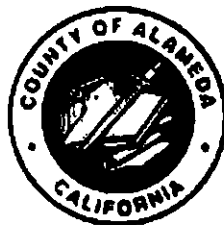


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This instrument is filed for record by Chicago Title Company as an Accommodation only. It has not been examined as to its execution or as to its effect on the Title.



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OFFICIAL RECORDS OF ALAMEDA COUNTY
STEVE MANNING
RECORDING FEE: 0.00

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Emeryville
1333 Park Avenue
Emeryville, CA 94608-3517
Attention: City Attorney

FWAC-7015004395



154 PGS

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C

(Space Above Reserved for Recorder's Use Only)
Exempt from recording fee per Gov. Code Section 27383

DEVELOPMENT AGREEMENT

Among

CITY OF EMERYVILLE,
a California municipal corporation;

AG-CCRP PUBLIC MARKET LP,
a Delaware limited partnership;

and

AVALONBAY COMMUNITIES, INC.,
a Maryland corporation

for

PUBLIC MARKET PROJECT

January 13, 2016

EFFECTIVE DATE

City of Emeryville, California

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DEVELOPMENT AGREEMENT PUBLIC MARKET PROJECT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is made and entered on the 13th day of January, 2016, by and between the CITY OF EMERYVILLE, a California municipal corporation (“**City**”), AG-CCRP Public Market LP, a Delaware limited partnership (“**AG-CCRP**”); and AVALONBAY COMMUNITIES, INC, a Maryland corporation (“**AVB**”). AG-CCRP and AVB are individually “**Developer**” and collectively “**Developers**”. The City and Developers are each individually a “**Party**” and collectively the “**Parties**” to this Agreement.

RECITALS

A. The City Council has found that development agreements will strengthen the public planning process, encourage private participation in comprehensive planning by providing a greater degree of certainty in that process, reduce the economic costs of development, allow for the orderly planning of public improvements and services, allocate costs to achieve maximum utilization of public and private resources in the development process, and assure that appropriate measures to enhance and protect the environment are achieved. Pursuant to California Government Code Section 65864 *et seq.*, the City has established the procedures and requirements for the consideration of development agreements as codified in Article 11 of Chapter 7 of Title 9 of the Emeryville Municipal Code (“**EMC**”).

B. California Government Code Section 65864, *et seq.*, and Article 11 of Chapter 7 of Title 9 of the EMC authorize the City to enter into an agreement for the development of real property with any person or entity having a legal or equitable interest in such property in order to establish certain development rights in the property.

C. AG-CCRP is the fee owner of that certain real property consisting of approximately 13.5 acres located within the City of Emeryville, County of Alameda, State of California (APNs: 49-1556-001, 49-1556-002, 49-1556-003 and 49-1556-004), legally described in Exhibit A attached hereto and incorporated herein by reference (“**Public Market Property**”). AVB and AG-CCRP entered into a Purchase and Sale Agreement (“**AVB PSA**”) for AVB to purchase two parcels within the Public Market Property to be created pursuant to the Tentative Map and known as Parcel A (approximately 1.84 acres) (“**Parcel A**”) and Parcel D (approximately 1.78 acres) (“**Parcel D**”), as each is depicted on Exhibit C, and therefore AVB has an equitable interest in these two portions of the Public Market Property. Pursuant to the AVB PSA, AG-CCRP will retain a commercial condominium that will be created within Parcel A pursuant to the Tentative Map (“**Parcel A Commercial Condominium**”) and AVB will retain a residential condominium (“**Parcel A Residential Condominium**”). The Parcel A Residential Condominium and Parcel D are collectively referred to in this Agreement as the “**AVB Property**,” and the remainder of the Public Market Property, including the Parcel A Commercial Condominium, is referred to as the “**AG-CCRP Property**.” If the AVB PSA is terminated for any reason prior to AVB’s acquiring any portion of the AVB Property, it is the Parties’ intent that AVB would have no further rights under this Agreement; nevertheless, this Agreement would remain effective as to Parcel A and Parcel D for the benefit of AG-CCRP solely.

D. On August 5, 2008, the City adopted an ordinance (Ordinance No. 08-004) approving a Planned Unit Development - Mixed Use Designation for the Marketplace Redevelopment Project and approved a Preliminary Development Plan (“**PDP**”) for the Public Market Property. The ordinance provides that the PDP will provide for a cohesive, integrated, well-planned development which will contribute to the general well-being of the surrounding neighborhood and community. The PDP contemplates redevelopment over a 25-year period including up to approximately 675 multi-family residential units, 180,000 square feet of retail, and 120,000 square feet of office, including: (i) redevelopment and replacement of the (now vacant) UA Theater building and surface level parking (ii) realignment of Shellmound Street directly in front of the Marketplace Tower and Public Market buildings (“**Shellmound Realignment**”) and addition of three new street segments with on-street parking (62nd and 63rd Streets and Market Drive) (“**New Streets**”) (collectively the Shellmound Realignment and New Streets are referred to herein as the “**Public Market Streets**”), the (iii) the addition of new buildings, (iv) the renovation and enlargement of the existing City park along Christie Avenue (“**Christie Park Expansion**”); (iv) the relocation of the pedestrian easement on Parcel A; and (v) related infrastructure improvements (collectively, the “**PDP Project**”).

E. The PDP Project was analyzed in the environmental impact report prepared pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) for the “Marketplace Redevelopment Project” certified by the City on January 15, 2008 (“**Marketplace EIR**”) by Resolution No. 08-09 and applied to the Marketplace PDP on August 8, 2008 by Resolution 08-126.

F. On October 19, 2010, the City approved the first Final Development Plan (“**FDP**”) for “Phase IA” on a portion of the PUD adjacent to the Property that is not subject to this Agreement (“**64th & Christie Project**”). The 64th & Christie project is a 190-unit rental residential building at the corner of Christie Avenue and 64th Street (now also referred to as the Emme Project), which received a Temporary Certificate of Occupancy in March 2015.

G. AG-CCRP acquired the Property from Marketplace Mortgage, LLC, the original applicant on the PDP, in 2012 and began redevelopment activities. In 2014, AG-CCRP and AVB entered into the AVB PSA for Parcel A and Parcel D. AG-CCRP submitted applications for FDPs for the Christie Park Expansion, Parcel B, Parcel C, and the Shellmound Realignment, and for a Tentative Map. AVB submitted applications for FDPs for Parcel A and Parcel D.

H. On February 26, 2015, the Planning Commission approved a Final Development Plan (14-001) for the Christie Park Expansion (“**Christie Park Expansion FDP**”).

I. On May 28, 2015, the Planning Commission approved a Final Development Plan (13-001) for a grocery store and multi-family residential on Parcel C (“**Parcel C FDP**”).

J. On June 25, 2015, the Planning Commission approved a Final Development Plan (14-003) for a multi-family residential on Parcel D (“**Parcel D FDP**”).

K. On July 23, 2015, the Planning Commission approved a Final Development Plan (FDP14-002) for a mixed use multifamily residential building with ground floor retail on Parcel A (“**Parcel A FDP**”).

L. On October 22, 2015, the Planning Commission approved a Tentative Map (SUBDIV15-002) creating nine parcels (Parcel A, B, C1 Commercial, C2 Residential, D, E, F, G and H) that includes realignment of Shellmound Street and creating 62nd Street, 63rd Street and Market Drive (**"Tentative Map"**).

M. The City is the fee owner of both the (i) the existing Christie Avenue Park, which will be increased with the City's acceptance of fee title to the Christie Park Expansion in exchange for the City dedicating a small portion of public right-of-way to Market Drive (**"Christie Park ROW Dedication"**) and (ii) the existing Shellmound Street, including the portion subject to the Shellmound Realignment that will be transferred in fee to AG-CCRP for the development of Parcel B (**"Current Shellmound Alignment Area"**) in exchange for AG-CCRP granting to the City a permanent right of way dedication on the new alignment (**"Shellmound Realignment Property"**). The existing Christie Avenue Park property and the Current Shellmound Alignment Area are both legally described on Exhibit B and are, collectively the **"City Property."** The Current Shellmound Alignment Area, the Shellmound Realignment Property, the Christie Park Expansion and the Christie Park ROW Dedication are all conceptually depicted on Exhibit D and, collectively, defined as the **"City Exchange Property."**

This Agreement will authorize the City Manager to execute the Christie Park Expansion Improvement Agreement by and between AG-CCRP and the City (**"Christie Park Expansion Improvement Agreement"**) to facilitate the Christie Park Expansion.

After a duly noticed public hearing on November 17, 2015, the City Council adopted Resolution No. 15-144 to vacate and abandon the public right of way in the Current Shellmound Alignment Area (**"Abandonment Resolution - Street"**) pursuant to Streets and Highways Code Section 8330(a) conditioned on Developers' dedication, design and construction of the Shellmound Realignment. Further, this Agreement will authorize the City Manager to execute the following agreements related to the Shellmound Realignment to facilitate the Public Market Streets: (i) Public Market Streets Property Exchange Agreement by and between AG-CCRP and the City (**"Public Market Streets Property Exchange Agreement"**); (ii) Public Market Streets Improvement Agreement by and between AG-CCRP and the City (**"Public Market Streets Improvement Agreement"**).

Additionally, on November 17, 2015, in accordance with Chapter 4, Part 3, Division 9 of the Streets and Highways Code, §§8333, 8335, the City Council adopted Resolution No. 15-145 to summarily vacate a five foot (5') wide public service easement and abandon in place the sanitary sewer main located therein traversing the Public Market Property which public service easement will be superseded by the relocation of the public service easement and sanitary sewer main to the future location of 63rd Street between Shellmound Street and Christie Avenue (**"Abandonment Resolution - Sewer"**). In accordance with the Sewer Abandonment Resolution, the City Manager has been authorized to (i) accept the grant of a temporary easement for the relocation of the sewer main along the future 63rd Street alignment between Shellmound Street and Christie Avenue, (ii) provide for the design, construction, installation, inspection and acceptance of the completed sanitary sewer in a public improvement agreement by and between the City and AG-CCRP (as already provided pursuant to Section 9-6.603 of Article 6 of Chapter 6 of Title 9 of the EMC), (iii) authorize Developers to conduct work within the existing easement

and (iv) terminate the temporary easement via quitclaim or other mechanism in accordance with the timing and conditions set forth in the Public Market Street Exchange Agreement.

Further, in connection with Parcel A, this Agreement will authorize the City Manager to negotiate and finalize the following agreement by and between AVB and City to facilitate the relocation of pedestrian access to the bridge crossing the Union Pacific Railroad: Agreement for Exchange of Real Property and Joint Escrow Instructions for Relocation of the Parcel A Pedestrian Easement by and between AG-CCRP and the City ("**Parcel A Land Exchange and Improvement Agreement**").

N. As provided in Section 9-5.407(b) of Article 4 of Chapter 5 of Title 9 of the EMC, to ensure compliance with the Costa Hawkins Act and *Palmer/Sixth Street Properties L.P. v. City of Los Angeles*, 175 Cal.App.4th 1396 (2009), City may only approve a rental project with on-site affordable units if the applicant voluntarily agrees to do so in a recorded agreement with the City to limit rents in consideration for assistance provided by the City. In consideration for the assistance provided by the terms of this Agreement, Developers have elected to provide inclusionary units consistent with EMC Section 9-5.407(a) on Parcel A, Parcel C and Parcel D as more fully described in Section 7 herein. City and Developers now desire to establish certain mutually agreeable conditions and requirements related to review, development and ongoing ownership and operation of the Property.

O. City and Developers have reached mutual agreement and desire to voluntarily enter into this Agreement to facilitate development of the Property subject to the conditions and requirements set forth herein.

P. The City Council has reviewed and evaluated the Agreement in accordance with Article 11 of Chapter 7 of Title 9 of the EMC and has found that this Agreement (i) is consistent with the purpose of Article 11 of Chapter 7 of Title 9 of the EMC by facilitating the development of a large, phased project for which there is significant private participation in infrastructure, public facilities, open space and amenities, and other programs of benefit to the City and its residents, (ii) is consistent with City's General Plan and (iii) is in the public interest. With respect to recent amendments to the General Plan adopted pursuant to Resolution No. 15-129, page 2-19 of the General Plan was amended to clarify that "existing approved Planned Unit Developments (PUDs) may exceed the base intensity, height, and density, as specified in the ordinances by which they were approved, without requiring bonuses."

Q. On June 25, 2015, the City of Emeryville Planning Commission, the initial hearing body for purposes of Agreement review, recommended approval of this Agreement and found the vacation and abandonment of Current Shellmound Realignment Area and the dedication and acceptance of the new Shellmound Street alignment, 62nd Street, 63rd Street and Market Drive to be consistent with the General Plan pursuant to Resolution No. DA15-001.

R. On December 1, 2015, the City Council adopted Ordinance No. 15-010 ("**Enacting Ordinance**") approving this Agreement and authorizing its execution. The Enacting Ordinance became effective on January 1, 2016, and is incorporated herein by reference.

AGREEMENT

NOW, THEREFORE, with reference to the foregoing recitals and definitions and in consideration of the mutual promises, obligations and covenants herein contained, City and Developers agree as follows:

1. **Definitions.** The following defined terms are used in this Agreement:

“64th & Christie Project” is defined in Recital F.

“Abandonment Resolution - Sewer” is defined in Recital M.

“Abandonment Resolution - Street” is defined in Recital M.

“Affordable Housing Units” is defined in Subsection 7.1.

“Affordable Housing Agreement” means the agreement entered into by the City and the applicable Developer pursuant to Section 7.1 of this Agreement and substantially in the form of Exhibit E.

“AG-CCRP” means AG-CCRP LP, a Delaware limited partnership, and its successors and assigns under this Agreement.

“AG-CCRP Property” is defined in Recital C.

“Agreement” means this Development Agreement.

“Area Median Income” shall mean the area median income published annually by the California Department of Housing and Community Development for the County of Alameda.

“Applicable City Regulations” shall mean, to the extent the following do not conflict with or are not inconsistent with this Agreement or the Existing Project Approvals (in the event of a conflict or inconsistency, this Agreement shall control): the rules, regulations, ordinances, resolutions, Impact Fees, Exactions and official policies of the City existing on the Effective Date and applicable to the development and use of the Property. Applicable City Regulations include, without limitation, (i) General Plan, the EMC, the Family Friendly Design Guidelines, consistent with this Agreement, and all other City laws in effect on the Effective Date; and (ii) all those existing and approved permits, entitlements, agreements, and other grants of approval having force and effect on the Effective Date to the Project and Property, including without limitation their text, terms and conditions of approval.

“Applicable Law” shall mean the Applicable City Regulations and all other rules, regulations, official policies, standards and specifications applicable to the development of the Property, as set forth in the Project Approvals, this Agreement, and, with respect to matters not addressed by these documents, those laws, rules, regulations, official policies, standards and specifications governing permitted uses, building locations, timing of construction, densities, design and heights in force and effect on the Effective Date.

