

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

This document is exempt from the payment of a
recording fee pursuant to Government Code §27383

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

This FIRST MAJOR AMENDMENT TO DEVELOPMENT AGREEMENT (this “**First Major Amendment**”) is made and entered into as of this ____ day of ____ 2022, by and between the CITY OF EMERYVILLE, a California municipal corporation (the “**City**”) and Emeryville Holdings (DE) LLC, a _____ (“**Oxford**” or “**Developer**”). The City and Oxford are each individually a “**Party**” and collectively the “**Parties**” to this First 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 (“**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 First 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 “**Parcels A and B 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, in connection with the proposed application for entitlements, and pursuant to Section 10 of the Agreement, amendments are requested to reflect the Parcels A and B FDP application.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. AFFORDABLE HOUSING UNITS. In consideration for the Parcel A Housing Fee (as defined below), Section 7.1 of the Agreement shall be amended to delete the obligation that Developer otherwise would have had to construct 8 Low Income Units and 10 Moderate Income Units on Parcel A. For the sake of clarity, an Affordable Housing Agreement shall not be required for Parcel A, and Affordable Housing Development Impact Fees shall be required for Parcels A and B. All other references to the Developer's affordable housing obligation for Parcel A in the Agreement, including in the recitals and Exhibits, shall be considered null and void in consideration for the Parcel A Housing Fee.
2. SUBSEQUENT APPROVALS. Consistent with Section 9.4 of the Agreement, the Parcels A and B FDP shall be incorporated as a Subsequent Project Approval.
3. PARCEL A HOUSING FEE PAYMENT. A new section 21 shall be added to the Agreement 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, 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:

21.1.1 Notwithstanding any other provision of this Agreement or the EMC, any Affordable Housing Impact Fee is due at issuance of the first building permit that includes foundation work for either Parcel A or Parcel B.

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 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 This subsection is subject to the following exceptions:

21.1.4.1 If a Temporary Certificate of Occupancy (“TCO”) is requested by Developer for any building on Parcel A or B prior to the fulfillment of payments in this section, all remaining Parcel A Housing Fee must be remitted at the time the TCO is requested.

21.1.4.2 After June 30, 2023, and in the sole discretion of the City, the City may demand, by written request, any remaining payment, in full, of any outstanding Parcel A Housing Fee due under this First Major Amendment if the City needs those funds to leverage other matching funds, complete any predevelopment work or remediation, or to begin construction with said funding provided that the Parcel A Housing Fee is used as set forth herein. Developer agrees to remit any balance due from this amount within thirty (30) days of the City’s written demand for the same.

21.2 Use of Parcel A Housing Fee. The City shall deposit the Parcel A Housing Fee into the City of Emeryville’s Affordable Housing Fund and use the Parcel A 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.

4. LETTERS OF SUPPORT. A new Section 22 shall be added to the Agreement as follows:

22. Letters of Support. Upon the request of the City, the Developer agrees to provide a letter of support, generally with the content outlined in Exhibit A, to facilitate the City’s efforts to secure affordable housing tax credits, state or federal financing, local, regional or state bond monies, or other affordable housing grants or funding programs to provide affordable housing on any portion of the properties located at 5890, 5900 or 6150 Christie Avenue (the “Christie Sites”). Developer agrees to offer such letter of support at Developer’s reasonable cost and in a form reasonably acceptable to Developer.

5. MARKET DRIVE. A new section 23 shall be added to the Agreement as follows:

23.1 Market Drive Conversion. Upon the commencement of any demolition or construction of affordable housing on the Christie Sites, Developer agrees to convert Market Drive into a vehicle-free, publicly accessible pedestrian space as described and depicted on Exhibit B (the “Market Drive Conversion”). The Market Drive Conversion shall be vehicle-free between 10:00 AM and 9:00 PM (“Vehicle Free Hours”) and is located generally between the southern intersection of 62nd Street and Market Drive and the west entrance loading dock of 5925 Shellmound Street (currently occupied by the Guitar Center, the “Guitar Center Loading Dock”). Developer agrees to apply for and process any necessary permit modification or other legally required changes or approvals, including but not limited to a Minor Design Review, to effectuate closure of such portion

of Market Drive as described herein within ninety (90) days of written notice of the commencement of demolition or construction by the City on the Christie Sites.

23.2 Guitar Center Lease Expiration. Upon the expiration of the Developer's lease with Guitar Center, and expiration of any options thereto, Developer agrees to expand the Market Drive Conversion required pursuant to Section 23.1 to include an additional portion of Market Drive. The Market Drive Conversion shall be expanded to include the area between the Guitar Center Loading Dock and 59th Street, as shown in Exhibit C. The vehicle-free zone shall be utilized as a publicly accessible pedestrian space during the Vehicle Free Hours daily. Developer agrees to apply for and process any necessary permit modifications or other legally required changes or approvals, including but not limited to Minor Design Review, to effectuate closure of such portion of Market Drive as described herein within sixty (60) days of the expiration of Guitar Center's current lease.

23.3 Pedestrian Zone. In furtherance of Sections 23.1 and 23.2, Developer agrees to pedestrianize Market Drive daily by eliminating vehicle traffic, removing all street parking on the applicable portions of Market Drive as identified herein, and providing pedestrian-oriented programming and barriers to vehicle use during the Vehicle Free Hours.

23.4 Deliveries and Trash Removal. Notwithstanding anything to the contrary, deliveries and waste and material pickups will be permitted on Market Drive between 9:00 PM and 10:00 AM daily to support the Emeryville Public Market uses including but not limited to the food hall, residential, retail, office and research and development uses.

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

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

7. COUNTERPARTS. This First Major Amendment may be signed in counterparts

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

[Signatures are provided on the following page]

OXFORD :

Emeryville Holdings (DE) LLC,
A _____

By: _____
Name: _____
Title: _____
Date: _____

CITY:

CITY OF EMERYVILLE,
a California municipal corporation
By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Title: _____
Date: _____

Exhibit A

Letter of Support Outline

In accordance with Section 22 of the Agreement, upon the request of the City, the Developer agrees to provide a letter of support, generally with the content outlined in this Exhibit A, to facilitate the City's efforts to secure affordable housing tax credits, state or federal financing, local, regional, or state bond monies, or other affordable housing grants or funding programs to provide affordable housing on any portion of the properties located at 5890, 5900 or 6150 Christie Avenue (the "Christie Sites").

- Emeryville Holdings (DE) LLC ("Oxford") owns the Public Market site generally located at Shellmound and Christie in Emeryville, CA.
- In connection with entitlements for development of Research & Development space at the Public Market site and in lieu of having the obligation to build affordable housing at the site, Oxford made a payment to the City of Emeryville's Affordable Housing Fund, which Fund will further the City's efforts to promote affordable housing production.
- Oxford supports development of the Christie Sites, including the City's use of funds in the Affordable Housing Fund to construct affordable housing on the Christie Sites and development of the Christie Sites generally.
- The Public Market project was planned as a mixed use district and the construction of additional affordable housing at the Christie sites adjacent to the Public Market district may add synergies to the district such that new residents may have the opportunity to dine and recreate within the project site, including the Food Hall and open spaces.

Exhibit B

Market Drive Conversion Before Guitar Center Lease Expiration



Exhibit C

Market Drive Conversion After Guitar Center Lease Expiration

