewed by - Steven Turner, Community Development Director

Reviewed by - Krysten Lee, Finance Director

Reviewed by - Kristopher J. Kokotaylo, City Attorney

Approved by - David J. Benoun, City Manager

Attachments

Attachment 1 - Draft Resolution

RESOLUTION NO. ____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPROVING A PLAN OF FINANCE FOR THE
ISSUANCE OF REVENUE BONDS BY THE CALIFORNIA
MUNICIPAL FINANCE AUTHORITY IN AN AGGREGATE
PRINCIPAL AMOUNT NOT TO EXCEED \$50,000,000 TO
FINANCE AND REFINANCE A QUALIFIED RESIDENTIAL
RENTAL PROJECT FOR THE BENEFIT OF TIMBER STREET
INVESTORS, L.P. AND EDEN HOUSING, INC., OR AN
AFFILIATE THEREOF, AND CERTAIN OTHER MATTERS
RELATING THERETO

WHEREAS, Eden Housing, Inc., a California nonprofit public benefit corporation (the “Sponsor”), on behalf of Timber Street Investors, L.P., a California limited partnership, or another ownership entity to be created by its general partner, Eden Timber, LLC, a California limited liability company, or by another affiliate of the Sponsor (such limited partnership or other ownership entity, the “Borrower”), has requested that the California Municipal Finance Authority (the “Authority”) undertake a plan of finance for the issuance from time to time of one or more series of revenue bonds in an aggregate principal amount not to exceed \$50,000,000 (the “Bonds”) to finance and refinance the acquisition, construction, development and equipping of a 79-unit qualified residential rental project for low-income seniors (the “Project”) to be owned and operated by the Borrower and located at 37660 Timber Street within the City of Newark, California (the “City”); and

WHEREAS, an “applicable elected representative” of the jurisdiction in which the Project is to be located is required to approve the plan of finance for the issuance of the Bonds for Project, under Section 147(f) of the Code; and

WHEREAS, the City Council of the City (the “City Council”) is the elected legislative body of the City and is an “applicable elected representative” for purposes of Section 147(f) of the Code; and

WHEREAS, the Authority has requested that the City Council approve the plan of finance for the Project, including the issuance of the Bonds by the Authority, in order to satisfy the public approval requirement of Section 147(f) of the Code and the requirements of Section 4 of the Joint Exercise of Powers Agreement Relating to the California Municipal Finance Authority, dated as of January 1, 2004 (the “Agreement”), among certain local agencies, including the City; and

WHEREAS, pursuant to Section 147(f) of the Code, the City Council has, following notice duly given, held a public hearing regarding the issuance of the Bonds, and now desires to approve the plan of finance for the Project, including the issuance of the Bonds by the Authority;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark as follows:

Section 1. That the forgoing recitals are true and correct and made part of this Resolution.

Section 2. That the City Council hereby approves the plan of finance for the Project, including the issuance of the Bonds by the Authority. It is the purpose and intent of the City Council that this resolution constitute approval of the plan of finance for the Project, including the issuance of the Bonds by the Authority, for the purposes of (a) Section 147(f) of the Code by the applicable elected representative of a governmental unit having jurisdiction over the area in which the Project is to be located, in accordance with said Section 147(f) and (b) Section 4 of the Agreement.

Section 3. The officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they deem necessary or advisable in order to carry out, give effect to and comply with the terms and intent of this resolution and the financing transaction approved hereby.

Section 4. The Clerk shall forward a certified copy of this Resolution to the Authority in care of its counsel:

Ronald E. Lee, Esq.
Jones Hall, APLC
475 Sansome Street, Suite 1700
San Francisco, CA 94111

Section 5. This resolution shall take effect immediately upon its adoption.

This Resolution was introduced at the City of Newark City Council's January 25, 2024 regular meeting by Council Member _____, seconded by Council Member _____, and passed as follows:



STAFF REPORT

Item F. 1.

DATE 01/25/2024
TO Honorable Mayor and City Council Members
FROM Brett Oeverndiek, Management Analyst II
SUBJECT Adopt a resolution amending the 2022-2024 Biennial Budget and Capital Improvement Plan for the Fiscal Year 2024 Capital Improvement Plan budget rollovers

SUMMARY AND RECOMMENDATION

Staff annually reviews the previously approved Capital Improvement Plan projects' budgets and expenses to identify projects that remain in progress at the fiscal year-end and must have unspent funds rolled over to the following fiscal year (FY). Staff recommends that the City Council, by Resolution, amend the 2022-2024 Biennial Budget and Capital Improvement Plan for the Fiscal Year 2024 Capital Improvement Plan Rollover.

BACKGROUND

As part of the previous fiscal year-end process, staff reviews the City's unspent appropriations, along with the City's upcoming spending plans. With each new budget year, it is necessary to bring forward the unspent appropriations in the approved Capital Improvement Plan once all prior fiscal year transactions have been finalized. It is then necessary to formally amend the 2022-2024 Biennial Budget and Capital Improvement Plan to re-appropriate the FY 2023 unspent appropriations to FY 2024.

DISCUSSION/ANALYSIS

The capital budget amendments include rollovers totaling \$29,418,322 of previously approved capital project appropriations, including streets and roadway projects, street trees and landscape maintenance projects, building maintenance projects, final costs on the New Civic Center project and other projects. The amount is projected based on the estimated costs to complete the approved capital projects being carried over from the previous year. It is now necessary to amend the 2022-2024 Biennial Budget and Capital Improvement Plan to re-appropriate the FY 2023 unspent appropriations to FY 2024.

The attached Exhibit A outlines all capital projects that require rollover of appropriations from FY 2023 and re-appropriated to FY 2024.

FISCAL IMPACT

The capital budget amendments include rollovers totaling \$29,418,322 of previously approved capital project appropriations.

REVIEW AND APPROVAL

Prepared by – Brett Oeverndiek, Management Analyst II

Reviewed by – Soren Fajeau, Public Works Director

Reviewed by - Krysten Lee, Finance Director

Reviewed by – Kristopher J. Kokotaylo, City Attorney

Approved by – David Benoun, City Manager

Attachments

918_Resolution_FY2024_CIP_Rollovers

918_Exhibit_FY2024_CIP_Rollovers

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AMENDING THE 2022-2024 BIENNIAL BUDGET
AND CAPITAL IMPROVEMENT PLAN FOR FISCAL YEAR
2024 CAPITAL IMPROVEMENT PLAN ROLLOVERS

WHEREAS, during the annual review of capital projects for the Fiscal Year 2023-2024, a need has been identified to amend the 2022-2024 Biennial Budget and Capital Improvement Plan; and

WHEREAS, the Fiscal Year 2023 appropriations have lapsed at year-end and projects that are ongoing or works in progress need to be re-appropriated for the Fiscal Year 2024; and

WHEREAS, the capital budget amendments include rollovers totaling \$29,418,322 of previously approved capital project appropriations, including streets and roadway projects, street trees and landscape maintenance projects, building maintenance projects, final costs associated with the New Civic Center project and other projects; and

WHEREAS, the rollover amount is projected based on estimated costs to complete the approved capital projects.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby amend that certain document entitled “2022-2024 Biennial Budget and Capital Improvement Plan of the City of Newark,” adopted by Resolution No. 11,379 on June 23, 2022, for Fiscal Year 2024 for Capital Improvement Plan rollovers as set forth in Exhibit A attached.