“Assignment and Assumption Agreement” means the Assignment and Assumption Agreement defined in Section 15.1 and substantially in the form of Exhibit F.

“Art Account” is defined in Section 7.2.

“Art Agreement” is defined in Section 7.2.

“Art Escrow Account Holder” is defined in Section 7.2.

“Art Master Plan” is defined in Section 7.2.

“AVB” means AvalonBay Communities, Inc., a Maryland corporation, and its successors and assigns under this Agreement.

“AVB Property” is defined in Recital C.

“Christie Park Expansion” is defined in Recital D.

“Christie Park Expansion FDP” is defined in Recital H.

“Christie Park Expansion Improvement Agreement” is defined in Recital M.

“Christie Park ROW Dedication” is defined in Recital M.

“City” means the City of Emeryville.

“City Council” means the City Council of the City of Emeryville.

“City Exchange Property” is described in Recital M and depicted on Exhibit D.

“City Manager” means the City Manager of the City of Emeryville.

“City Parties” is defined in Section 18.

“City Property” is defined in Recital M.

“Claim” is defined in Section 17.

“Connection Fees” means those fees charged by City to utility users as a cost for connecting to water, sewer, storm drains, and other applicable utilities.

“Construction Milestones” are defined in Section 5.2.2.

“Current Shellmound Alignment Area” is described in Recital M, legally defined in Exhibit B, and depicted in Exhibit D.

“Developers” is defined in the introductory paragraph of this Agreement and includes any successors or assigns.

“Effective Date” of this Agreement is defined in Section 5.1.

“EMC” means the Emeryville Municipal Code.

“Enacting Ordinance” is defined in Recital O.

“Park Account Escrow Holder” is defined in Section 7.2.

“Enacting Ordinance” is defined in Recital R.

“Exactions” is defined as those exactions that may be imposed by the City as conditions of developing the Project, including but not limited to requirements for acquisition, dedication or reservation of land, obligations to design, construct or fund on-site or off-site public and private infrastructure improvements such as roadways, utilities or other improvements necessary to support the Project, whether such exactions constitute subdivision improvements, mitigation measures in connection with environmental review of the Project, measures imposed for the protection of the public health or safety, or impositions made under Applicable Law.

“Existing Project Approvals” is defined as, collectively, the PDP, Marketplace EIR, Christie Park Expansion FDP, Parcel A FDP, Parcel C FDP, Parcel D FDP, and Tentative Map.

“Family Friendly Design Guidelines” shall mean the residential design policy approved by the City Council Resolution 15-44 on May 19, 2015.

“FDP” is defined in Recital F.

“Impact Fee(s)” are fees as defined in Government Code Section 66019.

“Initial Term” is defined in Subsection 5.2.

“Low Income Households” shall mean households earning up to eighty percent (80%) of the Area Median Income, as adjusted for household size in accordance with Health and Safety Code Section 50052.5.

“Major Amendment” is defined in Subsection 10.2.

“Marketplace EIR” is defined in Recital E.

“Minor Amendment” is defined in Subsection 10.2.

“Moderate Income Households” shall mean households earning up to one hundred and ten percent (110%) of the Area Median Income, as adjusted for household size in accordance with Health and Safety Code Section 50052.5.

“Mortgage” is defined in Section 16.1.

“Mortgagee” is defined in Section 16.1.

“New City Laws” shall mean any ordinances, resolutions, orders, rules, official policies, standards, specifications, guidelines or other regulations, which are promulgated or adopted by the City (including but not limited to any City agency, body, department, officer or employee) or its electorate (through their power of initiative or otherwise) after the Effective Date. New City Laws include amendments to Applicable City Regulations.

“New Other Laws” shall mean New City Laws that are specifically required to be applied by City pursuant to regional, State or Federal laws or regulations enacted after the Effective Date.

“New Streets” is defined in Recital D.

“Notice of Breach” is defined in Section 13.2.

“Notice of Permitted Delay” is defined in Subsection 5.2.1.

“Office Condominium” shall mean the creation of a condominium within the office tower on the existing Public Market parcel to separate the first floor from the second through eighth floors.

“Outside Date” is defined in Subsection 5.2.

“Parcel A” is defined in Recital C and depicted on Exhibit C.

“Parcel A Commercial Condominium” is defined in Recital C.

“Parcel A FDP” is defined in Recital K.

“Parcel A FDP Plans” shall mean the approved plans identified in Condition I.B. of the Parcel A FDP (FDP14-002) Conditions of Approval and on file with the City.

“Parcel A Land Exchange and Improvement Agreement” is defined in Recital M.

“Parcel A Residential Condominium” is defined in Recital C.

“Parcel B” is depicted on Exhibit C.

“Parcel B Condominium” shall mean the creation of a condominium to subdivide the Parcel B retail use from the parking garage.

“Parcel C FDP” is defined in Recital I.

“Parcel C FDP Plans” shall mean the approved plans identified in Condition I.B. of the Parcel C FDP (FDP13-001) Conditions of Approval and on file with the City.

“Parcel C” is depicted on Exhibit C.

“Parcel D FDP” is defined in Recital J.

“Parcel D FDP Plans” shall mean the approved plans identified in Condition I.B. of the Parcel D FDP (FDP14-003) Conditions of Approval and on file with the City.

“Parcel D” is defined in Recital C and depicted on Exhibit C.

“Parcel F” is depicted on Exhibit C.

“PDP” is defined in Recital D.

“PDP Project” is defined in Recital D.

“Permitted Delay” means delays or defaults by any Party due to the following causes: 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; legal challenges related to this Agreement, the Project Approvals, or any other approval required for the Project or any initiatives or referenda regarding the same; unusually severe weather impacting the Developer’s ability to meet the Construction Milestones set forth in Section 5.2.2, but only to the extent that such weather or its effects (including, without limitation, dry out time) result in delays in construction that cumulatively exceed twenty (20) days for every winter season; Severe Economic Recession, acts or omissions of the other party; or acts or failures to act on the part 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).

“Planning Commission” means the Planning Commission of the City of Emeryville.

“Processing Fees” is defined in Subsection 6.1(c).

“Project” means the development project as approved under the Project Approvals.

“Project Approvals” mean, collectively, (i) the Existing Project Approvals and (ii) any Subsequent Project Approvals approved under this Agreement for the Property.

“Property” means, collectively, (i) the Public Market Property and (ii) the City Property.

“Public Market Property” is defined in Recital C.

“Public Market Streets” is defined in Recital D.

“Public Market Streets Property Exchange Agreement” is defined in Recital M.

“Public Market Streets Improvement Agreement” is defined in Recital M.

“Public Rights of Way” is defined in Section 7.2.

“Severe Economic Recession” means a decline in the monetary value of all finished goods and services produced in the United States, as measured by initial quarterly estimates of US Gross Domestic Product (“GDP”) published by the US Department of Commerce Bureau of Economic Analysis (and not BEA’s subsequent monthly revisions), lasting more than four (4)

consecutive calendar quarters. Any quarter of flat or positive GDP growth shall end the period of such Severe Economic Recession.

“Shellmound Realignment” is defined in Recital D.

“Shellmound Realignment Property” is described in Recital K, and depicted in Exhibit D.

“Subsequent Project Approvals” means any development approvals for the Property approved pursuant to Section 9 of this Agreement.

“Substantially Complete” or **“Substantially Completes”** shall mean: (i) for a new building, the earlier of (A) issuance of the first temporary certificate of occupancy or (B) (1) construction of the building, including all work on the core, shell, lobby and exterior of the building, is complete; (2) eighty five percent (85%) of the contract price for construction (including all change orders) has been expended; and (3) the Community Development Director has determined in his or her reasonable discretion that the life safety systems have been installed and are fully functional; and (ii) for Christie Avenue Park or the Shellmound Realignment that eighty five percent (85%) of the contract price for construction (including all change orders) has been expended and Developer is not in default under the applicable public improvement agreement.

“Tentative Map” is defined in Section 9.8.

“Term” is defined in Section 5.2.

2. Description of Property. The real property which is the subject of this Agreement is (i) the Public Market Property and (ii) the City Property.

3. Interest and Qualifications of Developers.

3.1 AG-CCRP’s Representations and Warranties. AG-CCRP represents and warrants that:

3.1.1 As of the Effective Date, AG-CCRP is the sole fee owner of the Public Market Property, and no other person or entity holds any legal or equitable interests in the Public Market Property, other than AVB pursuant to the AVB PSA with respect to the Parcel A (excepting the Parcel A Commercial Condominium) and Parcel D;

3.1.2 As of the Effective Date, AG-CCRP is: (i) duly organized and validly existing under the laws of the State of Delaware; (ii) qualified and authorized to do business in the State of California and has duly complied with all requirements pertaining thereto; and (iii) is in good standing and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of Developer under this Agreement;

3.1.3 No approvals or consents of any persons are necessary for the execution, delivery or performance of this Agreement by AG-CCRP, except as have been obtained;

3.1.4 The execution and delivery of this Agreement and the performance of the obligations of AG-CCRP hereunder have been duly authorized by all necessary action and approvals; and

3.1.5 This Agreement is a valid obligation of AG-CCRP and enforceable in accordance with its terms.

3.2 AVB's Representations and Warranties. AVB represents and warrants that:

3.2.1 As of the Effective Date, AVB has an equitable interests in Parcel A (excepting the Parcel A Commercial Condominium) and Parcel D pursuant to the AVB PSA;

3.2.2 As of the Effective Date, AVB is: (i) duly organized and validly existing under the laws of the State of Maryland; (ii) qualified and authorized to do business in the State of California and has duly complied with all requirements pertaining thereto; and (iii) is in good standing and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of Developer under this Agreement;

3.2.3 No approvals or consents of any persons are necessary for the execution, delivery or performance of this Agreement by AVB, except as have been obtained;

3.2.4 The execution and delivery of this Agreement and the performance of the obligations of AVB hereunder have been duly authorized by all necessary action and approvals; and

3.2.5 This Agreement is a valid obligation of AVB and enforceable in accordance with its terms.

4. Relationship of City and Developers. It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by City and Developers and that Developers are not an agent or partner of City. City and Developers hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making City a joint venturer or partner with Developers.

5. Effective Date and Term of Agreement.

5.1 Effective Date. This Agreement shall be effective upon its execution by the Parties (the execution date being the "**Effective Date**"), which date in no event shall be earlier than the effective date of the Enacting Ordinance or the effective date of any Existing Project Approvals. The Parties acknowledge that Section 65868.5 of the Government Code and Article 11 of Chapter 7 of Title 9 of the EMC require that the City Clerk record this Agreement with the County Recorder no later than ten (10) days after City executes this Agreement, and that the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to: (i) all of the City's successors in interest to this Agreement; and (ii) each of CCRP's permitted assigns and successors in title to all or any portion of the Property (including, without

limitation, AVB upon AVB's acquiring title to Parcel A and/or Parcel D), in each case subject to the terms and conditions hereof.

5.2 Term. The "**Initial Term**" of this Agreement shall be twelve (12) years commencing on the Effective Date and expiring on the twelfth (12th) anniversary thereof, 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 shall expire in accordance with the provisions of Section 5.2.2, below, or may be extended pursuant to the provisions of Sections 5.2.1, below, provided, however, the total Term shall in no event exceed fifteen (15) years from the Effective Date ("**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.

5.2.1 Permitted Delay. If a Developer is deprived of a benefit under this Agreement as a result of an Permitted Delay, then the Developers' rights and obligations under this Agreement shall be extended for the entirety of the Property, including the Term of this Agreement, for the period of such Permitted Delay; provided, however, that such extension shall commence to run from the time of the commencement of the cause of the Permitted Delay. The cumulative total period of Permitted Delays shall not exceed three (3) years. The Developer claiming the Permitted Delay shall notify the City of its intent to claim a Permitted Delay within thirty (30) days of the commencement of the cause, the specific grounds for same, and the anticipated period of the Permitted Delay ("**Notice of Permitted Delay**"). In the case of a Severe Economic Recession Permitted Delay, Notice of Permitted Delay shall be provided within thirty (30) days of the conclusion of the fourth consecutive calendar quarter of decline in the monetary value of all finished goods and services produced in the United States. In such event, the Permitted Delay shall be deemed to have commenced at the start of the first calendar quarter when the Severe Economic Recession Permitted Delay commenced. After the City's receipt of such notice from a Developer, the City may reasonably object in writing to Developer's Notice of Permitted Delay by delivering written notice to the Developer setting forth the reasons for the City's objections. If the City does not object in writing to a Developer's Notice of Permitted Delay within thirty (30) days after receipt of such notice, then the applicable obligation(s) and Term of this Agreement shall be modified in accordance with the Notice of Permitted Delay, provided the Notice of Permitted Delay included an express statement that City's failure to object in writing to Developer's Notice of Permitted Delay would be deemed City's approval of the same. If the City timely objects in writing to Developer's Notice of Permitted Delay, the City and the Developer seeking an extension of the obligations(s) and Term on the grounds of a Permitted Delay shall meet and confer within thirty (30) days of the date of Developer's receipt of the City's written objection with the objective of attempting to arrive at a mutually acceptable solution as to whether the event constitutes a Permitted Delay and whether the obligation(s) and Term should be extended. Except for Severe Economic Recession, Developers acknowledge that adverse changes in economic conditions, in either of one or more Developers specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing or other lack of funding to complete the Project shall not constitute grounds for Permitted Delay. Developers expressly assume the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the

Effective Date. The time for City's performance of its obligations hereunder shall also be extended by the period of any Permitted Delay.

5.2.2 Deletion of PUD Condition I.C and Construction Milestones. The Parties agree that this Agreement amends the PDP to delete entirely Section I.C. of the PUD Conditions of Approval dated August 5, 2008. The Term of this Agreement shall expire if Developers have not met each of the following construction milestones, each subject to Permitted Delay and extension by the City Manager in his or her sole discretion if he or she determines that a Developer is diligently pursuing development, including the submission and processing of applications, obtaining building permits and/or paying applicable fees ("**Construction Milestones**"):

5.2.2.1 A Developer Substantially Completes construction of the Christie Park Expansion in accordance with the Christie Park Expansion FDP (as the same may be amended from time to time by mutual agreement of the City and AG-CCRP) on the existing Christie Avenue Park property and Parcel E as contemplated in the Tentative Map (as the same may be amended from time to time by mutual agreement of the City and AG-CCRP), and Christie Park Expansion Improvement Agreement.

