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AND WHEN RECORDED, MAIL TO:)
)
)
City of Emeryville)
1333 Park Avenue)
Emeryville, CA 95608-3517)
Attention: City Attorney)

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**SECOND MAJOR AMENDMENT TO
PUBLIC MARKET DEVELOPMENT AGREEMENT**

This SECOND MAJOR AMENDMENT TO DEVELOPMENT AGREEMENT (this “**Second Major Amendment**”) is made and entered into as of this _____ day of _____ 2025, by and between the CITY OF EMERYVILLE, a California municipal corporation (the “**City**”) and Emeryville Parcel A (DE) LLC, a Delaware limited liability company, and Emeryville Parcel B (DE) LLC, a Delaware limited liability company (“**Oxford**” or “**Developer**”). The City and Oxford are each individually a “**Party**” and collectively the “**Parties**” to this Second Major Amendment.

RECITALS

WHEREAS, the City originally entered into a Development Agreement dated January 13, 2016 and recorded on January 25, 2016 as Document Number 2016016044 (hereinafter collectively with all amendments “**Agreement**”) with AG-CCRP Public Market LP and AvalonBay Communities Inc. for the development of the Public Market project. All terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement unless this Second Major Amendment indicates otherwise.

WHEREAS, on April 3, 2018, a First Minor Amendment was executed to increase the amount of funds that could be utilized from the Art Account to prepare and adopt the Art Master Plan. Consistent with Sections 10.2 and 10.3 of the Agreement, the First Minor Amendment was processed administratively.

WHEREAS, the Agreement was assigned to the new applicant and owner, Oxford, on December 23, 2020, which was recorded on January 7, 2021 as Document Number 2021008037 in the Official Records of Alameda County.

WHEREAS, on April 9, 2021, Oxford submitted an application for a new Final Development Plan (the “**2021 FDP**”) to replace existing entitlements on Parcels A and B and to amend the Agreement and the Marketplace Planned Unit Development/Planned Development Permit.

WHEREAS, on September 20, 2022 and October 4, 2022, the City Council approved the First Major Amendment to the Agreement to reflect the Parcels A and B FDP application as well as amendments to the Marketplace Planned Unit Development/Planned Development Permit (“**DA and PUD/PDP Amendments**”).

WHEREAS, in consideration for removing the obligation to provide eight (8) Low Income Units and ten (10) Moderate Income Units on Parcel A, the DA and PUD/PDP Amendments required Oxford remit the Parcel A Housing Fee on a specified schedule.

WHEREAS, on October 27, 2022, the Planning Commission approved the 2021 FDP.

WHEREAS, on December 16, 2022, the Second Minor Amendment was executed to clarify the timing of the Developer obligations established in the First Major Amendment. Consistent with Sections 10.2 and 10.3 of the Agreement, the First Minor Amendment was processed administratively.

WHEREAS, Oxford has paid the Parcel A Housing Fee consistent with the First Major Amendment to the City as follows: (1) Ten Million Dollars (\$10,000,000) in 2023 and (2) approximately Three Million, Three Hundred Thirty Three Thousand, Three Hundred Thirty Three Dollars (\$3,333,333) in 2024.

WHEREAS, Oxford’s remaining Parcel A Housing Fee obligations pursuant to the First Major Amendment consist of (1) approximately Three Million, Three Hundred Thirty Three Thousand, Three Hundred Thirty Three Dollars (\$3,333,333) due June 30, 2025 and (2) approximately Three Million, Three Hundred Thirty Three Thousand Dollars, Three Hundred Thirty Three Dollars (\$3,333,333) due June 30, 2026.

WHEREAS, development of the 2021 FDP has not commenced and Oxford is evaluating the redevelopment of Parcel A for residential uses, including approximately 150 to 250 dwelling units, in addition to accessory uses such as parking and open space (“**Parcel A Project**”). Oxford is also investigating the feasibility of residential uses, including but not limited to townhomes and/or condominiums on Parcel B, in addition to accessory uses such as parking and open space (“**Parcel B Project**”).