City of Newark
Capital Projects Budget Rollover
Fiscal Year 2024

Exhibit A

Fund	Fund/Project Description	Project	Capital Rollovers	Total by Fund
Street Construction (XXX.90.091.910.6221)				
201	Citywide Traffic Signal Street Name Signs	1201	52,423	
	Lindsay Tract Street and Storm Drain Improvements	1238	879,422	
	Mowry Avenue Median Landscaping	1239	260,000	
	Citywide Crosswalk Evaluation	1256	150,000	
	Old Town PDA Streetscape Design	1258	490,371	
	Traffic Signals - LED Lamp/Accessory Replacement	CIPA10004/1263	25,000	
	Citywide Crosswalk Evaluation and Modifications	1278	26,757	
	Safe Route to Schools Improvements - Various Locations	1280	249,950	
	Street Tree Maintenance 2022	CIPA10002/1282	28,037	
	Thornton Avenue Complete Streets - Design	1284	255,129	
	Traffic Calming Measures	CIPA10003/1285	272,984	
	Traffic Signals - LED Lamp/Accessory Replacement	CIPA10004/1286	57,639	
	Street Asphalt Concrete Overlay Program 2023	CIPA10005/1300	1,880,120	
	2022-2023 Street Ruberized Capeseal	1301	1,399,523	
	Curb, Gutter and Sidewalk Replacement 2023	CIPA10007/1302	350,000	
	Traffic Calming Measures 2023	CIPA10003/1303	80,000	
	Citywide Accessible Pedestrian Ramps 2023	CIPA10001/1304	60,000	
	Thermoplastic Street Striping 2023	CIPA10008/1305	20,000	
	Lindsay Tract Roadway and Drainage Improvements	1306	500,000	
	Traffic Signal Interconnect - Cherry Street (Thornton Avenue - Stevenson Boulevard)	1307	150,000	
	Traffic Signal Interconnect - Newark Boulevard (State Route 84 - Civic Terrace Avenue)	1308	175,000	
	Traffic Signal Interconnect - Thornton Avenue (Sycamore Street - Cherry Street)	1309	150,000	7,512,355
202	Lindsay Tract Street and Storm Drain Improvements	1238	658,000	
	Arterial Bike Lanes	1254	92,523	750,523
211	Citywide Accessible Pedestrian Ramps (Ongoing)	CIPA10001/1234	40,000	40,000
214	Park Pathways Resurfacing for ADA Access	1232	77,386	
	Park Pathways Resurfacing for ADA Access	1297	184,088	261,474
280	Central Ave Overpass Project Development - Phase I	1014	53,191	53,191
281	Street Asphalt Concrete Overlay Program 2023	CIPA10005/1300	290,815	290,815
282	Lindsay Tract Street and Storm Drain Improvements	1238	91,570	91,570
284	Citywide Accessible Pedestrian Ramps (Ongoing)	CIPA10001/1234	20,000	
	Lindsay Tract Street and Storm Drain Improvements	1238	90,000	
	2020 Curb, Gutter & Sidewalk	CIPA10007/1247	199,900	
	Street Asphalt Concrete Overlay Program 2023	CIPA10005/1300	17,296	327,196
285	2020 Curb, Gutter & Sidewalk	CIPA10007/1247	182,176	
	2021 Curb, Gutter & Sidewalk	CIPA10007/1257	91,003	273,179
288	Arterial Bike Lanes	1254	347,124	347,124
Capital Improvements (XXX.90.094.940.6221)				
610	Surplus Property Disposal - Old FS No. 1	845	16,800	
	Lakeshore Park Lake Dredging Needs Scoping Analysis	935	25,000	
	Service Center Clean Water Requirements	1058	95,000	
	Finance System Replacement (Part 2)	1086	685,305	
	Irrigation Main Line Partial Replacement at Community Park	1088	198,100	
	Silliman Activity Center Improvements	1114	254,600	
	Web Site Upgrade	1185	77,660	
	Lakeshore Park Landscape Restoration	1146	297,140	
	Silliman Activity Center - Light Control Board	1153	50,000	
	Citywide Building Painting	1164	77,600	
	Citywide Building Roof Repairs	1165	121,100	
	Citywide Parks Irrigation Systems Upgrade/Modification	1171	170,000	
	Park Pathways Repair and Resealing	1175	77,100	

City of Newark
Capital Projects Budget Rollover
Fiscal Year 2024

Exhibit A

Fund	Fund/Project Description	Project	Capital Rollovers	Total by Fund
	New Civic Center	1188	6,248,529	
	Silliman Aquatic Center Activity Pool Play Structure Replacement	1190	19,941	
	Silliman Aquatic Center Pool Slide Replacement	1191	7,600	
	Citywide Trash Capture Devices (Phase 3)	1202	229,700	
	Citywide Work Station Replacement	1203	35,311	
	Lakeshore Park Well Rehabilitation and Pump Replacement	1211	75,000	
	Newark Community Park Restroom Restoration	1215	60,000	
	Silliman Activity Center - Carpet Replacement	1219	15,800	
	Virtual History Museum	1226	60,000	
	Fire Station No. 27 Painting	1235	32,000	
	Fire Station No. 27 Roofing	1236	55,000	
	Fire Station No. 29 Painting	1237	23,000	
	Service Center Rear Garage Repairs	1240	75,000	
	Service Center Buildings, Painting	1241	80,000	
	Fire Station No. 29 - Fencing	1265	20,000	
	PD Department Bar Car Patrol Vehicle	1266	84,000	
	PD Patrol Vehicle	1267	84,000	
	PD Replacement Scheduling and Workforce Management Software	1268	68,300	
	PW Maintenance Vehicle	1269	60,000	
	Silliman Center Water Heater Replacement	1271	100,000	
	Railroad Quiet Zone Study	1276	93,000	
	Newark Civic Center Technology	1292	37,355	
	Permit Tracking System Software Upgrades	1296	147,763	
	Public Works Maintenance Spray Truck	1287	80,000	
	Public Works Maintenance Vehicle	1288	60,000	
	Silliman Center - Air Handler #2 Replacement	1289	350,000	
	Silliman Aquatic Center - Hot Tub Replacement	1290	300,000	
	Silliman Aquatic Center - Partial Roof Replacement	1291	325,000	
	Service Center Fuel Island Replacement	1310	1,000,000	
	Service Center New Brick Wall	1311	120,000	
	Service Center Replacement & Repair of Skylights	1312	100,000	
	Service Center New Camera System	1313	80,000	
	Citywide Playground Engineered Wood Fiber Installation	1315	80,000	
	Citywide Grid Tree Pruning and Removal	1316	250,000	
	Community Park Well and Pump Replacement	1317	165,000	
	Dump Truck 3.5-ton	1318	80,000	
	Mini-Sweeper	1319	260,000	
	Tractor-Pulled Topdressing Implement	1320	28,000	
	Police Utility Vehicle	1321	12,500	
	Mobile Recreation Van	1322	70,000	
	Crime and Collision Scene Investigation Scanner	1323	84,000	
	Police Volunteer Radios	1324	20,000	
	Aquatic Center UV Sanitation System	1325	200,000	
	Silliman Center Preschool Playground Renovation	1326	300,000	
	Inflatable Outdoor Movie System	1327	8,000	
	Portable Outdoor Stage	1328	20,000	
	ERP Program Updates	1329	100,000	
	Service Center Fuel Pump Island Drainage System	1330	80,000	
	Citywide Geographic Information Systems - Phase 2	1331	119,100	
	Senior Center Room Divider	1332	50,000	
	Clean-up of State Right-of-way and landscaping (Thornton Avenue-I880)	1333	200,000	14,398,304
611	City Council Chambers Audio/Video System Upgrades	1298	311,478	311,478

City of Newark
Capital Projects Budget Rollover
Fiscal Year 2024

Exhibit A

Fund	Fund/Project Description	Project	Capital Rollovers	Total by Fund
621	Fuel Management System Replacement	1334	75,000	
	Service Center Fuel Canopy	1335	140,000	
	Service Center Waste Disposal Upgrades	1336	275,000	490,000
622	Central Ave Overpass Project Development - Phase I	1014	1,000,000	
	Arterial Bike Lanes	1254	1,036,185	2,036,185
625	Citywide Rail Station Alternatives Study	1275	80,000	
	Railroad Quiet Zone Study	1276	16,328	
	Sanctuary Park Conceptual Design & Parks Master Plan Amendment	1342	150,000	
	BMX Park Location Study & Conceptual Design	1343	150,000	396,328
Park Construction (624.90.093.930.6221)				
624	City Wide Parks Signage	1272	80,000	
	Sportsfield Outfield Net Replacement	1273	30,000	
	Sportsfield Park Synthetic Turf Fields Additional Fencing	1337	50,000	
	MacGregor Fields Cricket Pitch	1338	100,000	
	Mel Nunes Sportsfield Park Completion	1339	1,483,000	
	Ash Street Sports Facilities	1340	95,600	1,838,600
			29,418,322	29,418,322



STAFF REPORT

Item F. 2.

DATE 01/25/2024
TO Honorable Mayor and City Council Members
FROM Jayson Imai, Assistant City Engineer
SUBJECT General Overview of the Capital Improvement Plan and majority of projects

SUMMARY AND RECOMMENDATION

This informational item provides an overview of the Capital Improvement Plan (CIP) process, a summary of the majority of the projects submitted for consideration, prioritization criteria for project selection, and available funding sources.

The Executive Team has completed an initial review of all CIP projects submitted for consideration and will perform a detailed evaluation and ranking of all projects in February. Subsequently, a formal review of staff's project rankings and project funding recommendations is scheduled to be presented to the City Council for consideration in early April.

Staff recommends that the City Council receive the overview presentation on the Capital Improvement Plan. This item is informational only and includes a majority of the projects submitted.

BACKGROUND

As part of the preparation of the 2024-2026 Biennial Budget and Capital Improvement Plan, the Public Works Department is coordinating the development of the Capital Improvement Plan (CIP) budget component. The CIP development process commenced in November 2023 with a Call for Projects sent out to all City departments and members of the City Council. Projects submitted for consideration in response to the Call for Projects have been compiled and reviewed by staff. This informational item is intended to provide a summary of the majority of the projects submitted for consideration, available funding sources, and the criteria used to prioritize and select projects for funding. The City Council will then have the opportunity to provide feedback to staff regarding projects submitted for consideration. Project rankings and specific project funding recommendations are scheduled to be presented to the City Council for consideration in early April.

The general purpose of the CIP component of each Biennial Budget is to identify and prioritize capital improvement projects for potential funding. Projects may include

street, park, and building construction as well as specific maintenance projects for existing infrastructure. Feasibility studies and master plans to help identify and quantify future projects are also typically included in the CIP. Acquisitions of new equipment that would fall outside of a department's operating budget may also be included. In general, any project as defined above with an expenditure of \$10,000 or more is included in the CIP.

Projects submitted for consideration must satisfy at least one of the following five critical issues identified in the City's Budget:

Public Safety Services - Provide a level of public safety services that will protect our citizens, property, and community assets.

Education - Support, encourage and offer opportunities and programs that facilitate quality community education.

Quality of Life - Provide programs, services, and facilities that make Newark a desirable and healthy place to live.

Community Development – Make development decisions that maintain a vibrant, balanced, quality community.