5.2.2.2 A Developer Substantially Completes construction of the Christie Park Expansion in accordance with the Christie Park Expansion FDP (as the same may be amended from time to time by mutual agreement of the City and AG-CCRP) on the existing Christie Avenue Park property and Parcel E as contemplated in the Tentative Map (as the same may be amended from time to time by mutual agreement of the City and AG-CCRP), Christie Park Exchange Agreement and Christie Park Expansion Improvement Agreement within five (5) years of the Effective Date (if not previously completed under Section 5.2.2.1).

5.2.2.3 A Developer Substantially Completes construction of either (a) a second new building (residential, commercial or mixed-use at the Developers' sole discretion) on the Property or (b) the Shellmound Realignment as contemplated in the Public Market Streets Exchange Agreement and Public Market Streets Improvement Agreement within five (5) years of the Effective Date.

5.2.2.4 A Developer Substantially Completes both (a) construction of a third new building (residential, commercial or mixed-use at the Developers' sole discretion) on the Property (or second new building if a second new building was not previously completed under Section 5.2.2.) and (b) the Shellmound Realignment as contemplated in the Public Market Streets Exchange Agreement and Public Market Streets Improvement Agreement (if not previously completed under Section 5.2.2.3) within (8) years of the Effective Date.

The Developer obligation in this Section 5.2.2 to Substantially Complete the identified portions of the Project is only for purposes of determining the Term of the Agreement, and as such, is not intended by the Parties to either: (i) create any independent affirmative obligation of the Developer to construct any portion of the Project under this Agreement, or (ii) to relieve the applicable Developer from any other obligation to the City to fully (as opposed to "Substantially Complete") construct under the express terms of any applicable Project Approvals. For the purposes of this Section 5.2.2, neither the construction of the 64th & Christie Project building or a

new building on Parcel F shall qualify as a “building” for the purposes of the Construction Milestones set forth in Sections 5.2.2.1, 5.2.2.3 and/or 5.2.2.4.

6. Development of the Property. Subject to the fulfillment of the provisions of this Agreement and the obligations required by the Project Approvals, the City hereby grants to each Developer the present vested right to develop and construct on the Property all the improvements authorized by the Project Approvals and this Agreement. To the extent permitted by law, and except as otherwise provided herein, no future modification of the City’s General Plan, EMC, ordinances, policies or regulations shall apply to the Property that purports to: (i) limit the Permitted Uses of the Property, the density and intensity of use (including but not limited to floor area ratios of commercial/retail buildings or residential density), the maximum height and size of proposed buildings; (ii) impose Impact Fees, Exactions, requirements for reservation or dedication of land for public purposes, the subdivision of land, or requirements for infrastructure, public improvements, or public utilities, other than as provided in the Existing Project Approvals or pursuant to this Agreement; (iii) impose conditions upon development of the Property other than as permitted by the Applicable Law, the Existing Project Approvals and this Agreement; (iv) limit the timing, phasing or rate of development of the Property; (v) limit the location of building sites, grading or other improvements on the Property in a manner that is inconsistent with or substantially more restrictive than the limitations included in this Agreement, the Existing Project Approvals; or (vi) increase parking requirements beyond those set forth in the Applicable Law. In the event of an express conflict between this Agreement and the Existing Project Approvals, this Agreement shall control; provided, however, that nothing in this Agreement shall prevent or preclude City from adopting any land use ordinances, policies, regulations or amendments permitted herein.

6.1 Impact Fees, Exactions, Processing Fees and Taxes. Except as otherwise provided herein, each Developer agrees to pay when due any fees, taxes, assessments, impact fees, and other monetary and non-monetary exactions required to be paid by such Developer in connection with its portion(s) of the Property, as and to the extent provided below. Each Developer reserves the right to challenge whether such fees, taxes, assessments, impact fees or other monetary and non-monetary exactions have been accurately and appropriately calculated, measured and/or applied to their portion of the Property in accordance with this Agreement. In the event that a Developer challenges such fee, tax, assessment, impact fee or other exaction, such Developer shall pay under protest. The City agrees not to delay issuance of permits pending resolution of such protest. Notwithstanding the foregoing, for five (5) years after the Effective Date (subject to Permitted Delays pursuant to Section 5.2.1), Developers hereby waive any right to challenge and release City from any claim that the impact fees imposed by City and in effect as of the Effective Date bear no reasonable relationship between the need for the facilities identified in the respective impact fee studies and the impacts of the Project Approvals and/or that there is no reasonable relationship between the use of the impact fees and the type of development authorized by the Project Approvals for which the impact fees are charged.

Developers are aware of and familiar with the provisions of section 1542 of the California Civil Code which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the

release, which if known by him or her must have materially affected his or her settlement with the debtor.”

For five (5) years after the Effective Date Developers hereby waive and relinquish all rights and benefits which it may have under section 1542 of the California Civil Code.

SCW
AG-CCRP Initials

AVB Initials

(a) Federal/State Compliance Fees. City may charge and Developers agree to pay any new, increased or modified taxes, assessments, impact fees or other monetary or non-monetary exactions, whether imposed as a condition of or in connection with any Subsequent Project Approvals or otherwise, which are uniformly imposed and reasonably necessary to comply with the requirements of any Federal or State statute or regulation which is enacted or adopted after the Effective Date of this Agreement.

(b) Other Local Agency Compliance Fees. City may charge and Developers agree to pay any new, increased or modified taxes, assessments, impact fees or other monetary or non-monetary exactions, whether imposed as a condition of or in connection with any Subsequent Project Approvals or otherwise, which are uniformly imposed and reasonably necessary to comply with the requirements of local governmental agencies other than the City.

(c) Processing Fees. City may charge and Developers agree to pay all processing fees, including application, permit processing, plan checking (time and materials) and inspection and monitoring fees (“**Processing Fees**”), for land use approvals, grading and building permits, General Plan maintenance fees, and other permits and entitlements, which are in force and effect on a City-wide basis at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing.

(d) Impact Fees and Exactions. For five (5) years after the Effective Date of this Agreement (subject to Permitted Delay pursuant to Section 5.2.1), the City may charge and Developers agree to pay all those Impact Fees in existence as of the Effective Date of this Agreement at the rates in effect as of the Effective Date of this Agreement, as such Impact Fees may be adjusted on a citywide basis, provided that such adjustment is done in accordance with Applicable Law and does not exceed the percentage increase in the Engineering News-Record Construction Index for San Francisco, California. Thereafter, the City may charge and the Developers agree to pay all those Impact Fees in existence and at the rates in effect as of the time land use or development permits, approvals or entitlements are applied for on any or all portions of the Property. In addition, except as provided herein, in any Subsequent Project Approval the City will not impose and the Developers will not be required to comply with and/or pay for any Exactions other than as provided in or contemplated by this Agreement and the Existing Approvals. All future conditions of approval of Subsequent Project Approvals shall be

release, which if known by him or her must have materially affected his or her settlement with the debtor.”

For five (5) yeas after the Effective Date Developers hereby waive and relinquish all rights and benefits which it may have under section 1542 of the California Civil Code.

AG-CCRP Initials



AVB Initials

(a) Federal/State Compliance Fees. City may charge and Developers agree to pay any new, increased or modified taxes, assessments, impact fees or other monetary or non-monetary exactions, whether imposed as a condition of or in connection with any Subsequent Project Approvals or otherwise, which are uniformly imposed and reasonably necessary to comply with the requirements of any Federal or State statute or regulation which is enacted or adopted after the Effective Date of this Agreement.

(b) Other Local Agency Compliance Fees. City may charge and Developers agree to pay any new, increased or modified taxes, assessments, impact fees or other monetary or non-monetary exactions, whether imposed as a condition of or in connection with any Subsequent Project Approvals or otherwise, which are uniformly imposed and reasonably necessary to comply with the requirements of local governmental agencies other than the City.

(c) Processing Fees. City may charge and Developers agree to pay all processing fees, including application, permit processing, plan checking (time and materials) and inspection and monitoring fees (“Processing Fees”), for land use approvals, grading and building permits, General Plan maintenance fees, and other permits and entitlements, which are in force and effect on a City-wide basis at the time those permits, approvals or entitlements are applied for, and which are intended to cover the actual costs of processing the foregoing.

(d) Impact Fees and Exactions. For five (5) years after the Effective Date of this Agreement (subject to Permitted Delay pursuant to Section 5.2.1), the City may charge and Developers agree to pay all those Impact Fees in existence as of the Effective Date of this Agreement at the rates in effect as of the Effective Date of this Agreement, as such Impact Fees may be adjusted on a citywide basis, provided that such adjustment is done in accordance with Applicable Law and does not exceed the percentage increase in the Engineering News-Record Construction Index for San Francisco, California. Thereafter, the City may charge and the Developers agree to pay all those Impact Fees in existence and at the rates in effect as of the time land use or development permits, approvals or entitlements are applied for on any or all portions of the Property. In addition, except as provided herein, in any Subsequent Project Approval the City will not impose and the Developers will not be required to comply with and/or pay for any Exactions other than as provided in or contemplated by this Agreement and the Existing Approvals. All future conditions of approval of Subsequent Project Approvals shall be

consistent with this Agreement and shall expressly provide that in the event of a conflict between the conditions of approval and this Agreement, this Agreement shall control.

(e) Voter or Property Owner Approved Assessments or Special Taxes. Nothing in this Agreement shall limit the City's ability to pursue and implement property-owner approved assessment or special tax districts, such as a property and business improvement district, landscaping and lighting assessment or community facilities district in conformance with applicable law. Such voter or property-owner approved assessments or special taxes shall not be considered Impact Fees or Exactions for purposes of this Agreement.

6.2 Timing of Commencement of Construction and Completion. Developers shall have the vested right to develop in such order, at such rate and at such times as each Developer deems appropriate in the exercise of its business judgment. In particular, and not in any limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider, and expressly provide for, the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the desire of the Parties hereto to avoid that result. Notwithstanding the adoption of an initiative after the Effective Date by City's electorate to the contrary, the Parties acknowledge that, except as otherwise provided for in this Agreement, each Developer shall have the vested right to develop its components of the Project in such order and at such rate and at such times as each Developer deems appropriate in the exercise of its business judgment.

6.3 Applicable Law. Prior to the Effective Date of this Agreement, the Parties shall prepare three (3) sets of the Project Approvals and Applicable Law applicable to the Project as of the Effective Date, one (1) set for City and one (1) set for each Developer, to which Subsequent Project Approvals shall be added from time to time so that if it becomes necessary in the future to refer to any of the Project Approvals or Applicable Law, there will be a common set available to the Parties. Failure to include in the sets of Project Approvals and Applicable Law any rule, regulation, policy, standard or specification that is within the Applicable Law and Project Approvals as described in this Agreement shall not affect the applicability of such rule, regulation, policy, standard or specification.

6.4 New City Laws; Reservations of Authority. New City Laws shall not be applicable to the Property except as otherwise provided herein. The Parties acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to City all of its police power which cannot be so limited. This Agreement shall be construed to reserve to City all such power and authority which cannot be restricted by contract. Notwithstanding any other provision of this Agreement to the contrary, the following regulations and provisions shall apply to the development of the Property:

(a) Processing fees and charges of every kind and nature imposed by City, including planning processing deposits to cover the actual costs to City of processing applications for Project Approvals or for monitoring compliance with any Project Approvals granted or issued, as such fees and charges are adjusted from time to time, as well as building plan check fees, building permit fees, encroachment permit fees, inspection fees.

(b) Regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided such procedures are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties.

(c) Regulations governing construction standards and specifications, including City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all other uniform construction codes then applicable in City at the time of permit application, as well as regulations and standards related to sanitary sewers, sewer laterals, storm drains, storm water treatment measures, and any and all measures required pursuant to NPDES permits issued to City in connection with use, operation and maintenance of said sanitary sewer and storm drain systems.

(d) New City Laws which may be in conflict with this Agreement or the Project Approvals but which are necessary to protect persons or property from dangerous or hazardous conditions which create a threat to the public health or safety or create a physical risk.

(e) New City Laws applicable to the Property, which do not conflict with this Agreement or the Project Approvals, provided such New City Laws are uniformly applied on a City-wide basis to all substantially similar types of Development Projects and properties.

(f) Connection Fees then applicable in City at the time of permit application.

6.5 Developer's Contest of Applicability of New City Laws. If any Developer believes, or if both Developers believe, that the application by the City of a New City Law to the Project is (i) not authorized pursuant to subsections (a), (b), (c), (d), (e) or (f) of Section 6.4 above and (ii) inconsistent with the Project Approvals or the terms of this Agreement and desires to contest such application, Developer or Developers shall give written notice to the City in accordance with this Section 6.5. A Developer's written notice shall inform the City of the factual and legal reasons why the Developer believes the City cannot apply the New City Law to the Project consistent with the Project Approvals and this Agreement. The City shall respond to the Developer's notice within thirty (30) days of receipt of such notice. Thereafter, the Parties shall meet and confer within ten (10) business days of the date of Developer's receipt of the City's response with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. If no mutually acceptable solution is reached at the conclusion of the meet and confer period, Developer may file legal action challenging such application in accordance with Section 12 below. If it is determined at the conclusion of such legal action that such New City Laws apply to the Project, and if such New City Laws have the effect of materially impeding or preventing development in accordance with this Agreement and the Project Approvals, then the contesting Developer may request the City (i) to amend this Agreement in accordance with the Development Agreement Law and/or to amend the Project Approvals or Applicable City Regulations or (ii) to terminate this Agreement as to the contesting Developer by mutual agreement, which request shall not be unreasonably denied, by giving a written request for termination to the City not earlier than sixty (60) days, nor more than one hundred eighty (180)

days, after the determination that such New City Laws apply to the Project has become final, provided, however, that before any Developer shall submit such request for termination, the requesting Developer shall give at least sixty (60) days written notice of its intent to request termination to the City, and if the City modifies the New City Laws so that they no longer prevent or materially impede development of the Project in accordance with this Agreement and the Project Approvals, the contesting Developer shall no longer have the right to request termination of this Agreement. This Agreement may be terminated as to any Developer only by mutual written agreement of the City and such Developer, and termination as to one Developer shall not have the effect of terminating this Agreement as to the other Developer.

6.6 New Other Laws. The City shall not be precluded from adopting and applying New City Laws to the Project to the extent that such New City Laws are specifically required to be applied by City pursuant to State or Federal laws or regulations enacted after the Effective Date (“**New Other Laws**”), as provided in Government Code section 65869.5. In the event New Other Laws (i) prevent or preclude compliance with one or more provisions of the Project Approvals or this Development Agreement, or (ii) have the effect of materially impeding or preventing development in accordance with the Project Approvals or this Agreement, any Developer wishing to contest such New Other Law shall give written notice to the City of such issue. The applicable Developer’s written notice shall explain how the application of New Other Laws would affect the Developer’s rights under the Agreement. Thereafter, the applicable Developer shall meet and confer with the City in good faith for a period of forty-five (45) days to determine whether any modification or suspension of this Agreement is necessary to comply with such New Other Laws. It is the intent of the Parties that any such modification or suspension be limited to that which is necessary, and to preserve to the extent possible the original intent of the Parties in entering into this Development Agreement. If the applicable Developer and City fail to find a mutually agreeable solution to modify or suspend the Agreement in order to achieve compliance with such New Other Laws, then the applicable Developer shall have the right, at its sole election, to either: (i) pursue litigation pursuant to Section 13, or (ii) to request that City terminate this Agreement by mutual agreement as to the applicable Developer in the same manner as provided in Section 6.5 above with respect to New City Laws. Termination of this Agreement as to one Developer shall not have the effect of terminating this Agreement as to the other Developer. Nothing in this Agreement shall be deemed a waiver of any Developer’s right to challenge or contest the validity or applicability of any New Other Laws.