WHEREAS, the Parties wish for Oxford to have at its election the continuing ability to remit payment of the Parcel A Housing Fee consistent with the First Major Amendment.

WHEREAS, the Parties wish to establish parameters for the disposition of any and all Parcel A Housing Fees paid pursuant to the First Major Amendment in the event that Parcel A is developed for residential uses or is otherwise developed.

WHEREAS, the Parties wish to allow the tolling of the obligations established by the First Major Amendment in order to facilitate said evaluation.

WHEREAS, pursuant to Section 10 of the Agreement, amendments are requested to reflect this modification.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. DEVELOPER ENTITIES. The developer entities subject to the rights and obligations pursuant to this Agreement, inclusive of all amendments, are “Emeryville Parcel A (DE) LLC” and “Emeryville Parcel B (DE) LLC.”

2. TERM. Section 5.2 of the Agreement shall be amended and restated in its entirety as follows:

The "Initial Term" of this Agreement shall run until the expiration of all time periods specified in Section 9.11 and shall in no event expire earlier than March 1, 2029, unless this Agreement is earlier terminated as to the entire Property in accordance with the provisions hereof. The Initial Term has been established by the Parties as a reasonable estimate of the time required to develop a substantial portion of the PDP Project and obtain the public benefits of the PDP Project. The Initial Term may be extended pursuant to the provisions of Sections 5.2.1, below, provided, however, the total Term shall in no event extend more than three (3) years beyond the Initial Term ("Outside Date"). The "Term" of this Agreement means the Initial Term, together with any and all extensions. Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect, subject, however, to the provisions of Section 10 hereof.

3. CITY OBLIGATIONS. A sentence shall be added to Section 9.2 of the Agreement as follows:

In evaluating the environmental effects of the Parcel A Project and the Parcel B Project pursuant to CEQA, the City shall rely on the Marketplace EIR to the maximum extent provided by law, including the use of a CEQA Guidelines Section 15183 checklist and, in the alternative, may evaluate the use of exemptions or other streamlining devices including but not limited to the Class 32 infill exemption.

4. DEVELOPER OBLIGATIONS. A new section 9.11 shall be added to the Agreement as follows:

9.11 Parcel A and B Development Obligations. Developer may proceed with previously entitled development of Parcels A and B, subject to continuing obligations pursuant to Section 21.1 of this Agreement. However, Developer is evaluating the redevelopment of Parcel A for residential uses, including approximately 150 to 250 dwelling units, in addition to accessory uses such as parking and open space (“**Parcel A Project**”). Developer is also investigating the feasibility of residential uses, including but not limited to townhomes and condominiums on Parcel B, in addition to accessory uses such as parking and open space (“**Parcel B Project**”). To facilitate such timely evaluation, Developer agrees as follows.

9.11.1 Parcel A Development Obligations. Developer shall expend best efforts to meet the following application schedule for the Parcel A Project in order to allow for any anticipated market recovery and support project feasibility. Failure to meet any one deadline does not foreclose Developer from meeting subsequent deadlines.

9.11.1.1 Developer shall by December 1, 2025 submit illustrative concept plans, including site plans, elevations, and floor plans, for the Parcel A Project with sufficient detail to facilitate a study session before the Planning Commission.

9.11.1.2 Developer shall by December 1, 2026 submit an application for a Final Development Plan and, if necessary, a Planned Unit Development Amendment for the Parcel A Project (collectively, “**Parcel A Project FDP**”).

9.11.1.3 Developer shall by December 1, 2027, or nine (9) months following Final Approval of the Parcel A Project FDP, whichever is later, submit an application for a building permit for the Parcel A Project.

9.11.1.4 Developer shall by December 1, 2028, or twelve (12) months following submittal of the application for building permit, whichever is later, satisfy all requirements for issuance of the building permit and remit payment of all fees required for issuance of the building permit for the Parcel A Project.