City Government Operations – Operate a City government that enables the organization to meet the service demands of the community.

Projects are then categorized into three priority levels, as follows:

Priority Level 1 (Mandatory): Projects that meet a federal, State, or local legal or regulatory requirement, satisfy a critical risk management issue to ensure public safety, or serve to preserve and protect the City's existing assets and public infrastructure.

Priority Level 2 (Necessary): Projects that are considered necessary but not mandatory as they would not clearly address a critical legal, safety, or asset-projection need. Projects at this level could be funded by a consensus priority opinion of the City Council for the benefit of the community. This can also include projects that would provide a local match for outside funding sources, provide a definitive service level increase, or would complete the final phase of a multi-phased project. Feasibility studies and master plans are also categorized as Priority Level 2.

Priority Level 3 (Desirable): All other projects that do not satisfy Level 1 or Level 2 criteria.

DISCUSSION/ANALYSIS

A total of approximately \$46.5 million (\$46.5M) of new and previously unfunded projects were submitted for consideration for inclusion and funding with the CIP. A list of the majority of the projects submitted for consideration is attached to this staff report.

After reconciliation and accounting for cost savings and general reimbursements from previously completed Capital Projects, staff anticipates a projected available Capital Fund balance of approximately \$1.5M as of June 30, 2024. In addition, staff anticipates there will be approximately \$4.2M in available Community Development Maintenance impact fees, which are restricted funds with limited uses for qualifying projects.

Gas Tax funds, which are a combination of local transportation sales tax measures and fees (Measure BB and Vehicle Registration Fee), State Highway Users Tax Accounts (HUTA) and the Road Maintenance and Rehabilitation Act (RMRA or “SB1”) funding, will result in projected annual revenue of approximately \$4.5M for Fiscal Year 2025 and \$4.8M for Fiscal Year 2026. Gas Tax funding must be used within the public right-of-way for transportation-related improvements and maintenance.

A “first cut” review of all CIP projects submitted for consideration has been completed by the Executive Team and will be followed in February by a detailed assessment and ranking of all projects and an evaluation of prioritized projects against available funding sources. Project rankings and staff’s project funding recommendations are scheduled to be presented to the City Council in early April.

Because some Councilmembers have real property interests within the proximity of various CIP projects submitted for consideration, separate informational items have been prepared for those particular projects.

FISCAL IMPACT

There is no fiscal impact. This is an informational item only.

REVIEW AND APPROVAL

Prepared by - Jayson Imai, City Engineer

Reviewed by - Soren Fajeau, Public Works Director

Reviewed by - Krysten Lee, Finance Director

Reviewed by - Kristopher J. Kokotaylo, City Attorney

Approved by - David J. Benoun, City Manager

Attachments

Presentation

Projects Submitted for Consideration



Capital Improvement Plan

General Overview

City Council: January 25, 2024

Capital Improvement Plan

Overview

1

Overview of CIP Process

2

CIP Selection Methodology

3

CIP Funding Summary

4

Projects Submitted for Consideration

5

Next Steps

Process Overview

Capital Improvement Plan

Identify and Prioritize Capital Improvement Projects for Potential Funding

Types of Projects in the CIP

- Streets, Parks, and Buildings
 - Feasibility Studies and Master Plans
 - New Equipment Purchases
-

Projects or Purchases of \$10,000 or more

Process Overview

Capital Improvement Plan

CIP Schedule for Review and Approval

1. Call for Projects
2. Staff Evaluation of Projects Submitted
- 3. *City Council Overview of Submitted Projects***
4. Executive Team Review/Ranking of Projects (February)
5. City Council Review of Projects Recommended for Funding (early April)
6. Draft CIP to Planning Commission (late April)
7. Biennial Budget/CIP City Council Work Session (early May)
8. Recommended City Council Approval of Biennial Budget and CIP (late May)

Process Overview

Capital Improvement Plan

Project Selection Methodology

Evaluation of Critical Issues

Evaluation of Project Prioritization Criteria

Priority Level 1 (Mandatory)

Priority Level 2 (Necessary)

Priority Level 3 (Desirable)

Evaluation of Available Funding Sources

Review of staffing and maintenance impacts

Project Funding

Major Funding Sources for the Capital Improvement Plan

Gas Tax Funds

\$9.3M
for two-year
period



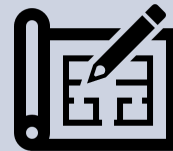
Capital Funds

\$1.5M
Unrestricted
Capital Funds



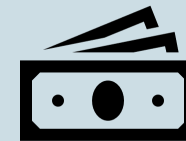
Impact Fees

\$4.2M
Community
Development
Maintenance
Fund



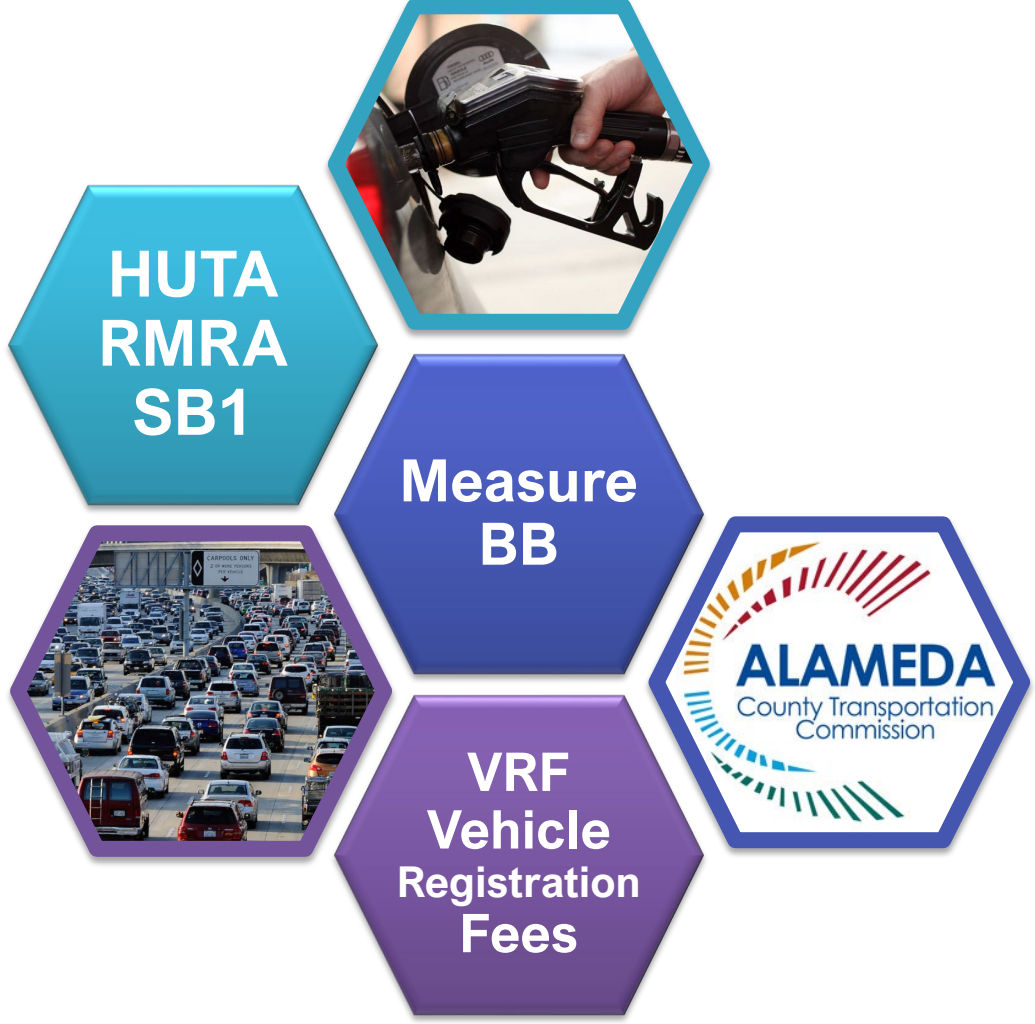
Outside Funding

**Transportation
and Other
Grant Funds**



Gas Tax

Major Funding Sources for the Capital Improvement Plan



HUTA
RMRA
SB1

Measure
BB

VRF
Vehicle
Registration
Fees



ALAMEDA
County Transportation
Commission

- Highway Users Tax Account (HUTA)
- Road Maintenance Rehabilitation Account/
Senate Bill 1 (RMRA/SB1)
 - Over \$2.7M per year
- Measure BB Direct Distributions
 - \$1.6M per year
- Vehicle Registration Fee (VRF) Direct
Distributions
 - \$220,000 per year