6.7 Initiatives and Referenda. If any New City Law is enacted or imposed by a citizen-sponsored initiative or referendum, which New City Law would conflict with the Project Approvals, Applicable Law or this Agreement or reduce the development rights or assurances provided by this Agreement, such New City Law shall not apply to the Property; provided, however, the Parties acknowledge that City’s approval of this Agreement is a legislative action subject to referendum. Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, use permits, building permits or other entitlements to develop or use the Property that are approved or to be approved, issued or granted by City shall apply to the Property. Developers agree and understand that City does not have authority or jurisdiction over any other public agency’s ability to grant governmental approvals or permits or to impose a moratorium or other limitations that may affect the Project. City shall cooperate with

Developers and, at the requesting Developer or Developers' expense, shall undertake such actions as may be necessary to ensure this Agreement remains in full force and effect to the maximum extent permitted by law. City shall not support, adopt or enact any New City Law, or take any other action which would violate the express provisions or spirit and intent of this Agreement. Developers acknowledge, however, that nothing in this Agreement is intended to interfere with the City Council's legal obligations under the Elections Code when timely presented with an initiative or referendum measure containing the requisite number of signatures. Developers recognize the risk that, while it is not the Parties' intent or desire hereunder, a referendum may prevail over this Agreement (if a referendum is timely filed) or that during the Term of this Agreement, an initiative measure may possibly invalidate or prevail over this Agreement, and Developers assume such risk. For the purposes of clarity, the Parties agree and acknowledge that it is the intent of the Parties to have this Agreement prevail, to the maximum extent legally allowed, over any measures adopted during its Term. Should an initiative measure or measures be enacted which would conflict with this Agreement, and should such measure be determined by a court of competent jurisdiction to invalidate or prevail over all or any part of this Agreement, Developers shall have no recourse against City for any damages Developers might sustain as a result thereof. And, in the event that the City Council adopts or the voters approve an initiative that conflicts with this Agreement, the City acknowledges and agrees that the Developers have reserved all rights to challenge the application of such initiative to the Project under the terms of this Agreement and the Applicable Law.

6.8 Regulation by Other Public Agencies. Developers acknowledge and agree that other local, regional, state and federal public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies. Each Developer shall, at the time required by Developer in accordance with Developer's construction schedule, apply for all such other permits and approvals as may be required by other governmental or quasi-governmental entities in connection with the development of, or the provision of services to development on the Property. Each Developer shall also pay all required fees when due to such public agencies and provide proof of payment of such fees to City prior to or concurrently with issuance of building permits for any portion of the Project for which such fees are due. Developers acknowledge that City does not control the amount of any such fees. City shall cooperate with Developers in Developers' effort to obtain such permits and approvals; provided, however, City shall have no obligation to incur any costs, without compensation or reimbursement, or to amend any City policy, regulation or ordinance in connection therewith. In the event that school fees are imposed upon Developers that are in excess of those required by state law and Developers wish to object to such school fees, Developers may pay such fees under protest. The City agrees not to delay issuance of permits under these circumstances.

6.9 Sales Tax Point of Sale Designation. Developers shall include a provision in their respective construction documents requiring contractors to use diligent good faith efforts (but without increasing the costs of materials) to require all persons and entities providing bulk lumber, concrete, structural steel and pre-fabricated building components, such as roof trusses, to be used in connection with the construction and development of, or incorporated into, the Project, to either (1) obtain a use tax direct payment permit or (2) elect to obtain a sub-permit for the job site of a contract valued at \$5 million or more in order to have the local portion of the sales and use tax distributed directly to the City instead of through the county-wide pool.

7. Developer Assistance.

7.1 Affordable Housing Units. Each Developer, as applicable, shall provide eleven percent (11%) of the dwelling units within the residential building(s) constructed on each of Parcel A, Parcel C and Parcel D as rental units at affordable rates, including five percent (5%) affordable to Low Income Households and six percent (6%) affordable to Moderate Income Households (“**Affordable Housing Units**”). The specific number of each type of Affordable Housing Unit to be provided on each parcel shall be as follows:

	No. of Low Income Units	No. of Moderate Income Units
Parcel A	8	10
Parcel C	3	4
Parcel D	11	14

In recognition of the Affordable Housing Units, the Developers shall have no obligation to pay any otherwise applicable affordable housing impact fee. Unless the City finds compelling reasons to the contrary, the affordable units shall be dispersed throughout the development, the mix and type of affordable units shall be proportionate to those of each individual parcel, and the affordable units shall be comparable with the design of the base level market rate units in terms of appearance, materials and quality of finishes. Accordingly, there shall be market rate units in the development that are designed with the base level of appearance, materials and quality of finishes. Parking designated for the affordable units shall be provided in an equitable manner as that provided for the market rate units. Consistent with Section 9-5.407(c) of Article 4 of Chapter 5 of Title 9 of the EMC, an Affordable Housing Agreement shall be executed and acknowledged by Developer and delivered to City prior to issuance of a building permit for each residential building and then recorded prior to issuance of the temporary certificate of occupancy for each residential building, which shall include a breakdown of the types of units provided as affordable, which shall be directly proportionate to the types of units in each Parcel. The Affordable Housing Agreement shall allow the project to be converted to an ownership residential project; provided, however, that at least twenty percent (20%) of the ownership residential units shall be affordable to moderate income households and subject to the restrictions set forth in pursuant to Article 4 of Chapter 5 of Title 9 of the EMC. Developers, on behalf of themselves, their parent companies, subsidiaries, and affiliates and their members, shareholders, partners, principals, heirs, executors, successor and assigns, and all other persons or entities acquiring the Property or any interest therein, hereby waive and release any and all claims arising directly or indirectly from, and covenant not to sue City or City Parties in connection with the provision of Affordable Housing Units. Each Developer’s obligations under this Section 7.1 as to its interest in Parcel A, Parcel C or Parcel D, as applicable, are binding upon their successors in title to Parcel A, Parcel C or Parcel D, as applicable.

7.2 Public Art. Prior to issuance of a certificate of occupancy for the first building constructed on the Property, City and Developer shall establish and enter into a Public Market

Project Art Escrow Account Agreement (“**Art Agreement**”) providing for the establishment of a Public Market Project Art Escrow Account (“**Art Account**”) with a licensed financial institution of Developer’s choosing (“**Art Account Escrow Holder**”), and once established, Developer shall deposit the public art fee applicable pursuant Section 3-2.406 of Article 4 of Chapter 2 of Title 3 of the EMC to that first building in said Account. Prior to issuance of a building permit for all subsequent buildings constructed on the Property, Developer shall deposit the public art fee applicable to that building in the Art Account. In the event one or more subsequent building permits are issued to Developer for construction of one or more building(s) on the Property and the Art Account has yet to be established, the public art fee shall be paid by the Developer on the subsequently issued permit(s) upon issuance of a certificate of occupancy for the first building constructed on the Property and establishment of the Art Account. Said Art Agreement shall, at a minimum, provide for notice to City by Escrow Holder of all deposits, withdrawals and expenditures from said Art Account, and the submission of supporting documentation (contracts, invoices, etc.) by Developer to City in support of all such deposits, withdrawals and expenditures from said Art Account.

Within one (1) year of establishment of the Art Account, Developer shall, in consultation with the Emeryville Public Art Committee encompassing no less than three (3) public meetings with the Committee, utilize no more than fifty thousand dollars (\$50,000) of the funds in the Art Account to prepare and adopt a Public Market Project Art Master Plan (“**Art Master Plan**”) for the Property and the Public Market Streets and the relocated Parcel A pedestrian easement (the “**Public Rights of Way**”). The Art Master Plan shall focus on the use and placement of art on the Property and within the Public Rights of Way, to enhance, enliven, encourage and increase pedestrian activity. The Art Master Plan may include recommendations for locations on the Property and within the Public Rights of Way for signature works of art, smaller scale projects that are more intimately viewed by the public, and temporary exhibits, performances, or events. The Art Master Plan shall be approved by the Emeryville Transportation Committee solely to confirm the appropriateness of proposed locations of art pieces within the Public Rights of Way. Finally, the Art Master Plan shall include a process for soliciting proposals and contracting with selected artists for the design, preparation and installation of art in the locations on the Property and the Public Rights of Way as depicted therein, and a schedule for expenditure of funds deposited into the Art Account.

The Art Master Plan shall be submitted to the Director of Community Development within thirty (30) calendar days after adoption by the Developer for his or her approval confirming said Art Master Plan has been prepared and adopted in accordance with this Section 7.2. For works of art to be located within the Public Rights of Way, City and Developer shall enter into an encroachment agreement approved by the City Council which will identify the locations of art to be installed, require the provision of appropriate insurance during construction and installation of the art work, and other contractual protections as deemed necessary by the City in the management of its right of way, specifically including waiver by artists of any rights under the California Art Preservation Act (California Civil Code Sections 980 et seq.), the 1990 Visual Artists’ Rights Act, and any other similar state or federal law.

Notwithstanding the foregoing, if a proposal for public art installation is approved on any portion of the Property pursuant to Section 3-2.403 of Article 4 of Chapter 2 of Title 3 of the

EMC, Developer shall not be obligated to contribute to the Art Account described in this Section 8 as to that portion of the Property.

In particular, the treatment of the east wall of the Parcel B structure may satisfy the public art obligation applicable to Parcel B pursuant to Article 4 of Chapter 2 of Title 3 of the EMC provided that the cost of the treatment exceeds the contribution amount specified in Section 3-2.403 of Article 4 of Chapter 2 of Title 3 of the EMC for Parcel B notwithstanding any other restriction on satisfying the public art obligation with a façade treatment. In such instance, Developer shall be deemed in compliance with Section 3-2.406 of Article 4 of Chapter 2 of Title 3 of the EMC (including the obligation to provide an in-lieu contribution, or provide proof of a contractual agreement to commission or purchase and to install art work) and this Section 7.2 (including the obligation to contribute to the Art Account). In the event that the cost of the treatment does not exceed the contribution amount specified in Section 3-2.403 of Article 4 of Chapter 2 of Title 3 of the EMC for Parcel B, the Developer shall deposit the remaining contribution to the Art Account as described in this Section 7.2.

7.3 Transportation Benefit. Within six months of obtaining a temporary certificate of occupancy and throughout the Term of this Agreement, each Developer shall have established and implemented either one of the following transportation benefits, which such election shall be at the sole discretion of the Developer: (i) a program to provide a ridership benefit on AC Transit either through (x) participation in the then applicable EasyPass program, or (y) providing an AC Transit pass to each residential unit that request a pass or (ii) a program to provide subsidized BART or Amtrak passes available for use by each residential unit that requests subsidized BART or Amtrak passes. Each Developer shall annually survey its residents regarding their predominant mode of transportation before electing which transportation benefit to provide, with the overall goal of serving the greatest number of residents. If the program provides options for the type of benefit, said program shall provide an opportunity for each residential unit to annually elect which transportation benefit they wish to have available for their household; provided, however, that no household may receive more than one such benefit. If a Developer elects to provide subsidized BART or Amtrak passes, the annual value of the subsidy provided by Developer for BART or Amtrak passes shall be no more than the annual cost of the AC Transit EasyPass program based on the Level of Transit Service determined by AC Transit to be applicable to the Project for 100-500 Program Participants at that time. This transportation benefit shall be identified in the lease agreement and each Developer shall post a notice describing the benefit in a location visible to residents. Each Developer shall provide documentation of the proposed transit benefit program to the Planning Director for approval prior to implementation. Each Developer shall thereafter provide documentation showing provision of passes, vouchers or other such means of providing the transportation benefit within six months after establishment and implementation of the program. Any changes in the transportation benefit program shall be approved by the Planning Director prior to implementation.

8. City Assistance.

8.1 Modifications to FDPs. In consideration for the Developers' assistance described in Section 7, particularly the provision of Affordable Housing Units, the City agrees to the following design and public works modifications to support the economic viability of the Project.

The City Manager shall be authorized to direct the Community Development Director to make the finding of substantial conformance under this Section 8.1 and to prepare and approve a revised and consolidated FDP for each parcel respectively and as applicable.

8.1.1 Parcel C Trellis. The rooftop trellis over residential parking shown on Parcel C FDP Plans shall not be required to be shown in any plans required for the issuance of permits and shall not be required to be constructed. For purpose of illustration, the rooftop trellis is shown on Sheets G006, G008, AC001, AC105, AC106, AC107, AC201, AC203, AC204, AC205, AC301, AC504B, L004, L005, L007, L017. Any depiction of the rooftop trellis on Parcel C FDP Plans (or other plans) separate from those listed in this Section 8.1.1. shall not be interpreted to require such rooftop trellis. This Section 8.1.1. supersedes Parcel C FDP Condition VII.A.10 requiring the applicant to work with the Community Development Director to improve the design of the trellis as it relates to the rooftop trellis over residential parking.

8.1.2 Parcel C Residential Windows. The residential windows shown on Parcel C FDP Plans may be modified from Aluminum to Vinyl. The aesthetic of the windows shall be maintained. For purpose of illustration, the residential windows are shown on Parcel C FDP Plans Sheets G008, AC001, AC201, AC202, AC203, AC206, AC303, AC304, AC502, AC503, AC504A, AC504C, L004, L017, L018.

8.1.3 Parcel C Grocery Storefront. The glass grocery storefront, as depicted in Parcel C FDP Plans may be modified to allow a concrete window sill at the base of each window and modified storefront, as depicted in Exhibit F1. As further depicted in Exhibit F1 corner window panes must extend to the floor. For purpose of illustration, the glass grocery storefront is shown on FDP C PDP Plans Sheets G008, AC201, AC203, AC204, AC205, AC301, AC302, AC304, L004, L007, L017. Any depiction of the glass grocery storefront extending to the floor on the Parcel C FDP Plans (or other plans) separate from those listed in this Section 8.1.3. shall not be interpreted to require glass extending to the floor, except as provided in this Section 8.1.3 for corner window panes.