9.11.2 Parcel B Development Obligations. Developer shall by December 1, 2025 provide evidence such as pro forma financial statements supporting Developer’s determination regarding the feasibility of residential uses, including ownership products, on Parcel B. Developer may request the City contract with a third party consultant to maintain confidentiality of such evidence. In the event that Developer determines such uses are not presently feasible due to economic or other considerations, Developer shall have no further development obligations with regard to the Parcel B Project. In the event that Developer determines such uses are feasible, the below development obligations shall become effective and Developer shall expend best efforts to meet the following application schedule for the Parcel B Project in order to allow for any anticipated market recovery and support project feasibility. Failure to meet any one deadline does not foreclose Developer from meeting subsequent deadlines.

9.11.2.1 Developer shall by June 1, 2026 submit illustrative concept plans, including site plans, elevations, and floor plans, for the Parcel B Project with sufficient detail to facilitate a study session before the Planning Commission.

9.11.2.2 Developer shall by March 1, 2027 submit an application for a Final Development Plan and, if necessary, a Planned Unit Development Amendment for the Parcel B Project (collectively, “**Parcel B Project FDP**”).

9.11.2.3 Developer shall by March 1, 2028, or nine (9) months following Final Approval of the Parcel B Project FDP, whichever is later, submit an application for a building permit for the Parcel B Project.

9.11.2.4 Developer shall by March 1, 2029, or twelve (12) months following submittal of the application for building permit, satisfy all requirements for issuance of the building permit and remit payment of all fees required for issuance of the building permit for the Parcel B Project.

9.11.3 For purposes of Section 9.11, an approval shall only be a "Final Approval" provided that all applicable administrative appeal periods and statute of limitations pursuant to the California Environmental Quality Act (Public Resources Code § 21167) and Planning and Zoning Law (Government Code § 65009) has elapsed without challenge. Any such challenge is cause for Permitted Delay and extension of rights and obligations pursuant to Section 5.2.1.

9.11.4 Failure to achieve the above schedules shall not constitute a breach subject to Section 13 of this Agreement.

5. AMENDMENTS. The first sentence of Section 10.2 of the Agreement shall be amended and restated in its entirety as follows:

Any amendment to this Agreement which affects or relates to (a) the Term of this Agreement; (b) permitted uses of the Property; (c) provisions for the reservation or dedication of land; (d) conditions, terms, restrictions or requirements for subsequent discretionary actions; (e) the density or intensity of use of the Property or the maximum height or size of proposed buildings; or (f) monetary contributions by Developer, shall be deemed a "Major Amendment" and shall require giving of notice and a public hearing before the Planning Commission and City Council. Notwithstanding the foregoing, the City Manager may approve extensions to the obligations and tolling in Sections 9.11 and 21.3 as minor amendments where Developer shows good cause. Each extension may be for a period of up to six (6) months and the City Manager may approve up to two (2) such extensions which shall have the effect of extending all subsequent obligations and tolling for the equivalent period of time as the extension.

6. PARCEL A HOUSING FEE PAYMENT. Section 21 of the Agreement shall be amended and restated in its entirety as follows:

21. Parcel A Housing Fee.

21.1 Parcel A Housing Fee Payment Schedule. As consideration for eliminating the obligation to build affordable housing on Parcel A, and provided that all applicable administrative appeal periods and statutes of limitations pursuant to the California Environmental Quality Act (Public Resources Code § 21167) and Planning and Zoning Law (Gov. Code § 65009) on the DA and PUD/PDP Amendments, and on the FDP

Approval (approved by the City Council on October 4, 2022 and the Planning Commission on October 27, 2022, respectively), have closed without challenge, Developer shall remit to the City a sum of Twenty Million Dollars (\$20,000,000) (“Parcel A Housing Fee”) to be used by the City as set forth herein. The Parcel A Housing Fee is inclusive of any affordable housing impact fees pursuant to Emeryville Municipal Code Section 9-5.409 (“New Nonresidential Projects - Affordable Housing Impact Fee”). The following terms shall apply to the remittance of said Parcel A Housing Fee:

21.1.2 Ten Million Dollars (\$10,000,000), excluding the payments made in 21.1.1, shall be due on or before June 30, 2023.