Total Over \$4.5M per year

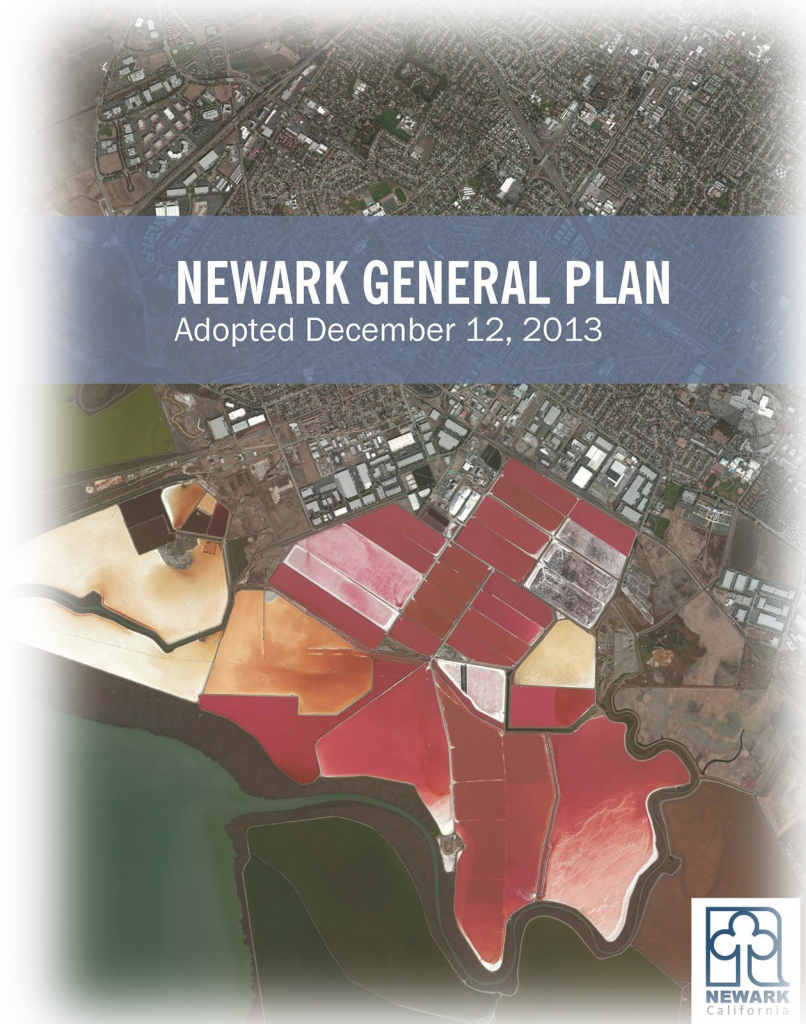
Capital Funds

Major Funding Sources for the Capital Improvement Plan



Impact Fees

Major Funding Sources for the Capital Improvement Plan



NEWARK GENERAL PLAN

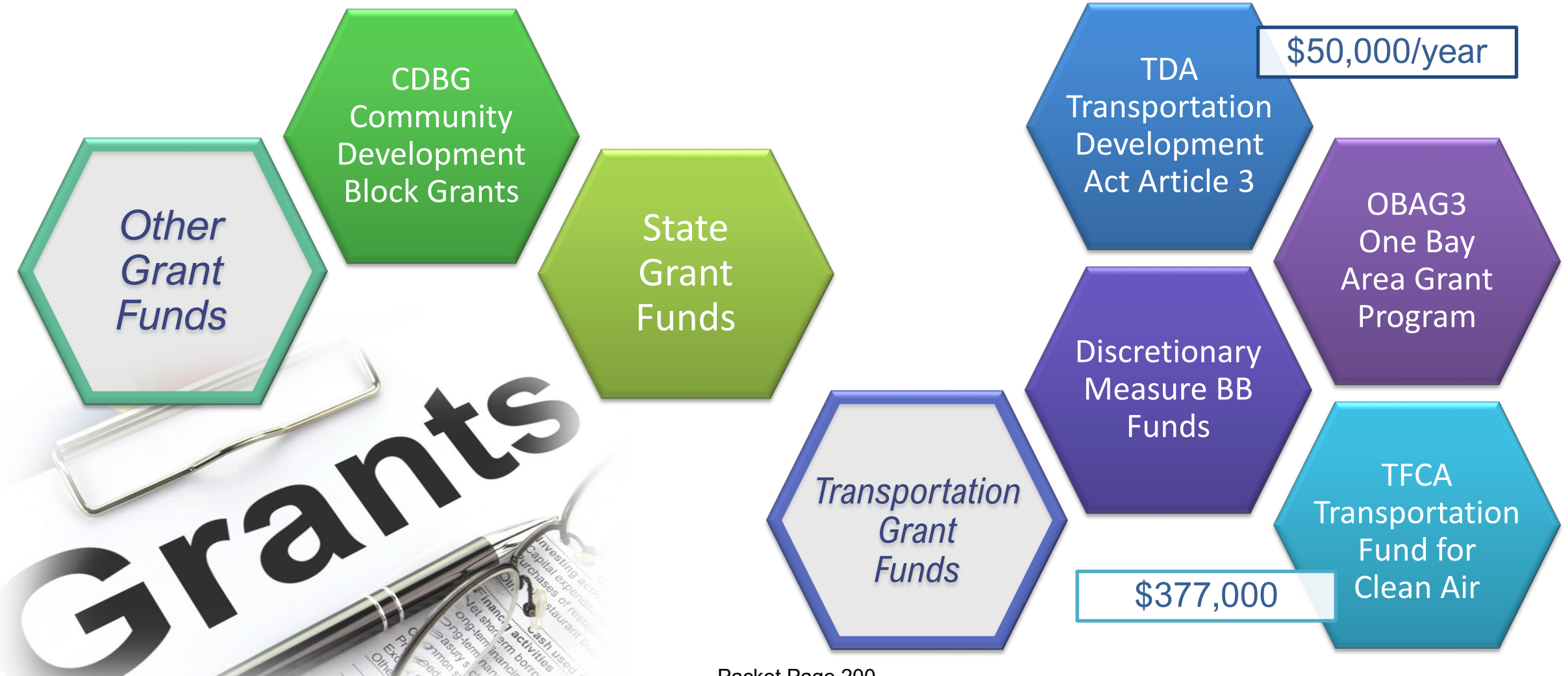
Adopted December 12, 2013

- **Community Development Maintenance Funds**
 - Feasibility Studies or Master Plans
 - Maintaining or Updating General Plan

\$4.2M Available Balance

Outside Funding

Major Funding Sources for the Capital Improvement Plan





Gas Tax Projects Submitted

Capital Improvement Plan

Annual Street Maintenance Projects	Estimated Cost
Street Asphalt Concrete Overlay Program (2025 and 2026)	\$ 8,000,000
Curb, Gutter and Sidewalk Replacement (2025 and 2026)	\$ 800,000
Street Tree Maintenance (2025 and 2026)	\$ 600,000
Citywide Accessible Pedestrian Ramps (2025 and 2026)	\$ 150,000
Traffic Calming Measures (2025 and 2026)	\$ 200,000
Thermoplastic Street Striping (2025 and 2026)	\$ 50,000
TOTAL	\$ 9,800,000



Gas Tax Projects Submitted

Capital Improvement Plan

Standalone Street Improvement Projects	Estimated Cost
Cherry St/Mowry Ave Turn Pocket - Construction	\$ 400,000
Industrial Areas Edge Treatments – Design	\$ 250,000
Industrial Areas Edge Treatments – Construction	\$ 1,200,000
TOTAL	\$ 1,850,000



Gas Tax Projects Submitted

Capital Improvement Plan

Currently Unfunded Street Improvement Projects	Estimated Cost
Central Ave Median & Sidewalk Improvements (Design)	\$ 250,000
Central Ave Median & Sidewalk Improvements (Construction)	\$ 1,200,000
Thornton Ave Complete Streets Improvements (Construction)	\$ 3,000,000
TOTAL	\$ 4,450,000

Gas Tax Projects Submitted

Capital Improvement Plan

	Total Cost
Annual Street Maintenance Projects	\$ 9,800,000
Street Improvement Projects	\$ 1,850,000
Currently Unfunded Projects	\$ 4,450,000
Additional Projects	\$ 19,700,000
TOTAL	\$ 35,800,000

Total Projected Gas Tax Funds

\$ 9,300,000

Capital Fund Projects Submitted

Maintenance Projects

	Estimated Cost
Second Chance Roof Replacement	\$ 120,000
Senior Center Repainting	\$ 100,000
Silliman Center Door Closer Replacement	\$ 100,000
Silliman Center Gym & Dance Floor Refinishing	\$ 130,000
Silliman Center Locker Room Flooring Replacement	\$ 150,000
Silliman Center Partial Roof and Skylight Replacement	\$ 250,000
Silliman Center Shower Flooring Replacement	\$ 100,000
Silliman Center Water Slide Replacement	\$ 350,000
Softball Fields Scoreboard and Bleacher Replacement	\$ 50,000
TOTAL	\$ 1,350,000

Capital Fund Projects Submitted

New Vehicles

	Estimated Cost
Community Preservation Vehicle	\$ 50,000
Information Services Vehicle	\$ 100,000
Police Department Patrol Vehicle	\$ 200,000
Police Department Undercover Vehicle	\$ 100,000
Public Works Maintenance Sweeper	\$ 500,000
Public Works Maintenance Mini Excavator	\$ 120,000
Public Works Maintenance Vehicles (2)	\$ 160,000
TOTAL	\$ 1,230,000

Capital Fund Projects Submitted

Operations

	Estimated Cost
Emergency Breaching Tools and Training	\$ 46,000
Fire Stations Nos. 27 & 29 – Additional Fencing	\$ 500,000
Mel Nunes Sportsfield Park Storage Unit	\$ 60,000
MotoShoot Training System	\$ 20,000
Operator XR VR Simulator	\$ 100,000
Public Works Maintenance Robotic Mower	\$ 25,000
Senior Center Driveway Relocation	\$ 40,000
Service Yard – Vacuum Truck Shelter	\$ 100,000
SIDNE (Simulated Impaired Driving Experience)	\$ 50,000
Star Chase Vehicle Tracking	\$ 45,000
TOTAL	\$ 986,000