8.1.4 Parcel A Board Formed Concrete. The board formed concrete, as depicted in Parcel A FDP Plans Sheet A2.11, shall not be required to be shown in any plans or constructed for that portion of the east elevation of the Parcel A building directly beneath the approximately 25'-7" wide bridge walk and existing pedestrian bridge required for the issuance of permits, as is more specifically depicted in Exhibit F2. Any depiction of the board formed concrete on Parcel A FDP Plans (or other plans) separate from that listed in this Section 8.1.4. shall not be interpreted to require such board formed concrete.

8.1.5 Parcel B Trellis. A rooftop trellis over parking shall not be required as part a FDP (or any other requirement) for Parcel B.

8.2 Market Drive Stormwater Improvements. Improvements to reslope Market Drive to direct stormwater from Parcel G to the new public storm drain on 64th Street shall not be required. Notwithstanding the foregoing, in the event that improvements are required in connection with Tentative Map Condition IV.(B)(1) such improvements may be required only to the extent that the improvements are necessary in order to achieve compliance with the Municipal Regional Stormwater Permit and there is no other feasible way to achieve compliance.

8.3 Payment of Impact Fees. Consistent with Section 9-5.1906 of Article 19 of Chapter 5 of Title 9 of the EMC, the City has confirmed that the Developer may elect to pay fees before: (i) final inspection or (ii) issuance of a certificate of occupancy, whichever occurs first. Consistent with Section 9-5.414 of Article 4 of Chapter 5 of Title 9 of the EMC, Developer shall not be required to pay the traffic impact fees, if any, building fees and other City fees applicable to the affordable units of a proposed housing development.

9. Processing of Subsequent Project Approvals.

9.1 City Processing of Subsequent Entitlements. The City and Developers agree that Developers must be able to proceed efficiently with the development of the Property and that, accordingly, an efficient City review and land development and construction inspection process is necessary. Accordingly, the City agrees that upon submission by Developers of all appropriate applications and processing fees, City shall, to the full extent allowed by law, promptly and diligently, subject to applicable law, commence and complete all steps necessary to act on Developers' currently pending applications for Subsequent Project Approvals. City agrees that the scope of its review of remaining or supplementary applications for development approvals shall be exercised in a manner consistent with the terms of this Agreement and Applicable Law. In recognition of the public benefits of this Project, the City shall prioritize the processing of subsequent entitlements and permits and shall use good faith efforts to process permits expeditiously. Good faith efforts to expeditiously process permits shall include:

(i) With respect to processing any plan check for which the City has engaged a third party plan checker, City shall use good faith efforts to enforce any timing requirements set forth in any contract with such third party plan checker. The City acknowledges that its current contract requires its consultant to provide initial plan check within fifteen (15) to thirty (30) business days of receipt and subsequent recheck comments within fifteen (15) business days. For any plan checking performed by the City, such as Public Works, it shall use good faith efforts to meet the same timeframes set forth in any contract with a third party plan checker.

(ii) City shall request that the Alameda County Fire Department meet the same timeframes as outlined in subpart (i). In the event that the Alameda County Fire Department fails to meet such timeframes, if requested by Developer or Developers, the City shall request that the Alameda County Fire Department prioritize its review.

(iii) Review of any documentation prepared for the Department of Toxic Substances Control requiring City review within two (2) weeks of receipt of such documentation and request by a Developer.

9.2 CEQA. The Parties understand that the Marketplace EIR is intended to be used not only in connection with the Existing Approvals, but also in connection with necessary Subsequent Project Approvals for the Term of the Agreement. However, the Parties acknowledge that, depending on the scope of the project described in Developers' applications, certain discretionary Subsequent Project Approvals, may legally require additional analysis under CEQA. Notwithstanding any other provision of this Agreement, nothing contained herein is intended to limit or restrict the discretion of the City to comply with CEQA. However, the

City shall not undertake additional environmental review or impose new or additional mitigation measures on the Project other than as required by Public Resources Code section 21166 and CEQA Guidelines section 15162. To the extent supplemental or additional review is required in connection with Subsequent Project Approvals, Developers acknowledge that City may require additional mitigation measures necessary to mitigate significant impacts that were not foreseen at the time this Agreement was executed; provided, however, that such mitigation shall only relate to Subsequent Project Approvals and may not mitigate for impacts associated with the Existing Approvals that are vested by this Agreement.

9.3 Term of Existing and Subsequent Project Approvals. All Existing Project Approvals and all Subsequent Project Approvals relating to the Property or any portion thereof, including modifications or amendments thereto, shall be extended to the later of: (i) the expiration of the Term, or (ii) the date provided by applicable law.

9.4 Incorporation of Subsequent Project Approvals. All Subsequent Project Approvals shall be deemed incorporated herein and vested as of the effective date of such approvals and shall be governed by the terms and conditions of this Agreement. Upon request by any Developer, the City and such Developer shall enter into an amendment to this Development Agreement to be recorded against such Developer's Property and identifying and incorporating the specific Subsequent Project Approvals which have been granted with respect to such Property. Such an amendment is deemed a Minor Amendment. All costs incurred by City in connection with the preparation of such amendment, including reasonable attorney's fees, shall be reimbursed by the requesting Developer within ten (10) business days following City's demand therefor.

9.5 Public Market Streets Agreements. The City Manager, or his or her designee, is hereby authorized to execute and implement the (a) Public Market Streets Property Exchange Agreement substantially in the form of Exhibit G and the (b) Public Market Streets Improvement Agreement substantially in the form of Exhibit H. The Parties shall use good faith efforts to expeditiously negotiate and finalize the Public Market Streets Property Exchange Agreement and Public Market Streets Improvement Agreement, which shall include efforts to execute the Public Market Streets Property Exchange Agreement and Public Market Streets Improvement Agreement by the Effective Date of this Agreement. The City Manager is hereby authorized to revise the Public Market Streets Property Exchange Agreement and Public Market Streets Improvement Agreement to include final revisions necessary to conform with the Project Approvals. The City Manager shall promptly and diligently, subject to applicable law, commence and complete all steps necessary to implement the agreements.

9.6 Parcel A Land Exchange and Improvement Agreement. The City Manager, or his or her designee, is hereby authorized to negotiate, execute and implement the necessary agreements to relocate the existing pedestrian easement on Parcel A, in substantial conformance with the following terms: (a) temporary relocation of the easement during construction; (b) permanent relocation of the easement consistent with design of the buildings on Parcel A; (c) conveyance by the City of City property surrounding the west tower at the pedestrian bridge to AVB; (d) air rights to construct over the foundation of the west tower; (e) a process for making modifications to the east and west tower and bridge, as necessary; (f) rights for the City to access the west tower as reasonably necessary to perform maintenance and repairs; (g) maintaining

public access to the pedestrian bridge during construction; (h) structural and/or seismic evaluation of the existing east and west tower and bridge in order to assess the need for any structural modifications or enhancements to the east or west tower or bridge as a result of the modifications to the west tower required by the building on Parcel A and payment by Developer of all costs to evaluate, assess, design, permit and construct all modifications or enhancements to the east or west tower or bridge reasonably required by City; and (i) consideration for the relocation of the easement shall be the upgraded pedestrian walkway and the structural modifications and enhancements to the tower. The Parties acknowledge receipt of a preliminary seismic assessment of the Amtrak Pedestrian Overcrossing dated October 20, 2015, prepared by Wiss, Janney, Elstner Associates, Inc. for the City, which concludes that modifications to the west tower required by the building on Parcel A “will affect the overall seismic performance of the overcrossing and that further study is needed to ensure that the modifications are implemented in an appropriate way”. The Parties shall use good faith efforts to expeditiously negotiate and finalize the Parcel A Land Exchange and Improvement Agreement, which shall include efforts to execute the Parcel A Land Exchange and Improvement Agreement within sixty (60) days of the Effective Date.

9.7 Christie Park Expansion Improvement Agreement. The City Manager, or his or her designee, is hereby authorized to execute and implement the Christie Park Expansion Improvement Agreement substantially in the form of Exhibit I. In exchange for the Christie Park Expansion, the Developer is deemed eligible for a credit against impact fees otherwise owed pursuant to Section 9-5.1911 of Article 19 of Chapter 5 of Title 9 of the EMC and subject to the process for demonstrating land dedication and improvement costs in the Christie Park Expansion Improvement Agreement. The Parties shall use good faith efforts to expeditiously finalize and execute the Christie Park Expansion Improvement Agreement, which shall include efforts to execute the Christie Park Expansion Improvement Agreement by the Effective Date of this Agreement. The approval of this Agreement and authorization of the City Manager to execute the Christie Park Expansion Improvement Agreement satisfies permitting obligations as provided in Tentative Map Condition III.A.5.c. To the extent that there are any inconsistencies between the Tentative Map and the Christie Park Expansion Improvement Agreement with respect to the timing for the Christie Park Plans and Specifications or the provision of security, the Christie Park Expansion Improvement Agreement shall control and shall be deemed to supersede any conflicting language in the Tentative Map. The City Manager is hereby authorized to revise the Christie Park Expansion Improvement Agreement to include final revisions necessary to conform with the Project Approvals. The City Manager shall promptly and diligently, subject to applicable law, commence and complete all steps necessary to implement the agreements.

9.8 Tentative Map. As described in Recital L, the Planning Commission has approved a Tentative Map for the Property (the “**Tentative Map**”). Consistent with the Abandonment Resolution-Sewer, if, prior to issuance of a building permit for construction of improvements on Parcel C, the Final Map approval has not been processed and recorded, the City Manager is authorized to enter into necessary agreement(s) to (i) accept the grant of a temporary easement for the relocation of the sewer main along the future 63rd Street alignment between Shellmound Street and Christie Avenue, (ii) require the design, construction, installation, inspection and acceptance of the completed sanitary sewer in a public improvement agreement by and between the City and AG-CCRP (as already provided pursuant to Section 9-6.603 of Article 6 of Chapter 6 of Title 9 of the EMC), (iii) authorize Developers to conduct

work within the existing easement and (iv) terminate the temporary easement via quitclaim or other mechanism in accordance with the timing and conditions set forth in the Public Market Street Exchange Agreement.

9.9 Parcel A Retail Parking. This Agreement expressly provides the right to provide parking for proposed retail use on Parcel A (a) outside the Property through implementation of parking demand strategies such as valet parking on a temporary basis during active construction on the Property that limits the ability to provide parking for the Parcel A retail uses or (b) on a parcel other than Parcel A that is within the Property, including but not limited to (i) Parcel B (on temporary surface parking or the structured garage once constructed) or (ii) Parcel C (on temporary surface parking or the structured garage once constructed). This provision expressly supersedes Parcel A FDP Condition VI.A.1.e.

9.10. Parcel A and D Signage. If requested by the Developer, the City agrees to process all signs proposed for Parcels A and D by the Planning Director according to the Minor Design Review procedures set forth at Section 9-7.404 of Article 4 of Chapter 7 of Title 9 of the EMC.

10. Amendments.

10.1 Amendment By Written Consent. Except as otherwise expressly provided herein (including Section 6 relating to termination as to only one Developer, Section 12 relating to City's annual review and Section 13 relating to termination in the event of a breach), this Agreement may be terminated, modified or amended only by mutual written consent of the Parties hereto or their successors-in-interest or assignees and in accordance with the provisions of Government Code Sections 65867, 65867.5 and 65868 and Article 11 of Chapter 7 of Title 9 of the EMC. Any termination, modification or amendment (whether a Major Amendment or Minor Amendment) that only affects a portion of the Property over which only one Developer has an interest may be effectuated by mutual written consent of the affected Developer and the City; provided, however, that the other Developer shall be given written notice of the proposed amendment and its substance at least thirty (30) days prior to its execution.

10.2 Major Amendment. 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. Any amendment which is not a Major Amendment shall be deemed a "**Minor Amendment**" subject to Section 10.3 below and shall not, except to the extent otherwise required by Applicable Law, require notice or public hearing before the Parties may execute an amendment hereto. The City Manager or his or her designee shall have the authority to determine if an amendment is a Major Amendment subject to this Section 10.2 or a Minor Amendment subject to Section 10.3 below. Each Developer shall have the right to appeal the City Manager's determination to the City Council in accordance with Chapter 4 of Title 1 of the EMC.

10.3 Minor Amendment. The City Manager or his or her designee shall have the authority to review and approve amendments to this Agreement provided that such amendments are not Major Amendments. Each Developer shall have the right to appeal such City Manager approvals or disapprovals to the City Council in accordance with Chapter 4 of Title 1 of the EMC.

10.4 Extensions of Time for Performance. Times of performance under this Agreement may be extended in writing by the mutual agreement of City Manager and the applicable Developer.

10.5 Requirement for Writing. No modification, amendment or other change to this Agreement or any provision hereof shall be effective for any purpose unless specifically set forth in a writing, which refers expressly to this Agreement and is signed by duly authorized representatives of the Parties or their successors. The City Clerk shall record an appropriate notice of any Major Amendment, cancellation or termination with the Alameda County Recorder not later than ten (10) days after the effective date of the action effecting such amendment, cancellation or termination, accompanied by a legal description of the Property.

10.6 Amendments to Development Agreement Legislation. This Agreement has been entered into in reliance upon the provisions of the development agreement legislation (California Government Code Section 65864 *et seq.*) as those provisions existed on the Effective Date. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement unless such amendment or addition is specifically required by the California State Legislature, or is mandated by a court of competent jurisdiction. If such amendment or change is permissive (as opposed to mandatory), this Agreement shall not be affected by the same unless the Parties mutually agree in writing to amend this Agreement to permit such applicability.

11. Effect of Termination on Developers' Obligations.

11.1 Continued Applicability of Existing Project Approvals. Notwithstanding any other provision hereof to the contrary, termination of this Agreement or any part thereof, shall not affect any requirement to comply with the Project Approvals and the terms and conditions of the applicable zoning, planned unit development or final development plan approvals, any applicable permit(s), or any subdivision map or other land use entitlements, or any payments then due and owing to City. Developers understand and agree that the Existing Project Approvals may be substantially modified in light of the circumstances resulting from the termination of this Agreement or Developers' rights hereunder and Developers shall have no rights to challenge said modification by reason of this Agreement other than the rights, if any, Developers would have in the absence of this Agreement.

11.2 Provisions Surviving Termination. Notwithstanding anything in this Agreement to the contrary, Section 17 [Indemnification] of this Agreement shall survive and remain in effect following termination or cancellation of this Agreement for so long as necessary to give its provisions full force and effect with respect to claims or rights of City arising prior to such termination or cancellation.

12. Annual Review. City and Developers shall annually review this Agreement, and all actions taken pursuant to the terms of this Agreement with respect to the Project, in accordance with the provisions of Section 9-7.1107 of Article 11 of Chapter 7 of Title 9 of the EMC. Developers shall have the right to either file a joint report or each Developer may file its own report.