21.1.3 Except as modified by Section 21.1.4 and Section 21.3, the balance of the Parcel A Housing Fee, which excludes payments made in 21.1.1 and 21.1.2, shall be paid in equal installments annually each year for three years, beginning in 2024, until the full Parcel A Housing Fee has been paid. The balance of the Parcel A Housing Fee shall be paid in equal installments on June 30, 2024, June 30, 2025, and June 30, 2026.

21.1.4 However, if Developer applies for a building permit for foundation work for any building entitled by the Final Development Plan for Parcels A and B approved by the Planning Commission on October 27, 2022 (the “**2021 FDP**”) prior to the fulfillment of payments in this section, all remaining Parcel A Housing Fee must be remitted at the time the building permit application is submitted.

21.2 Renegotiation. In the event that Developer notifies the City that it will remit outstanding Affordable Housing Fees consistent with the schedule in Section 21.1.3 but Developer ultimately proceeds with a residential development on either Parcel A or Parcel B, the City agrees to give good faith consideration to the renegotiation of the obligations in Section 9.11 and Section 21. Specifically, the City shall give good faith consideration to distributing the balance of Affordable Housing Fees pursuant to Section 21.5 in excess of the affordable housing obligation of such development on either Parcel A or Parcel B based on City’s Affordable Housing Program (Municipal Code Title 9, Chapter 5, Article 4) in effect as of the date of the Second Major Amendment and as applicable; agreeing to processing, design or construction concessions; or other means of facilitating the residential development on either Parcel A or Parcel B.

21.3 Tolling. During the pendency of Parcel A and B Development Obligations described in Section 9.11, Developer’s obligation to remit remainder of the Parcel A Housing Fee shall be tolled, subject to the below exceptions. However, Developer at its election may continue to remit some or all payments consistent with Section 21.1 without loss of the rights and benefits conferred by this Agreement as modified by the Second Major Amendment.

21.3.1 In the event that Developer fails to comply with Section 9.11.1.1 and Section 9.11.2.1, tolling as to the June 30, 2025 payment described in Section 21.1.3 shall elapse and such payment shall become due December 30, 2025. All other outstanding payment obligations pursuant to Section 21 shall remain tolled.

21.3.2 In the event that Developer fails to comply with Section 9.11.1.2, the tolling as to the June 30, 2025 and June 30, 2026 outstanding payment described in Section 21.1.3 shall elapse and such payment shall become due December 30, 2026. All other outstanding payment obligations pursuant to Section 21 shall remain tolled.

21.3.3 In the event that Developer fails to comply with Section 9.11.1.3, the tolling of Developer's obligations to remit outstanding payments described in Section 21.1.3 shall elapse and such payments will become due six (6) months after the failure to comply.

21.3.4 Tolled payments shall be subject to a four percent (4%) escalation representing the average annual yield of the California Local Agency Investment Fund, prorated on a monthly basis according to the length of exercised tolling. Payments remitted at Developer's election consistent with the schedule provided in Section 21.1 shall not be subject to escalation.

21.4 Termination of Affordable Housing Fee Obligation. In the event that the Parcel A Project is completed, Developer's obligation to remit remainder of the Parcel A Housing Fee shall be terminated.

21.5 Disposition of Affordable Housing Fee. The City shall deposit the Parcel A Housing Fee into the City of Emeryville's Affordable Housing Fund and maintain such funds unless disposed of pursuant to this section.

21.5.1 In the event that a certificate of occupancy is issued for the Parcel A Project, the balance of the Parcel A Housing Fee paid to the City shall be disposed of as follows:

21.5.1.1 In the event that Developer provides affordable housing on site consistent with the City's Affordable Housing Program (Municipal Code Title 9, Chapter 5, Article 4) in effect as of the date of the Second Major Amendment and as applicable, the City shall (1) refund the balance of Affordable Housing Fee to Developer and/or (2) apply the balance of the Affordable Housing Fee as a credit against other impact fees that may be assessed against the Parcel A Project or the Parcel B Project.