Capital Fund Projects Submitted

Previously Requested but Unfunded

	Estimated Cost
Articulated Aerial Lift Truck	\$ 300,000
Arterial Landscape Median Upgrades	\$ 600,000
Birch Grove Park Tennis Court Area Re-Landscaping	\$ 200,000
Citywide Bus Shelters	\$ 2,400,000
New Spray Truck	\$ 250,000
Second Chance Shelter Repairs	\$ 200,000
Senior Center HVAC Replacement	\$ 50,000
Silliman Aquatic Center – UV Sanitation System	\$ 260,000
Silliman Center Energy Conservation Measures	\$ 200,000
Silliman Center Pool Deck Replacement	\$ 300,000
Storage Facility at Service Center	\$ 400,000
TOTAL	\$ 5,160,000

Capital Fund Projects Submitted

Capital Improvement Plan

	Total Cost
Maintenance Projects	\$ 1,350,000
New Vehicles	\$ 1,230,000
Operations	\$ 986,000
Previously Requested Unfunded	\$ 5,160,000
Additional Projects	\$ 75,000
TOTAL	\$ 8,801,000

Total Projected Capital Funds

\$ 1,500,000



Planning Studies Submitted

Capital Improvement Plan

	Total Cost
ADA Transition Plan	\$ 250,000
Four Corners Area Plan	\$ 350,000
Housing Element Implementation – Housing Programs	\$ 450,000
NewPark Place Specific Plan Enhancement & Expansion	\$ 300,000
Rental Housing Inspection Program Assessment	\$ 150,000
Title 17 (Zoning) Housing-Related Assessment & Update	\$ 400,000
TOTAL	\$ 1,900,000

Community Development Maintenance Funds

\$ 4,200,000

Capital Improvement Plan

Next Steps

Executive Team Ranking of Projects (February)

City Council Review of Projects Recommended for Funding (early April)

Draft CIP to Planning Commission (late April)

Biennial Budget/CIP City Council Work Session (May)

Recommended City Council Approval (May)

Capital Improvement Plan

New Projects Submitted for Consideration

Requesting Department	Project Description	Importance	Funding Source	Estimated Cost
Maintenance	Second Chance Roof - Replacement	High	Capital Funds	\$ 120,000
Maintenance	Senior Center Repainting	High	Capital Funds	\$ 100,000
Maintenance	Silliman Center Door Closers - Replacement	High	Capital Funds	\$ 100,000
Maintenance	Silliman Center Gym & Dance Floor Refinishing	High	Capital Funds	\$ 130,000
Maintenance	Silliman Center Locker Room Flooring - Replacement	High	Capital Funds	\$ 150,000
Maintenance	Silliman Center Partial Roof and Skylight Replacement	High	Capital Funds	\$ 250,000
Maintenance	Silliman Center Shower Flooring - Replacement	High	Capital Funds	\$ 100,000
Maintenance	Silliman Center Water Slide - Replacement	High	Capital Funds	\$ 350,000
R&CS	Softball Fields Retrofit - Birch Grove & Mel Nunes Sportsfield	Medium	Capital Funds	\$ 50,000
CDD	Community Preservation - Vehicle	Medium	Capital Funds	\$ 50,000
Maintenance	Information Services - Vehicle	High	Capital Funds	\$ 100,000
Maintenance	Police Department Patrol Vehicle	High	Capital Funds	\$ 200,000
Maintenance	Police Department Undercover Vehicle	High	Capital Funds	\$ 100,000
Maintenance	Public Works Maintenance - Sweeper	High	Capital Funds	\$ 500,000
Maintenance	Public Works Maintenance - Mini Excavator	High	Capital Funds	\$ 120,000
Maintenance	Public Works Maintenance - Vehicles (2)	High	Capital Funds	\$ 160,000
Police	Emergency Breaching Tools and Training	High	Capital Funds	\$ 46,000
Maintenance	Fire Stations No. 27 & 29 - Additional Fencing	High	Capital Funds	\$ 500,000
Maintenance	Mel Nunes Sportsfield Park Storage unit	High	Capital Funds	\$ 60,000
Police	MotoShoot Training System	Medium	Capital Funds	\$ 20,000
Police	Operator XR VR Simulator	High	Capital Funds	\$ 100,000
Maintenance	Public Works Maintenance - Robotic Mower	High	Capital Funds	\$ 25,000
R&CS	Senior Center Driveway Relocation	High	Capital Funds	\$ 40,000
Maintenance	Service Yard - Vacuum Truck Shelter	High	Capital Funds	\$ 100,000
Police	SIDNE (Simulated Impaired Driving Experience)	Medium	Capital Funds	\$ 50,000
Police	Star Chase GPS Vehicle Tracking	Medium	Capital Funds	\$ 45,000
Public Works	ADA Transition Plan	High	CD Maintenance Funds	\$ 250,000
CDD	Four Corners Area Plan	High	CD Maintenance Funds	\$ 350,000
CDD	Housing Programs - Implementation of Adopted Housing Element	High	CD Maintenance Funds	\$ 450,000
CDD	NewPark Place Specific Plan Enhancement and Expansion	High	CD Maintenance Funds	\$ 300,000
CDD	Rental Housing Inspection Program Assessment	Medium	CD Maintenance Funds	\$ 150,000
CDD	Title 17 (Zoning) Housing-related Assessment and Update	High	CD Maintenance Funds	\$ 400,000

Capital Improvement Plan

New Projects Submitted for Consideration

Requesting Department	Project Description	Importance	Funding Source	Estimated Cost
Engineering	Annual Street Asphalt Concrete Overlay Program	High	Gas Tax	\$ 8,000,000
Engineering	Annual Curb, Gutter & Sidewalk Replacement Program	High	Gas Tax	\$ 800,000
Engineering	Annual Street Tree Maintenance Program	High	Gas Tax	\$ 600,000
Engineering	Annual Citywide Accessible Pedestrian Ramps	High	Gas Tax	\$ 150,000
Engineering	Annual Traffic Calming Measures	High	Gas Tax	\$ 200,000
Engineering	Annual Thermoplastic Street Striping	High	Gas Tax	\$ 50,000
CDD	Industrial Areas Edge Treatments (Design)	High	Gas Tax	\$ 250,000
CDD	Industrial Areas Edge Treatments (Construction)	High	Gas Tax	\$ 1,200,000
Engineering	Cherry St @ Mowry Ave Median Turn Pocket Lengthening (Construction)	Medium	Gas Tax	\$ 400,000

Capital Improvement Plan

Currently Unfunded Projects Resubmitted for Consideration

Requesting Department	Project Description	Importance	Funding Source	Estimated Cost
Maintenance	Articulated Aerial Lift Truck	High	Capital Funds	\$ 300,000
Maintenance	Arterial Landscape Median Upgrades	Medium	Capital Funds	\$ 600,000
CDD	Citywide Bus Shelters	Medium	Capital Funds	\$ 2,400,000
Maintenance	Birch Grove Park Tennis Court Area Re-landscaping	Medium	Capital Funds	\$ 200,000
Maintenance	New Spray Truck	High	Capital Funds	\$ 250,000
Maintenance	Second Chance Shelter Repairs	High	Capital Funds	\$ 200,000
R&CS	Senior Center HVAC Replacement	Medium	Capital Funds	\$ 50,000
R&CS	Silliman Center Pool Sanitation System Retrofit	High	Capital Funds	\$ 260,000
R&CS	Silliman Center Energy Conservation Measures	Medium	Capital Funds	\$ 200,000
R&CS	Silliman Center Pool Deck Replaceent	High	Capital Funds	\$ 300,000
PD	Storage Facility at Service Center	High	Capital Funds	\$ 400,000
CDD	Central Ave Median and Sidewalk Improvements (Design)	High	Gas Tax	\$ 250,000
CDD	Central Ave Median and Sidewalk Improvements (Construction)	High	Gas Tax	\$ 1,200,000
CDD/PW	Thornton Avenue Complete Streets Improvements	High	Gas Tax	\$ 3,000,000



STAFF REPORT

Item F. 3.

DATE 01/25/2024
TO Honorable Mayor and City Council Members
FROM Jayson Imai, Assistant City Engineer
SUBJECT Overview of the Capital Improvement Plan related to Old Town PDA Streetscape Improvements

SUMMARY AND RECOMMENDATION

This informational item provides an overview of the Capital Improvement Plan (CIP) process, a summary of the Old Town PDA Streetscape Improvements which was submitted for consideration, prioritization criteria for project selection, and available funding sources.

The Executive Team has completed an initial review of all CIP projects submitted for consideration and will perform a detailed evaluation and ranking of all projects in February. Subsequently, a formal review of staff's project rankings and project funding recommendations is scheduled to be presented to the City Council for consideration in early April.

Staff recommends that the City Council receive the overview presentation on the Capital Improvement Plan related to the Old Town PDA Streetscape Improvements. This item is informational only.