12.1 Certificate of Compliance. If the City Manager (or the City Council, if applicable) finds good faith compliance by Developers with the terms of this Agreement, the City Manager shall, upon request of Developer or Developers, issue a certificate of compliance within ten (10) business days thereafter, certifying Developers' good faith compliance with the terms of this Agreement through the period of the applicable annual review. Such certificate of compliance shall be in recordable form and shall contain such information as may be necessary in order to impart constructive record notice of the finding of good faith compliance hereunder. Developers shall have the right to record the certificate of compliance in the Official Records of the County of Alameda.

12.2 No City Waiver. City does not waive any claim of defect or breach in performance by Developers if, following periodic review pursuant to this Section 12, City does not propose to modify or terminate this Agreement. Failure of City to conduct an annual review shall not constitute a waiver by City of its rights to otherwise enforce the provisions of this Agreement nor shall Developers have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

13. Defaults and Remedies.

13.1 Remedies for Breach. Upon the occurrence of any breach resulting from Developers' failure to pay when due any monies owing under the terms of this Agreement, including the failure to provide the Affordable Housing Units, City shall have the right, in addition to the remedies specified below, to recover damages or to obtain any other remedy available at law or in equity consistent with the purpose of this Agreement. City and Developers agree that in the event of any non-monetary breach of this Agreement, the only remedies available to the non-breaching party shall be: (1) suits for specific performance to remedy a specific breach; (2) suits for declaratory or injunctive relief; (3) suits for mandamus under Code of Civil Procedure Section 1085, or special writs; or (4) termination of this Agreement or, at the option of City in the event of breach by a Developer or Developers, termination of the rights of a Developer or both Developers, as applicable, under this Agreement. All of these remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy. Neither party shall be entitled to any special, consequential or punitive damages in the event of a breach by the other party. Provisions of this Section 13 shall be subject to the qualification that if the failure or default relates only to AG-CCRP on the one hand or only to AVB on the other hand, and not to AG-CCRP and AVB together or the entire Project or the entire Property, then the procedures and remedies described in this Agreement shall apply only to the defaulting Developer and shall not apply to the non-defaulting Developer or its portion of the Property or Project. Notwithstanding anything to the contrary contained in this Agreement, each Developer's liability hereunder shall be severable and not joint, and each Developer shall have

liability hereunder with respect to any portion of the Property only in connection with matters arising during the term of such Developer's ownership of such portion of the Property.

13.2 Notice of Breach. Prior to the initiation of any action for relief specified in Section 13.1 above because of an alleged breach of this Agreement, the party claiming breach shall deliver to the other Party or Parties a written notice of breach ("**Notice of Breach**"). The Notice of Breach shall specify the reasons for the allegation of breach with reasonable particularity. The breaching party shall (a) in the case of a monetary breach, cure such breach within ten (10) business days following receipt of such Notice of Breach, or (b) in the case of a non-monetary breach, cure, correct or remedy such breach within thirty (30) days following receipt of such Notice of Breach, or if the non-monetary breach is of the nature to take longer than thirty (30) days to cure, take reasonable actions to commence curing the breach during such thirty (30) day period and to thereafter diligently and continuously prosecute such cure to completion.

13.3 Estoppel Certificate. Any party may, at any time, and from time to time, deliver written notice to any other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and is a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, and 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 therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The City Manager of City shall have the right to execute any certificate requested by Developers hereunder. City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees.

14. Cooperation and Implementation.

14.1 Other Governmental Permits. Developers shall apply in a timely manner for any approvals which may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. City shall cooperate with Developers (without, however, being required to be an advocate for Developers), without cost or financial obligation on the part of City, in Developers' endeavors to obtain such permits and approvals.

14.2 Cooperation in the Event of Third-Party Legal Challenge. City and Developers shall cooperate in the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, any Existing Project Approvals or Subsequent Project Approvals or the underlying environmental review and documents. To the extent that Developers determine, in their sole discretion, to contest such litigation challenges, Developers shall reimburse City, within thirty (30) days following City's written demand therefor, which may be made from time to time during the course of such litigation, all costs incurred by City in connection with the litigation challenge, including City's administrative, legal and court costs, provided that City shall either: (a) elect to joint representation by Developers' counsel; or (b) retain an experienced litigation attorney, require such attorney to prepare and comply with a litigation budget, and present such litigation budget to Developers prior to incurring obligations to pay legal fees in excess of \$5,000. If only one

Developer elects to contest such litigation, or if such litigation only relates to the Existing Project Approvals or Subsequent Project Approvals for only one Developer, only the Developer contesting such litigation shall have the reimbursement obligations set forth in the prior sentence. Developers further agree to indemnify and hold City harmless from and against any and all claims for recovery of the third party's litigation expenses, including attorney's fees. If Developers elect, in their sole and absolute discretion, not to contest such litigation challenges, City shall have no obligation to contest such challenges. If the City elects to contest such challenges after Developers elect not to contest, the City shall do so at its sole cost.

15. Transfers; Assignments. Notwithstanding any other provisions of this Agreement, each Developer, as applicable, may freely transfer title to (or any equitable interest in) all or a portion of the Public Market Property and may freely assign all or any part of its rights and duties under this Agreement with each such transfer without City consent, including but not limited, to any financial institution or other lender from which any Developer has borrowed funds for use in constructing the improvements contemplated in this Agreement or otherwise developing the Property. The assigning Developer shall provide a complete copy of any such assignment to City within ten (10) business days following execution thereof.

15.1 Assumption of Assigned Obligations; Release of Assignor. Subject to the provisions and conditions of this Section 15.1, upon the Assignment of any or all of the rights, duties, obligations or interests under this Agreement or other of the Project Approvals and receipt by City of the fully executed assignment and assumption agreement as provided for herein, the assignor (e.g., Developer) shall be released by the City and the other Developer from those obligations under this Agreement and the Project Approvals that are specified in the assumption agreement as having been assigned to and assumed by the assignee. Upon providing such assignment and assumption agreement to the City, (y) any default by an assignee of any rights, duties, obligations or interests so assigned and assumed by the assignee shall not thereby constitute a default or breach by the assignor with respect to the rights, duties, obligations or interests not assigned and (z) any default by the assignor of any rights, duties, obligations or interests not so assigned shall not thereby constitute a default or breach by the assignee with respect to the rights, duties, obligations or interests so assigned and assumed. The parties to the assignment and assumption agreement shall address in detail whether and how each obligation and right set forth in this Agreement and in the other Project Approvals shall be divided, allocated, assigned or otherwise assigned, in whole or in part, among the assignor and assignee; if requested by an assignor and assignee, City agrees to assist the assignor and assignee (including attendance at meetings), at assignor's expense, in determining how each obligation and right set forth in this Agreement and the other Project Approvals can be described and allocated in the assignment and assumption agreement so as to avoid confusion later regarding what obligations and rights have and have not been assigned. The assignment and assumption shall be in the form attached as Exhibit F [Form Assignment and Assumption Agreement] and shall be recorded on the portion of the Property to which the assignment applies.

15.2 Successive Assignment. In the event there is more than one Assignment under the provisions of this Section 15 the provisions of this Section 15 shall apply to each successive Assignment and Assignee.

16. Mortgagee Protection; Certain Rights of Cure.

16.1 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording this Agreement, including the lien of any deed of trust or mortgage (“**Mortgage**”). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement (including City’s remedies with respect to a Developer’s or Developers’ failure to provide Affordable Housing Units, and to seek other relief as provided in this Agreement) shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee (“**Mortgagee**”) who acquires title to the Property, or any portion thereof, by foreclosure, trustee’s sale, deed in lieu of foreclosure, or otherwise.

16.2 Mortgagee Not Obligated. Notwithstanding the provisions of Section 16.1 above, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of the Project, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by this Agreement, or otherwise under the Existing Project Approvals and Subsequent Project Approvals.

16.3 Notice of Default to Mortgagee. If City receives a written notice from a Mortgagee, Developers or any approved assignee requesting a copy of any notice of default given Developers or a designated approved assignee hereunder and specifying the address for service thereof, then City shall make good faith efforts to deliver to such Mortgagee at such Mortgagee’s cost (or Developers’ cost), concurrently with service thereon to Developers, any notice given to Developers with respect to any claim by City that Developers are in default hereunder, and if City makes a determination of default hereunder, City shall if so requested by such Mortgagee likewise make good faith efforts to serve at such Mortgagee’s cost (or Developer’s cost) notice of such noncompliance on such Mortgagee concurrently with service thereon on Developers. Each Mortgagee shall have the right during the same period available to Developers to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in City’s notice. Notwithstanding the foregoing, failure of City to provide notice to any party other than the Developer alleged or determined to be in default under this Agreement shall not render City’s notice inadequate.

16.4 No Supersedure. Nothing in this Section 16 shall be deemed to supersede or release a Mortgagee or modify a Mortgagee’s obligations under any subdivision improvement agreement or other obligation incurred with respect to the Project outside this Agreement, nor shall any provision of this Section 16 constitute an obligation of City to such Mortgagee.

17. Indemnification. It is specifically understood and agreed by the Parties that the development contemplated by this Agreement is a private development, that City has no interest in or responsibility for or duty to third persons concerning any of said improvements, and that Developers shall have full power over the exclusive control of the Property herein described subject only to the limitations and obligations of Developers under this Agreement. Each Developer hereby (severally and not jointly) agrees to and shall indemnify, defend with counsel reasonably acceptable to City and hold City and its elected and appointed representatives, officers, agents and employees harmless from any and all claims arising out of this Agreement

and related to any portion of the Project owned by such Developer, including claims for bodily injury, including death, and property damage, which may arise directly or indirectly from the acts, omissions, negligence or willful misconduct of Developers or their shareholders, partners, members, principals, officers, employees, representatives, agents, contractors or subcontractors, excepting suits and actions arising from the sole negligence or willful misconduct of City (“**Claim**”). This indemnification and hold harmless agreement applies to all damages and claims for damages (including attorneys’ fees and costs) suffered or alleged to have been suffered by reason of the acts, omissions, negligence or willful misconduct referred to in this Section 17, regardless of whether or not City prepared, supplied or approved plans or specifications for the Project. This Section 17 shall sunset and have no further force or effect on the date that is five (5) years after termination of this Agreement. Provisions of this Section 17 shall be subject to the qualification that each Developer shall have an obligation to defend and hold harmless the City only to the extent of any Claims relating to any portion of the Project owned by such Developer.

18. Insurance. During any period of construction of the Project, each Developer shall maintain and/or shall cause their contractors to maintain a commercial general liability policy in an amount not less than Two Million Dollars (\$2,000,000) combined single limit, including contractual liability together with a comprehensive automobile liability policy in the amount of One Million Dollars (\$1,000,000), combined single limit. Such policy or policies shall be written on an occurrence form, so long as such form of policy is then commonly available in the commercial insurance marketplace. Nothing in this Section 18 shall preclude the City from requiring different amounts of insurance through any of the improvement agreements for the off-site improvements. During any period in which construction is being undertaken, each Developer shall maintain or shall cause their contractor to maintain builder’s all-risk insurance in an amount not less than the full insurable value of the improvements under construction on a replacement cost basis; and each Developer shall cause to be furnished to City evidence reasonably satisfactory to City that any contractor with whom Developers have contracted for the performance of work on the Property carries workers’ compensation insurance as required by law. Companies writing the insurance required hereunder shall be approved to conduct business in the State of California. Each Developer’s insurance shall be placed with insurers with a current A.M. Best’s rating of no less than A-:VII. Each Developer shall furnish appropriate certificate(s) of insurance evidencing the insurance coverage required hereunder. City, and its officers, officials, and employees (collectively, “**City Parties**”) shall be named as additional insured parties under the liability policies required hereunder. The certificate of insurance shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination ten (10) days advance notice in the case of cancellation for nonpayment of premiums, if the insurance carrier provides such notices in its normal course of business. Coverage provided hereunder by Developers shall be primary insurance and shall not be contributing with any insurance, self-insurance or joint self-insurance maintained by City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of City to the extent that such waiver is commonly available with respect to such coverages. The required certificate shall be furnished by each Developer to City prior to commencement of construction of the Project.

19. Notices. Formal written notices, demands, correspondence and communications between City and Developers shall be sufficiently given if (a) personally delivered; or (b) dispatched by next day delivery by a reputable carrier such as Federal Express to the offices of City and Developers indicated below, provided that a receipt for delivery is provided; or (c) if dispatched within the San Francisco Bay Area by first class mail, postage prepaid, to the offices of City and Developers indicated below. Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as any party may from time-to-time designate by next day delivery or by mail as provided in this Section.

To City: City of Emeryville
1333 Park Avenue
Emeryville, CA 94608-3517
Attention: City Manager
Tel: (510) 596-4370

With a copy to: City of Emeryville
1333 Park Avenue
Emeryville, CA 94608-3517
Attention: City Attorney
Tel: (510) 596-4380

To AG-CCRP: AG-CCRP Public Market, L.P.
c/o City Center Realty Partners
170 Grant Avenue, 6th Floor
San Francisco, California 94108
Attention: Mark Stefan
Telephone: (415) 395-2908

With copies to: Holland & Knight
50 California St., Suite 2800
San Francisco, CA 94111
Attention: Tamsen Plume/Chelsea Maclean
Telephone: (415) 743-6900

To AVB: AvalonBay Communities, Inc.
455 Market Street, Suite 1650
San Francisco, CA 94105
Attn: Nathan Hong
Telephone: (415) 284-9093

AvalonBay Communities, Inc.
671 N Glebe Road
Arlington, VA 22203
Attn: Legal Department

With copies to: Morrison & Foerster LLP
425 Market Street

San Francisco, CA 94109
Attn: Miles Imwalle
Telephone: (415) 268-7000

Notices delivered by deposit in the United States mail as provided above shall be deemed to have been served two (2) business days after the date of deposit if addressed to an address within the State of California, and three (3) business days if addressed to an address within the United States but outside the State of California.

20. Miscellaneous.

20.1 Headings. Section headings in this Agreement are for convenience only and are not intended to be used to interpret or construe the terms, covenants or conditions of this Agreement.

20.2 Severability. Except as otherwise provided herein, if any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the Parties.

20.3 Agreement Runs with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement, including the Affordable Housing obligations as provided in Section 7.1 above, shall be binding upon the City, and its successors and assigns, and each Developer's respective successors in title to the Property or any portion thereof and permitted assigns, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the City, and its successors and assigns, and each Developer's respective successors in title to the Property or any portion thereof and permitted assigns. All of the provisions of this Agreement, including the obligations of Developers to provide Affordable Housing Units as provided in Section 7.1 above, shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property hereunder, or with respect to any City-owned property, (a) is for the benefit of such properties and is a burden upon such property, (b) runs with such properties, (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each property hereunder, and each other person or entity succeeding to an interest in such properties. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein that affects such portion of the Project or the Property, including the obligations of Developers and their successors and assigns to provide Affordable Housing Units as provided in Section 7.1 above, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Property.