21.5.1.2 In the event that Developer does not provide affordable housing on site, the City shall retain an amount of the balance of the Affordable Housing Fee necessary to satisfy the current year affordable housing impact fee obligation imposed pursuant to the City's Affordable Housing Program (Municipal Code Title 9, Chapter 5, Article 4) as applicable and no further affordable housing unit or fee

obligation shall be imposed on the Parcel A Project. To the extent the balance of the Affordable Housing Fee exceeds the amount necessary to satisfy the affordable housing impact fee obligation imposed pursuant to the City's Affordable Housing Program (Municipal Code Title 9, Chapter 5, Article 4) in effect as of the date of the Second Major Amendment and as applicable, subject to automatic annual adjustments based on an independently published cost index that is referenced in the ordinance or resolution establishing the fee, the excess shall be refunded or credited to Developer consistent with Section 21.4.1.1.

21.5.3 In the event that Developer is unable to satisfy the obligations contained in Section 9.11, upon expiration of the time for said obligations and of any negotiations pursuant to Section 21.2, the City may use the Affordable Housing Fee for the development of affordable housing anywhere by the City of Emeryville, at the discretion of the City Council and consistent with the purpose of the Affordable Housing Fund.

7. SUBSEQUENT APPROVALS. The 2021 FDP for Parcels A and B approved by the Planning Commission on October 27, 2022 allowing research and development use and other amenities was incorporated into the Agreement as a Subsequent Project Approval in the First Major Amendment to the Agreement. That approval shall remain valid, and shall not be rescinded regardless of approval of the Parcel A Project FDP or the Parcel B Project FDP, as defined herein. In the event Developer pursues the 2021 FDP project, Developer must comply with all conditions of those entitlements, including payment of the remaining Parcel A Affordable Housing Fee, as defined in the First Major Amendment to the Agreement. Consistent with Section 9.4 of the Agreement, upon approval, the Parcel A Project FDP and Parcel B Project FDP shall be incorporated as a Subsequent Project Approval.

8. AFFORDABLE HOUSING OBLIGATIONS. To the extent affordable housing obligations attach to the Parcel A Project or the Parcel B Project, Developer may elect to provide such units on site or proceed via in lieu fee.

10. INTERPRETATION. This Second Major Amendment shall be interpreted to give each of the provisions their plain meaning. The recitals are incorporated into this Second Major Amendment.

11. STATUS OF AGREEMENT. Except as modified by this Second Major Amendment, the terms and provisions of the Agreement shall remain in full force and effect.

12. COUNTERPARTS. This Second Major Amendment may be signed in counterparts.

IT WITNESS WHEREOF, the Parties have executed this Second Major Amendment as of the date and year first written above.

[Signatures are provided on the following pages]

OXFORD :

Emeryville Parcel A (DE) LLC,
A Delaware limited liability company

DocuSigned by:
By: Mark McGowan
0A3ABCFCC0D342D...
Name: Mark McGowan
Title: Vice President
Date: 05/28/2025
Signed by:

By: Kristen Binck
75B1DDE2B2224B7...
Name: Kristen Binck
Title: Vice President
Date: 05/29/2025

Emeryville Parcel B (DE) LLC,
A Delaware limited liability company

DocuSigned by:
By: Mark McGowan
0A3ABCFCC0D342D...
Name: Mark McGowan
Title: Vice President
Date: 05/28/2025
Signed by:

By: Kristen Binck
75B1DDE2B2224B7...
Name: Kristen Binck
Title: Vice President
Date: 05/29/2025

[Signatures must be notarized]

CITY:

CITY OF EMERYVILLE,
a California municipal corporation

By: _____

Name: LaTanya Bellow

Title: City Manager

Date: _____

DocuSigned by:
APPROVED AS TO FORM:
John Kennedy
By: _____
2C934D02DB55467
Name: John Kennedy
Title: City Attorney
Date: 05/30/2025

[Signature must be notarized]