BACKGROUND

As part of the preparation of the 2024-2026 Biennial Budget and Capital Improvement Plan, the Public Works Department is coordinating the development of the Capital Improvement Plan (CIP) budget component. The CIP development process commenced in November 2023 with a Call for Projects sent out to all City departments and members of the City Council. Projects submitted for consideration in response to the Call for Projects have been compiled and reviewed by staff. This informational item is intended to provide a summary of the Old Town PDA Streetscape Improvements which was submitted for consideration, available funding sources, and the criteria used to prioritize and select projects for funding. The City Council will then have the opportunity to provide feedback to staff regarding the Old Town PDA Streetscape Improvements submitted for consideration. Project rankings and specific project funding recommendations are scheduled to be presented to the City Council for consideration in early April.

The general purpose of the CIP component of each Biennial Budget is to identify and prioritize capital improvement projects for potential funding. Projects may include street, park, and building construction as well as specific maintenance projects for existing infrastructure. Feasibility studies and master plans to help identify and quantify future projects are also typically included in the CIP. Acquisitions of new equipment that would fall outside of a department's operating budget may also be included. In general, any project as defined above with an expenditure of \$10,000 or more is included in the CIP.

Projects submitted for consideration must satisfy at least one of the following five critical issues identified in the City's Budget:

Public Safety Services - Provide a level of public safety services that will protect our citizens, property, and community assets.

Education - Support, encourage and offer opportunities and programs that facilitate quality community education.

Quality of Life - Provide programs, services, and facilities that make Newark a desirable and healthy place to live.

Community Development – Make development decisions that maintain a vibrant, balanced, quality community.

City Government Operations – Operate a City government that enables the organization to meet the service demands of the community.

Projects are then categorized into three priority levels, as follows:

Priority Level 1 (Mandatory): Projects that meet a federal, State, or local legal or regulatory requirement, satisfy a critical risk management issue to ensure public safety, or serve to preserve and protect the City's existing assets and public infrastructure.

Priority Level 2 (Necessary): Projects that are considered necessary but not mandatory as they would not clearly address a critical legal, safety, or asset-projection need. Projects at this level could be funded by a consensus priority opinion of the City Council for the benefit of the community. This can also include projects that would provide a local match for outside funding sources, provide a definitive service level increase, or would complete the final phase of a multi-phased project. Feasibility studies and master plans are also categorized as Priority Level 2.

Priority Level 3 (Desirable): All other projects that do not satisfy Level 1 or Level 2 criteria.

DISCUSSION/ANALYSIS

A total of approximately \$46.5 million (\$46.5M) of new and previously unfunded projects were submitted for consideration for inclusion and funding with the CIP.

After reconciliation and accounting for cost savings and general reimbursements from previously completed Capital Projects, staff anticipates a projected available Capital Fund balance of approximately \$1.5M as of June 30, 2024. In addition, staff anticipates there will be approximately \$4.2M in available Community Development Maintenance impact fees, which are restricted funds with limited uses for qualifying projects.

Gas Tax funds, which are a combination of local transportation sales tax measures and fees (Measure BB and Vehicle Registration Fee), State Highway Users Tax Accounts (HUTA) and the Road Maintenance and Rehabilitation Act (RMRA or “SB1”) funding, will result in projected annual revenue of approximately \$4.5M for Fiscal Year 2025 and \$4.8M for Fiscal Year 2026. Gas Tax funding must be used within the public right-of-way for transportation-related improvements and maintenance.

A “first cut” review of all CIP projects submitted for consideration has been completed by the Executive Team and will be followed in February by a detailed assessment and ranking of all projects and an evaluation of prioritized projects against available funding sources. Project rankings and staff’s project funding recommendations are scheduled to be presented to the City Council in early April.

This informational item is for consideration of the following project:

Requesting Department	Project Description	Importance	Funding Source	Estimated Cost
CDD/PW	Old Town PDA Streetscape Improvements (Construction)	High	Gas Tax	\$6,000,000

FISCAL IMPACT

There is no fiscal impact. This is an informational item only.

REVIEW AND APPROVAL

Prepared by - Jayson Imai, City Engineer

Reviewed by - Soren Fajeau, Public Works Director

Reviewed by - Krysten Lee, Finance Director

Reviewed by - Kristopher J. Kokotaylo, City Attorney

Approved by - David J. Benoun, City Manager

Attachments

Presentation



Capital Improvement Plan Overview

Old Town PDA Streetscape Improvements

City Council: January 25, 2024



Gas Tax Projects Submitted

Capital Improvement Plan

	Total Cost
Annual Street Maintenance Projects	\$ 9,800,000
Street Improvement Projects	\$ 1,850,000
Currently Unfunded Projects	\$ 4,450,000
<i>Old Town PDA Streetscape Improvements (Construction)</i>	<i>\$ 6,000,000</i>
Additional Projects	\$ 13,700,000
TOTAL	\$ 35,800,000

Total Projected Gas Tax Funds

\$ 9,300,000



STAFF REPORT

Item F. 4.

DATE 01/25/2024
TO Honorable Mayor and City Council Members
FROM Jayson Imai, Assistant City Engineer
SUBJECT Overview of the Capital Improvement Plan related to the Traffic Signal Interconnect Project

SUMMARY AND RECOMMENDATION

This informational item provides an overview of the Capital Improvement Plan (CIP) process, a summary of the Traffic Signal Interconnect Project which was submitted for consideration, prioritization criteria for project selection, and available funding sources.

The Executive Team has completed an initial review of all CIP projects submitted for consideration and will perform a detailed evaluation and ranking of all projects in February. Subsequently, a formal review of staff's project rankings and project funding recommendations is scheduled to be presented to the City Council for consideration in early April.

Staff recommends that the City Council receive the overview presentation on the Capital Improvement Plan related to the Traffic Signal Interconnect Project. This item is informational only.

BACKGROUND

As part of the preparation of the 2024-2026 Biennial Budget and Capital Improvement Plan, the Public Works Department is coordinating the development of the Capital Improvement Plan (CIP) budget component. The CIP development process commenced in November 2023 with a Call for Projects sent out to all City departments and members of the City Council. Projects submitted for consideration in response to the Call for Projects have been compiled and reviewed by staff. This informational item is intended to provide a summary of the Traffic Signal Interconnect Project which was submitted for consideration, available funding sources, and the criteria used to prioritize and select projects for funding. The City Council will then have the opportunity to provide feedback to staff regarding the Traffic Signal Interconnect Project submitted for consideration. Project rankings and specific project funding recommendations are scheduled to be presented to the City Council for consideration in early April.

The general purpose of the CIP component of each Biennial Budget is to identify and prioritize capital improvement projects for potential funding. Projects may include

street, park, and building construction as well as specific maintenance projects for existing infrastructure. Feasibility studies and master plans to help identify and quantify future projects are also typically included in the CIP. Acquisitions of new equipment that would fall outside of a department's operating budget may also be included. In general, any project as defined above with an expenditure of \$10,000 or more is included in the CIP.

Projects submitted for consideration must satisfy at least one of the following five critical issues identified in the City's Budget:

Public Safety Services - Provide a level of public safety services that will protect our citizens, property, and community assets.

Education - Support, encourage and offer opportunities and programs that facilitate quality community education.

Quality of Life - Provide programs, services, and facilities that make Newark a desirable and healthy place to live.

Community Development – Make development decisions that maintain a vibrant, balanced, quality community.

City Government Operations – Operate a City government that enables the organization to meet the service demands of the community.

Projects are then categorized into three priority levels, as follows:

Priority Level 1 (Mandatory): Projects that meet a federal, State, or local legal or regulatory requirement, satisfy a critical risk management issue to ensure public safety, or serve to preserve and protect the City's existing assets and public infrastructure.

Priority Level 2 (Necessary): Projects that are considered necessary but not mandatory as they would not clearly address a critical legal, safety, or asset-projection need. Projects at this level could be funded by a consensus priority opinion of the City Council for the benefit of the community. This can also include projects that would provide a local match for outside funding sources, provide a definitive service level increase, or would complete the final phase of a multi-phased project. Feasibility studies and master plans are also categorized as Priority Level 2.

Priority Level 3 (Desirable): All other projects that do not satisfy Level 1 or Level 2 criteria.

DISCUSSION/ANALYSIS

A total of approximately \$46.5 million (\$46.5M) of new and previously unfunded projects were submitted for consideration for inclusion and funding with the CIP.

After reconciliation and accounting for cost savings and general reimbursements from previously completed Capital Projects, staff anticipates a projected available Capital Fund balance of approximately \$1.5M as of June 30, 2024. In addition, staff anticipates there will be approximately \$4.2M in available Community Development Maintenance impact fees, which are restricted funds with limited uses for qualifying projects.

Gas Tax funds, which are a combination of local transportation sales tax measures and fees (Measure BB and Vehicle Registration Fee), State Highway Users Tax Accounts (HUTA) and the Road Maintenance and Rehabilitation Act (RMRA or “SB1”) funding, will result in projected annual revenue of approximately \$4.5M for Fiscal Year 2025 and \$4.8M for Fiscal Year 2026. Gas Tax funding must be used within the public right-of-way for transportation-related improvements and maintenance.

A “first cut” review of all CIP projects submitted for consideration has been completed by the Executive Team and will be followed in February by a detailed assessment and ranking of all projects and an evaluation of prioritized projects against available funding sources. Project rankings and staff’s project funding recommendations are scheduled to be presented to the City Council in early April.