20.4 Applicable Law/Venue/Attorneys' Fees and Costs. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference

to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of Alameda, State of California. Should any legal action be brought by any party because of breach of this Agreement or to enforce any provision of this Agreement, each party shall bear their own attorney's fees and such other costs as may be incurred.

20.5 Recordation of Termination. Upon expiration or termination of this Agreement, a written statement acknowledging such expiration or termination shall be recorded by City in the Official Records of Alameda County, California.

20.6 Interpretation. All Parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. Unless the context clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; (e) "includes" and "including" are not limiting; and (f) "days" means calendar days unless specifically provided otherwise.

20.7 Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

20.8 Agreement is Entire Understanding. This Agreement is executed in one original. This Agreement constitutes the entire understanding and agreement of City and Developer with respect to matters set forth herein.

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

[Signatures on the following page]

CITY:

CITY OF EMERYVILLE,

a California municipal corporation

By: Carolyn Lehr

Name: CAROLYN LEHR

Its: CITY MANAGER

Date: 1-4-16

"Effective Date"

APPROVED AS TO FORM:

By: Michael Quinn

City Attorney

ACKNOWLEDGMENT

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

State of California)

County of)

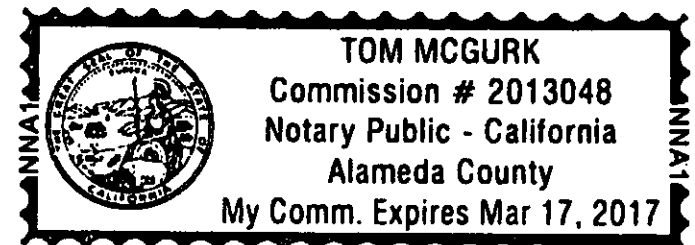
On January 4, 2016, before me, Tom McGurk, Notary Public, personally appeared Carolyn Lehr who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ 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.

Signature [Signature]

(Seal)



AG-CCRP:

AG-CCRP PUBLIC MARKET, LP,
a Delaware limited partnership

By: _____

Name: _____

Its: STEVEN G. WHITE

Date: 11/18/15

AKA Steven White

APPROVED AS TO FORM:

By: _____
AG-CCRP Attorney

ACKNOWLEDGMENT

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

State of California)

County of)

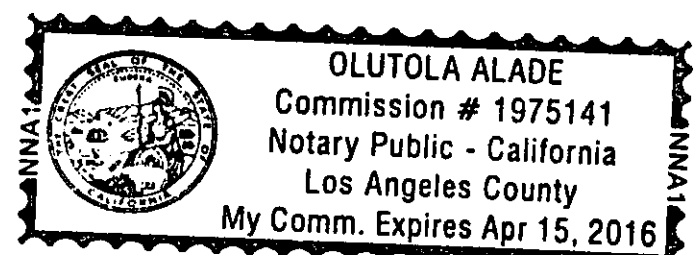
On November 18, 2015 before me, Olutola Alade,
personally appeared Steven White who proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), 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.

Signature Olutola Alade

(Seal)



AVB:

AVALONBAY COMMUNITIES, INC.,
a Maryland corporation

By: *Nathan Hong*

Name: Nathan Hong

Its: Senior Vice President

Date: 1/13/2016

APPROVED AS TO FORM:

By: *Mia Furell*
AVB Attorney

ACKNOWLEDGMENT

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

State of California)

County of SAN FRANCISCO)

On JANUARY 13th, 2016 before me, S. SAPPRASERT O'BRIEN, NOTARY PUBLIC, personally appeared NATHAN HONG 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.

Signature *S. Sapprasert O'Brien*



(Seal)

EXHIBIT A

LEGAL DESCRIPTION OF THE PUBLIC MARKET PROPERTY

EXHIBIT A

LEGAL DESCRIPTION OF THE REAL PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF EMERYVILLE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

PARCELS ONE, TWO, THREE AND FOUR AS SHOWN ON PARCEL MAP 9938, FILED DECEMBER 6, 2011, MAP BOOK 318, PAGES 66 THROUGH 69, ALAMEDA COUNTY RECORDS.

PARCEL B:

NON-EXCLUSIVE EASEMENTS, APPURTENANT TO PARCEL ONE, ABOVE, FOR THE USE OF ALL SERVICE DRIVES AND WALKWAYS FOR INGRESS AND EGRESS, PARKING AREAS FOR PARKING OF MOTOR VEHICLES AND FACILITIES INSTALLED FOR THE COMFORT AND CONVENIENCE OF CUSTOMERS, INVITEES, CONTRACTORS AND EMPLOYEES WITHIN THOSE COMMON AREA PORTIONS OF PARCEL ONE SHOWN ON SAID PARCEL MAP NO. 5303, AS SAID COMMON AREA IS DEFINED IN, AND AS SAID EASEMENTS WERE GRANTED PURSUANT TO, THAT CERTAIN "DECLARATION OF EASEMENTS AND RESTRICTIONS", EXECUTED BY CHRISTIE AVENUE PARTNERS, A CALIFORNIA PARTNERSHIP, DATED FEBRUARY 25, 1988, AND RECORDED FEBRUARY 29, 1988, AS SERIES NO. 88-051904, OFFICIAL RECORDS OF ALAMEDA COUNTY, STATE OF CALIFORNIA.

PARCEL C:

A NON-EXCLUSIVE EASEMENT APPURTENANT TO PARCEL ONE ABOVE, FOR PURPOSES OF INSTALLATION, MAINTENANCE, REPAIR, REPLACEMENT OR RELOCATION OF ALL EXISTING WATER SPRINKLER OR DRAINAGE SYSTEMS, GAS MAINS OR LINES, TELEPHONE OR ELECTRICAL OR FIBER OPTIC CONDUITS OR OTHER UTILITIES, TOGETHER WITH RIGHTS OF INGRESS AND EGRESS, UNDER, ON AND OVERTHAT CERTAIN REAL PROPERTY MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PORTION OF PARCEL 2 AS SHOWN ON PARCEL MAP NO. 5303, FILED FEBRUARY 26, 1988 IN BOOK 174 OF PARCEL MAPS, PAGES 91 AND 92, OFFICIAL ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE WESTERN TERMINUS OF THAT COURSE IN SAID PARCEL 2 CITED AS "N 75°58'00" E 164.07 FEET", BEING A POINT ON THE GENERAL EASTERLY LINE OF CHRISTIE AVENUE; THENCE ALONG SAID LINE SOUTH 14°02'00" EAST 15.00 FEET; THENCE NORTH 75°58'00" EAST 163.76 FEET; THENCE NORTH 14°02'00" WEST 15.00 FEET; THENCE SOUTH 75°58'00" WEST 163.76 FEET TO THE POINT OF BEGINNING.

APN: 049-1556-001, 049-1556-002, 049-1556-003, 049-1556-004

Exhibit A-1

EXHIBIT B

LEGAL DESCRIPTION OF THE CITY PROPERTY



June 9, 2015
BKF No. 20050045
Page 1 of 2

EXHIBIT A LEGAL DESCRIPTION VACATION OF A PORTION OF SHELLMOUND STREET

All that real property situate in the City of Emeryville, County of Alameda, State of California, described as follows:

Being a portion of Shellmound Street as shown on that certain "Parcel Map 9938" filed for record on December 6, 2011 in Book 318 at Pages 66-69, Records of Alameda County.

Commencing at the northeasterly corner of "PARCEL TWO" as shown on said "Parcel Map 9938" thence along the northeasterly line of said "PARCEL TWO," South 14°21'18" East, 91.29 feet to the **Point of Beginning** of this description;

Thence North 87°49'26" East, 51.07 feet to the northeasterly line of Shellmound Street as shown on said "Parcel Map 9938";

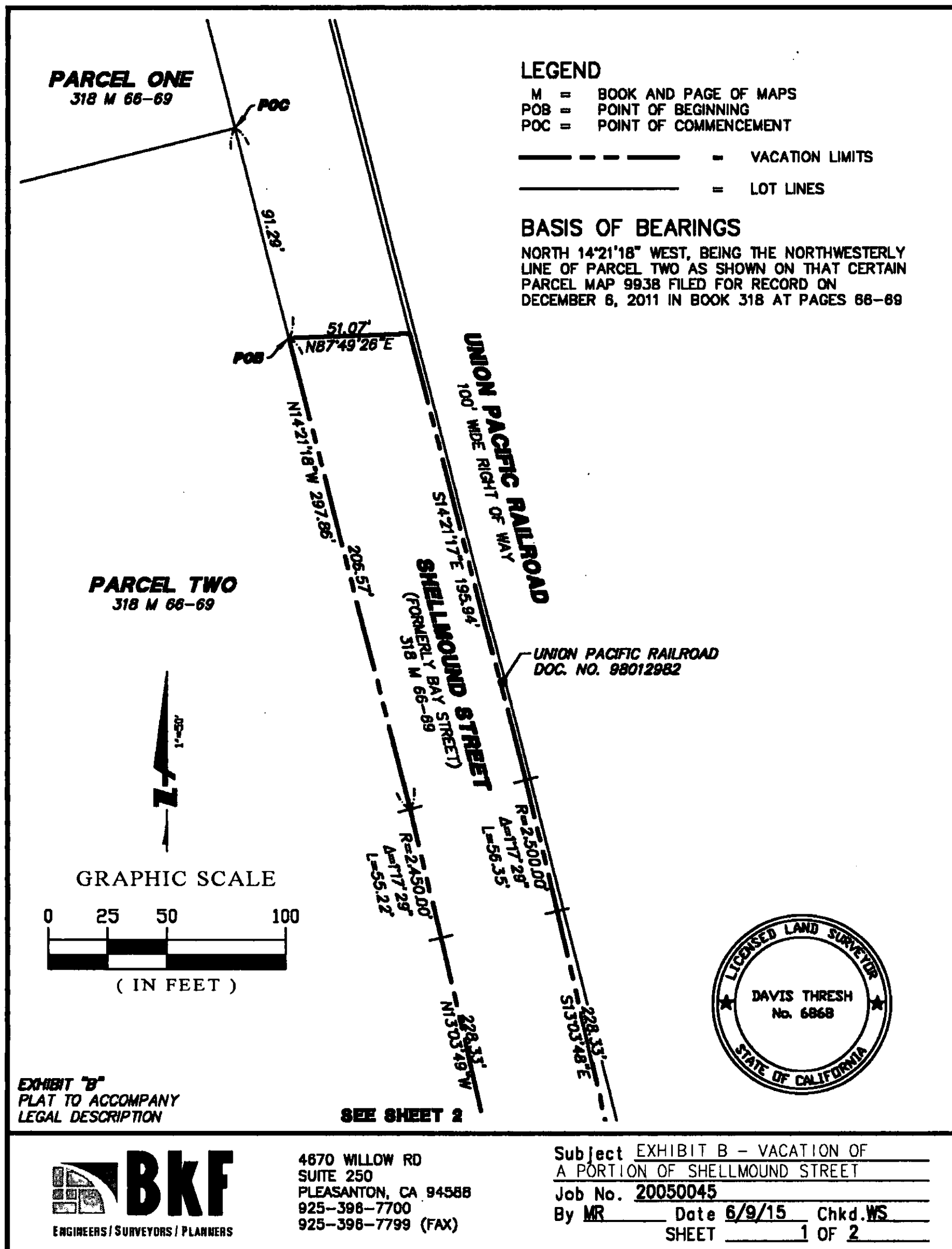
Thence along said northeasterly line the following six (6) courses:

- 1) South 14°21'17" East, 195.94 feet to the beginning of a tangent curve to the right, having a radius of 2,500.00 feet;
- 2) Along said tangent curve, through a central angle of 1°17'29", for an arc length of 56.35 feet;
- 3) South 13°03'48" East, 228.33 feet to the beginning of a tangent curve to the right, having a radius of 1,000.00 feet;
- 4) Along said tangent curve, through a central angle of 1°04'15", for an arc length of 18.69 feet;
- 5) South 11°59'33" East, 126.20 feet, to the beginning of a tangent curve to the left, having a radius of 1,000.00;
- 6) Along said tangent curve, through a central angle of 0°23'16", for an arc length of 6.77 feet to the northeasterly corner of "PARCEL THREE" as shown on said "Parcel Map 9938";

Thence along the general northerly line of said "PARCEL THREE," the following six (6) courses:

- 1) North 60°09'08" West, 42.67 feet to the beginning of a non-tangent curve to the left, having a radius of 5,635.65 feet, from the center of said curve a radial line bears North 76°21'19" East;
- 2) Along said non-tangent curve, through a central angle of 0°05'32", for an arc length of 9.08 feet to the beginning of a non-tangent curve to the right, having a radius of 196.00 feet, from the center of said curve a radial line bears South 68°49'19" East;
- 3) Along said non-tangent curve through a central angle of 20°30'58", for an arc length of 70.18 feet to a point of reverse curvature;
- 4) Along said reverse curve, having a radius of 500.00 feet, through a central angle of 6°08'45", for an arc length of 53.63 feet;
- 5) South 35°32'55" West, 3.00 feet to the beginning of a tangent curve to the left, having a radius of 149.00 feet;
- 6) Along said tangent curve, through a central angle of 24°34'21", for an arc length of 63.90 feet;