This informational item is for consideration of the following project:

Requesting Department	Project Description	Importance	Funding Source	Estimated Cost
Engineering	Traffic Signal Interconnect (Construction)	High	Gas Tax	\$7,500,000

FISCAL IMPACT

There is no fiscal impact. This is an informational item only.

REVIEW AND APPROVAL

Prepared by - Jayson Imai, City Engineer

Reviewed by - Soren Fajeau, Public Works Director

Reviewed by - Krysten Lee, Finance Director

Reviewed by - Kristopher J. Kokotaylo, City Attorney

Approved by - David J. Benoun, City Manager

Attachments

Presentation



Capital Improvement Plan Overview Traffic Signal Interconnect

City Council: January 25, 2024



Gas Tax Projects Submitted

Capital Improvement Plan

	Total Cost
Annual Street Maintenance Projects	\$ 9,800,000
Street Improvement Projects	\$ 1,850,000
Currently Unfunded Projects	\$ 4,450,000
<i>Traffic Signal Interconnect (Construction)</i>	\$ 7,500,000
Additional Projects	\$ 12,200,000
TOTAL	\$ 35,800,000

Total Projected Gas Tax Funds

\$ 9,300,000



STAFF REPORT

Item F. 5.

DATE 01/25/2024
TO Honorable Mayor and City Council Members
FROM Jayson Imai, Assistant City Engineer
SUBJECT Overview of the Capital Improvement Plan related to Citywide Information Kiosks Phase 1 Old Town

SUMMARY AND RECOMMENDATION

This informational item provides an overview of the Capital Improvement Plan (CIP) process, a summary of the Citywide Information Kiosks Phase 1 – Old Town Project which was submitted for consideration, prioritization criteria for project selection, and available funding sources.

The Executive Team has completed an initial review of all CIP projects submitted for consideration and will perform a detailed evaluation and ranking of all projects in February. Subsequently, a formal review of staff's project rankings and project funding recommendations is scheduled to be presented to the City Council for consideration in early April.

Staff recommends that the City Council receive the overview presentation on the Capital Improvement Plan related to Citywide Information Kiosks Phase 1 - Old Town. This item is informational only.

BACKGROUND

As part of the preparation of the 2024-2026 Biennial Budget and Capital Improvement Plan, the Public Works Department is coordinating the development of the Capital Improvement Plan (CIP) budget component. The CIP development process commenced in November 2023 with a Call for Projects sent out to all City departments and members of the City Council. Projects submitted for consideration in response to the Call for Projects have been compiled and reviewed by staff. This informational item is intended to provide a summary of the Citywide Information Kiosks Phase 1 – Old Town which was submitted for consideration, available funding sources, and the criteria used to prioritize and select projects for funding. The City Council will then have the opportunity to provide feedback to staff regarding the Citywide Information Kiosks Phase 1 - Old Town submitted for consideration. Project rankings and specific project funding recommendations are scheduled to be presented to the City Council for consideration in early April.

The general purpose of the CIP component of each Biennial Budget is to identify and prioritize capital improvement projects for potential funding. Projects may include street, park, and building construction as well as specific maintenance projects for existing infrastructure. Feasibility studies and master plans to help identify and quantify future projects are also typically included in the CIP. Acquisitions of new equipment that would fall outside of a department's operating budget may also be included. In general, any project as defined above with an expenditure of \$10,000 or more is included in the CIP.

Projects submitted for consideration must satisfy at least one of the following five critical issues identified in the City's Budget:

Public Safety Services - Provide a level of public safety services that will protect our citizens, property, and community assets.

Education - Support, encourage and offer opportunities and programs that facilitate quality community education.

Quality of Life - Provide programs, services, and facilities that make Newark a desirable and healthy place to live.

Community Development – Make development decisions that maintain a vibrant, balanced, quality community.

City Government Operations – Operate a City government that enables the organization to meet the service demands of the community.

Projects are then categorized into three priority levels, as follows:

Priority Level 1 (Mandatory): Projects that meet a federal, State, or local legal or regulatory requirement, satisfy a critical risk management issue to ensure public safety, or serve to preserve and protect the City's existing assets and public infrastructure.

Priority Level 2 (Necessary): Projects that are considered necessary but not mandatory as they would not clearly address a critical legal, safety, or asset-projection need. Projects at this level could be funded by a consensus priority opinion of the City Council for the benefit of the community. This can also include projects that would provide a local match for outside funding sources, provide a definitive service level increase, or would complete the final phase of a multi-phased project. Feasibility studies and master plans are also categorized as Priority Level 2.

Priority Level 3 (Desirable): All other projects that do not satisfy Level 1 or Level 2 criteria.

DISCUSSION/ANALYSIS

A total of approximately \$46.5 million (\$46.5M) of new and previously unfunded projects were submitted for consideration for inclusion and funding with the CIP.

After reconciliation and accounting for cost savings and general reimbursements from previously completed Capital Projects, staff anticipates a projected available Capital Fund balance of approximately \$1.5M as of June 30, 2024. In addition, staff anticipates there will be approximately \$4.2M in available Community Development Maintenance impact fees, which are restricted funds with limited uses for qualifying projects.

Gas Tax funds, which are a combination of local transportation sales tax measures and fees (Measure BB and Vehicle Registration Fee), State Highway Users Tax Accounts (HUTA) and the Road Maintenance and Rehabilitation Act (RMRA or “SB1”) funding, will result in projected annual revenue of approximately \$4.5M for Fiscal Year 2025 and \$4.8M for Fiscal Year 2026. Gas Tax funding must be used within the public right-of-way for transportation-related improvements and maintenance.

A “first cut” review of all CIP projects submitted for consideration has been completed by the Executive Team and will be followed in February by a detailed assessment and ranking of all projects and an evaluation of prioritized projects against available funding sources. Project rankings and staff’s project funding recommendations are scheduled to be presented to the City Council in early April.

This informational item is for consideration of the following project:

Requesting Department	Project Description	Importance	Funding Source	Estimated Cost
Community Development	Citywide Information Kiosks Phase 1 - Old Town	Medium	Capital Funds	\$75,000

FISCAL IMPACT

There is no fiscal impact. This is an informational item only.

REVIEW AND APPROVAL

Prepared by - Jayson Imai, City Engineer

Reviewed by - Soren Fajeau, Public Works Director

Reviewed by - Krysten Lee, Finance Director

Reviewed by - Kristopher J. Kokotaylo, City Attorney

Approved by - David J. Benoun, City Manager

Attachments

Presentation



Capital Improvement Plan Overview

Citywide Information Kiosks Phase 1 – Old Town

City Council: January 25, 2024



Capital Fund Projects Submitted

Capital Improvement Plan

	Total Cost
Maintenance Projects	\$ 1,350,000
New Vehicles	\$ 1,230,000
Operations	\$ 1,086,000
Previously Requested Unfunded	\$ 5,160,000
<i>Citywide Information Kiosks Phase 1 – Old Town</i>	<i>\$ 75,000</i>
TOTAL	\$ 8,901,000

Total Projected Capital Funds

\$ 1,500,000



STAFF REPORT

Item F. 6.

DATE 01/25/2024
TO Honorable Mayor and City Council Members
FROM Jayson Imai, Assistant City Engineer
SUBJECT Overview of the Capital Improvement Plan related to Quiet Zone Improvements and Thornton Avenue Streetscape Improvements (Elm Street to Willow Street)

SUMMARY AND RECOMMENDATION

This informational item provides an overview of the Capital Improvement Plan (CIP) process, a summary of the Quiet Zone Improvements Project and Thornton Avenue Streetscape Improvements (Elm Street to Willow Street) which were submitted for consideration, prioritization criteria for project selection, and available funding sources.

The Executive Team has completed an initial review of all CIP projects submitted for consideration and will perform a detailed evaluation and ranking of all projects in February. Subsequently, a formal review of staff's project rankings and project funding recommendations is scheduled to be presented to the City Council for consideration in early April.

Staff recommends that the City Council receive the overview presentation on the Capital Improvement Plan related to Quiet Zone Improvements Project and Thornton Avenue Streetscape Improvements (Elm Street to Willow Street). This item is informational only.

BACKGROUND

As part of the preparation of the 2024-2026 Biennial Budget and Capital Improvement Plan, the Public Works Department is coordinating the development of the Capital Improvement Plan (CIP) budget component. The CIP development process commenced in November 2023 with a Call for Projects sent out to all City departments and members of the City Council. Projects submitted for consideration in response to the Call for Projects have been compiled and reviewed by staff. This informational item is intended to provide a summary of the Quiet Zone Improvements Project and Thornton Avenue Streetscape Improvements (Elm Street to Willow Street) which were submitted for consideration, available funding sources, and the criteria used to prioritize and select projects for funding. The City Council will then have the opportunity to provide feedback to staff regarding the Quiet Zone Improvements Project and Thornton Avenue Streetscape Improvements (Elm Street to Willow Street) submitted

for consideration. Project rankings and specific project funding recommendations are scheduled to be presented to the City Council for consideration in early April.

The general purpose of the CIP component of each Biennial Budget is to identify and prioritize capital improvement projects for potential funding. Projects may include street, park, and building construction as well as specific maintenance projects for existing infrastructure. Feasibility studies and master plans to help identify and quantify future projects are also typically included in the CIP. Acquisitions of new equipment that would fall outside of a department's operating budget may also be included. In general, any project as defined above with an expenditure of \$10,000 or more is included in the CIP.

Projects submitted for consideration must satisfy at least one of the following five critical issues identified in the City's Budget:

Public Safety Services - Provide a level of public safety services that will protect our citizens, property, and community assets.

Education - Support, encourage and offer opportunities and programs that facilitate quality community education.

Quality of Life - Provide programs, services, and facilities that make Newark a desirable and healthy place to live.

Community Development – Make development decisions that maintain a vibrant, balanced, quality community.

City Government Operations – Operate a City government that enables the organization to meet the service demands of the community.

Projects are then categorized into three priority levels, as follows:

Priority Level 1 (Mandatory): Projects that meet a federal, State, or local legal or regulatory requirement, satisfy a critical risk management issue to ensure public safety, or serve to preserve and protect the City's existing assets and public infrastructure.

Priority Level 2 (Necessary): Projects that are considered necessary but not mandatory as they would not clearly address a critical legal, safety, or asset-projection need. Projects at this level could be funded by a consensus priority opinion of the City Council for the benefit of the community. This can also include projects that would provide a local match for outside funding sources, provide a definitive service level increase, or would complete the final phase of a multi-phased project. Feasibility studies and master plans are also categorized as Priority Level 2.

Priority Level 3 (Desirable): All other projects that do not satisfy Level 1 or Level 2 criteria.

DISCUSSION/ANALYSIS

A total of approximately \$46.5 million (\$46.5M) of new and previously unfunded projects were submitted for consideration for inclusion and funding with the CIP.

After reconciliation and accounting for cost savings and general reimbursements from previously completed Capital Projects, staff anticipates a projected available Capital Fund balance of approximately \$1.5M as of June 30, 2024. In addition, staff anticipates there will be approximately \$4.2M in available Community Development Maintenance impact fees, which are restricted funds with limited uses for qualifying projects.

Gas Tax funds, which are a combination of local transportation sales tax measures and fees (Measure BB and Vehicle Registration Fee), State Highway Users Tax Accounts (HUTA) and the Road Maintenance and Rehabilitation Act (RMRA or “SB1”) funding, will result in projected annual revenue of approximately \$4.5M for Fiscal Year 2025 and \$4.8M for Fiscal Year 2026. Gas Tax funding must be used within the public right-of-way for transportation-related improvements and maintenance.

A “first cut” review of all CIP projects submitted for consideration has been completed by the Executive Team and will be followed in February by a detailed assessment and ranking of all projects and an evaluation of prioritized projects against available funding sources. Project rankings and staff’s project funding recommendations are scheduled to be presented to the City Council in early April.

This informational item is for consideration of the following projects:

Requesting Department	Project Description	Importance	Funding Source	Estimated Cost
Engineering	Thornton Ave Streetscape Improvements (Elm St to Willow St)	High	Gas Tax	\$1,200,000
Engineering	Quiet Zones (Construction)	High	Gas Tax	\$4,000,000

FISCAL IMPACT

There is no fiscal impact. This is an informational item only.

REVIEW AND APPROVAL

Prepared by - Jayson Imai, City Engineer
Reviewed by - Soren Fajeau, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - David J. Benoun, City Manager

Attachments

Presentation



Capital Improvement Plan

Overview

Quiet Zones & Thornton Ave Streetscape Improvements

City Council: January 25, 2024



Gas Tax Projects Submitted

Capital Improvement Plan

	Total Cost
Annual Street Maintenance Projects	\$ 9,800,000
Street Improvement Projects	\$ 1,850,000
Currently Unfunded Projects	\$ 4,450,000
<i>Thornton Ave Streetscape Improvements (Elm St to Willow St)</i>	\$ 1,200,000
<i>Quiet Zones (Construction)</i>	\$ 4,000,000
Additional Projects	\$ 14,500,000
TOTAL	\$ 35,800,000

Total Projected Gas Tax Funds

\$ 9,300,000



STAFF REPORT

Item F. 7.

DATE 01/25/2024
TO Honorable Mayor and City Council Members
FROM Jayson Imai, Assistant City Engineer
SUBJECT Overview of the Capital Improvement Plan related to Thornton Avenue Pavement Overlay (I-880 to Olive Street)

SUMMARY AND RECOMMENDATION

This informational item provides an overview of the Capital Improvement Plan (CIP) process, a summary of the Thornton Avenue Overlay (I-880 to Olive Street) Project which was submitted for consideration, prioritization criteria for project selection, and available funding sources.

The Executive Team has completed an initial review of all CIP projects submitted for consideration and will perform a detailed evaluation and ranking of all projects in February. Subsequently, a formal review of staff's project rankings and project funding recommendations is scheduled to be presented to the City Council for consideration in early April.

Staff recommends that the City Council receive the overview presentation on the Capital Improvement Plan related to the Thornton Avenue Overlay (I-880 to Olive Street) Project. This item is informational only.

BACKGROUND

As part of the preparation of the 2024-2026 Biennial Budget and Capital Improvement Plan, the Public Works Department is coordinating the development of the Capital Improvement Plan (CIP) budget component. The CIP development process commenced in November 2023 with a Call for Projects sent out to all City departments and members of the City Council. Projects submitted for consideration in response to the Call for Projects have been compiled and reviewed by staff. This informational item is intended to provide a summary of the Thornton Avenue Overlay (I-880 to Olive Street) Project which was submitted for consideration, available funding sources, and the criteria used to prioritize and select projects for funding. The City Council will then have the opportunity to provide feedback to staff regarding the Thornton Avenue Overlay (I-880 to Olive Street) Project submitted for consideration. Project rankings and specific project funding recommendations are scheduled to be presented to the City Council for consideration in early April.

The general purpose of the CIP component of each Biennial Budget is to identify and prioritize capital improvement projects for potential funding. Projects may include street, park, and building construction as well as specific maintenance projects for existing infrastructure. Feasibility studies and master plans to help identify and quantify future projects are also typically included in the CIP. Acquisitions of new equipment that would fall outside of a department's operating budget may also be included. In general, any project as defined above with an expenditure of \$10,000 or more is included in the CIP.

Projects submitted for consideration must satisfy at least one of the following five critical issues identified in the City's Budget:

Public Safety Services - Provide a level of public safety services that will protect our citizens, property, and community assets.

Education - Support, encourage and offer opportunities and programs that facilitate quality community education.

Quality of Life - Provide programs, services, and facilities that make Newark a desirable and healthy place to live.

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City Government Operations – Operate a City government that enables the organization to meet the service demands of the community.

Projects are then categorized into three priority levels, as follows:

Priority Level 1 (Mandatory): Projects that meet a federal, State, or local legal or regulatory requirement, satisfy a critical risk management issue to ensure public safety, or serve to preserve and protect the City's existing assets and public infrastructure.

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Priority Level 3 (Desirable): All other projects that do not satisfy Level 1 or Level 2 criteria.

DISCUSSION/ANALYSIS

A total of approximately \$46.5 million (\$46.5M) of new and previously unfunded projects were submitted for consideration for inclusion and funding with the CIP.

After reconciliation and accounting for cost savings and general reimbursements from previously completed Capital Projects, staff anticipates a projected available Capital Fund balance of approximately \$1.5M as of June 30, 2024. In addition, staff anticipates there will be approximately \$4.2M in available Community Development Maintenance impact fees, which are restricted funds with limited uses for qualifying projects.

Gas Tax funds, which are a combination of local transportation sales tax measures and fees (Measure BB and Vehicle Registration Fee), State Highway Users Tax Accounts (HUTA) and the Road Maintenance and Rehabilitation Act (RMRA or “SB1”) funding, will result in projected annual revenue of approximately \$4.5M for Fiscal Year 2025 and \$4.8M for Fiscal Year 2026. Gas Tax funding must be used within the public right-of-way for transportation-related improvements and maintenance.

A “first cut” review of all CIP projects submitted for consideration has been completed by the Executive Team and will be followed in February by a detailed assessment and ranking of all projects and an evaluation of prioritized projects against available funding sources. Project rankings and staff’s project funding recommendations are scheduled to be presented to the City Council in early April.

This informational item is for consideration of the following project:

Requesting Department	Project Description	Importance	Funding Source	Estimated Cost
Engineering	Thornton Ave Pavement Overlay (I-880 to Olive St)	High	Gas Tax	\$1,000,000

FISCAL IMPACT

There is no fiscal impact. This is an informational item only.

REVIEW AND APPROVAL

Prepared by - Jayson Imai, City Engineer

Reviewed by - Soren Fajeau, Public Works Director

Reviewed by - Krysten Lee, Finance Director

Reviewed by - Kristopher J. Kokotaylo, City Attorney

Approved by - David J. Benoun, City Manager

Attachments

Presentation



Capital Improvement Plan

Overview

Thornton Avenue Pavement Overlay

City Council: January 25, 2024

Gas Tax Projects Submitted

Capital Improvement Plan

	Total Cost
Annual Street Maintenance Projects	\$ 9,800,000
Street Improvement Projects	\$ 1,850,000
Currently Unfunded Projects	\$ 4,450,000
<i>Thornton Ave Pavement Overlay (I-880 to Olive Street)</i>	<i>\$ 1,000,000</i>
Additional Projects	\$ 18,700,000
TOTAL	\$ 35,800,000

Total Projected Gas Tax Funds

\$ 9,300,000