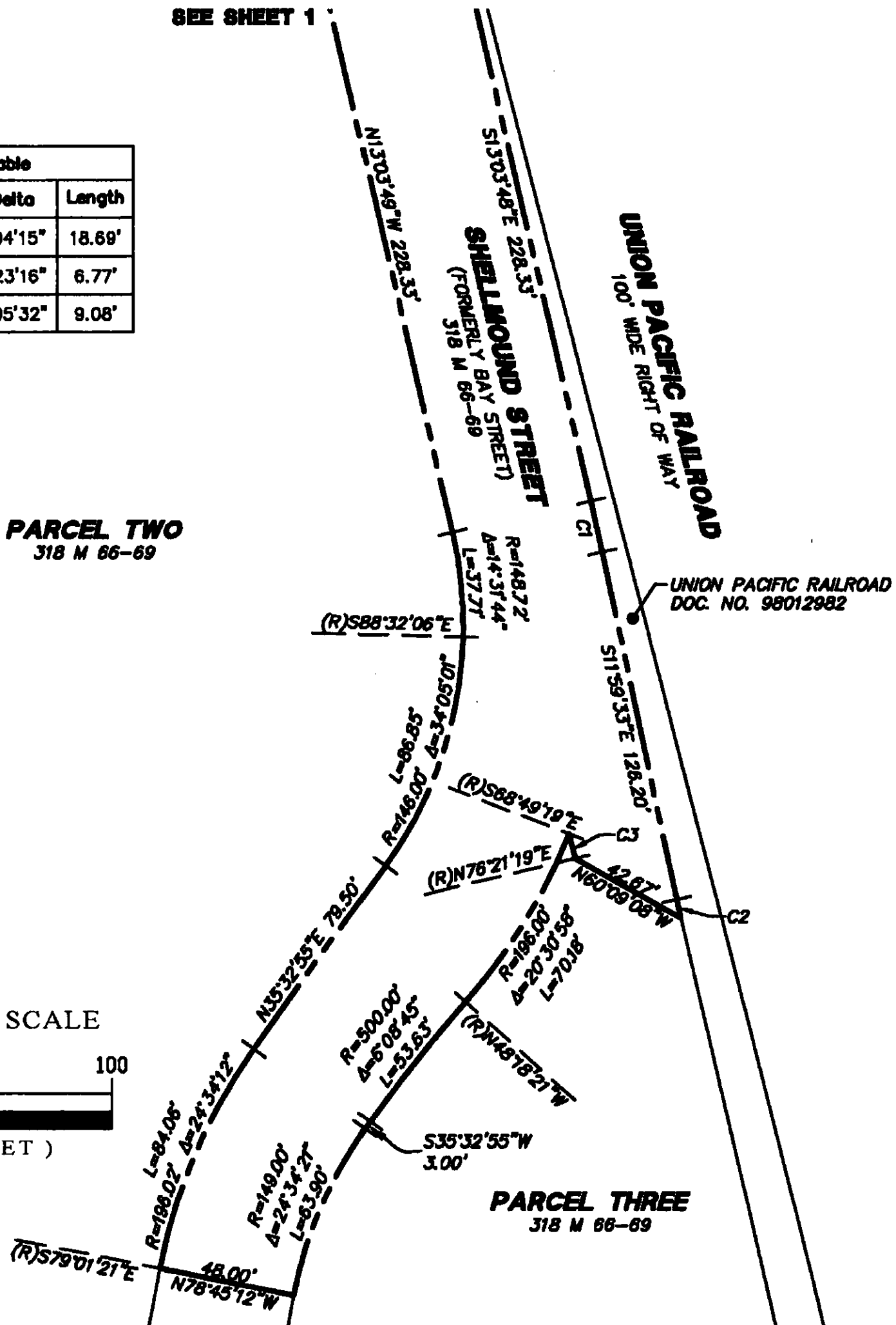
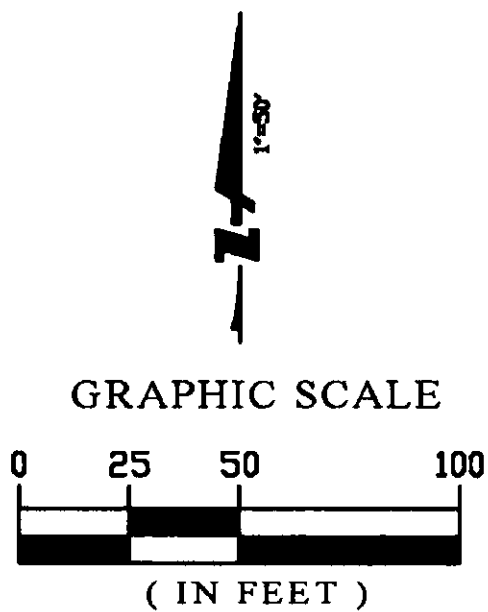
Thence leaving said northerly line, North 78°45'12" West, 48.00 feet to a point on the general northeasterly line of "PARCEL TWO" of said "Parcel Map 9938", said point being also the beginning of a non-tangent



SEE SHEET 1

Curve Table			
	Radius	Delta	Length
C1	1,000.00'	1°04'15"	18.69'
C2	1,000.00'	0°23'16"	6.77'
C3	5,635.65'	0°05'32"	9.08'

PARCEL TWO
318 M 66-69



4670 WILLOW RD
SUITE 250
PLEASANTON, CA 94588
925-396-7700
925-396-7799 (FAX)

Subject EXHIBIT B - VACATION OF
A PORTION OF SHELLMOUND STREET
Job No. 20050045
By MR Date 6/9/15 Chkd. WS
SHEET 2 OF 2



CITY OF EMERYVILLE

INCORPORATED 1954
2200 POWELL 12TH FLOOR
EMERYVILLE, CALIFORNIA 94608

TELEPHONE (415) 654-6161

Vanco
PO Box 272, Sta. A
Walnut Creek, CA 94596

Re: Assessor's Parcel No. 049-1493-001

ORDER NO. 101326

The land referred to in this report is situated in the state of California, County of ALAMEDA, and is described as follows:

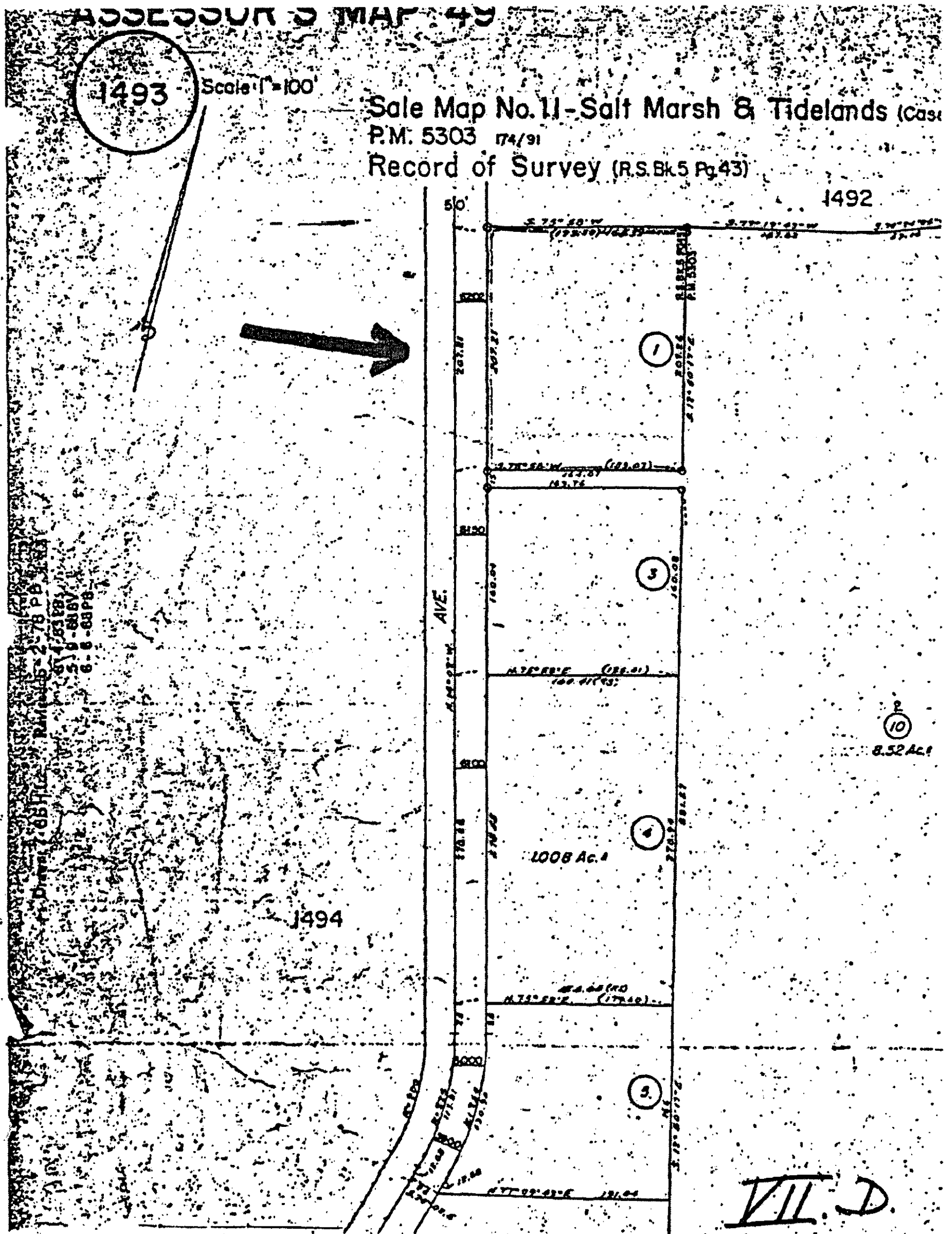
CITY OF EMERYVILLE

PORTION OF SECTION 16, TOWNSHIP 1 SOUTH, RANGE 4 WEST, MOUNT DIABLO BASE AND MERIDIAN, AS SHOWN ON "MAP NO. 4 OF SALT MARSH AND TIDE LANDS SITUATED IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA". DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WESTERN LINE OF THE MAIN LINE RIGHT OF WAY, 100 FEET WIDE, OF THE SOUTHERN PACIFIC RAILROAD COMPANY, FORMERLY NORTHERN RAILROAD, WITH A LINE DRAWN PARALLEL WITH AND DISTANT SOUTHERLY 50 FEET, MEASURED AT RIGHT ANGLES, FROM THE NORTHERN LINE OF THE LAND DESCRIBED IN THE DEED TO THE PARAFFINE COMPANIES, INC., DATED JULY 10, 1944, RECORDED JULY 11, 1944, IN BOOK 4533 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 434; THENCE ALONG SAID WESTERN LINE, SOUTH 14° 21' 18" EAST (SAID BEARINGS TAKEN FOR THE PURPOSE OF MAKING THIS DESCRIPTION) 457.18 FEET; THENCE SOUTH 71° 46' 22" WEST 215.22 FEET; THENCE SOUTH 70° 24' 25" WEST 59.14 FEET; THENCE SOUTH 77° 19' 43" WEST 157.82 FEET TO THE ACTUAL POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND: RUNNING THENCE SOUTH 12° 50' 17" EAST 207.26 FEET; THENCE SOUTH 75° 58' WEST 189.07 FEET TO THE CENTERLINE OF SHELLMOUND STREET, AS SAID STREET IS SHOWN ON THE MAP OF "RECORD OF SURVEY FOR VAN BOKKELEN-COLE CO., IN THE CITY OF EMERYVILLE, ALAMEDA COUNTY, CALIF.", FILED NOVEMBER 4, 1964, IN LICENSED SURVEY BOOK 5, PAGE 43, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY; THENCE ALONG THE LAST NAMED LINE, NORTH 14° 02' WEST 207.21 FEET TO A LINE DRAWN SOUTH 75° 58' WEST FROM THE POINT OF BEGINNING; AND THENCE NORTH 75° 18' EAST 193.39 FEET TO THE ACTUAL POINT OF BEGINNING.

ASSESSOR'S PARCEL NO. 049-1493-001

VII.D.
EXHIBIT A



Clarity copy can be found at: Chicago title
2150 John Glenn Dr #100
Concord, CA 94512
94528

Clarify Copy can be found at:
Chicago title
2150 John Glenn Dr #100
Concord, CA 94528

EXHIBIT C
DEPICTION OF PARCELS

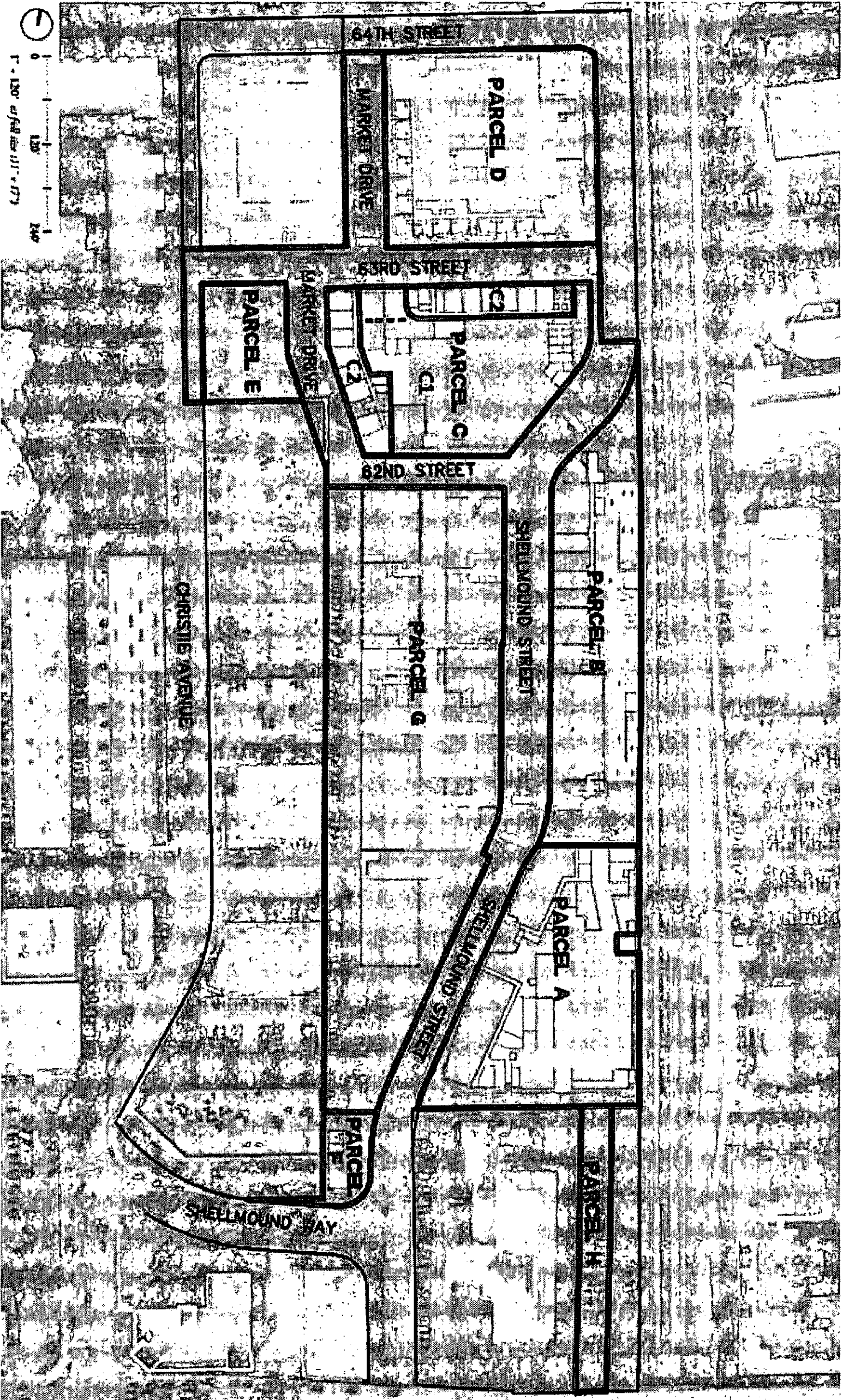
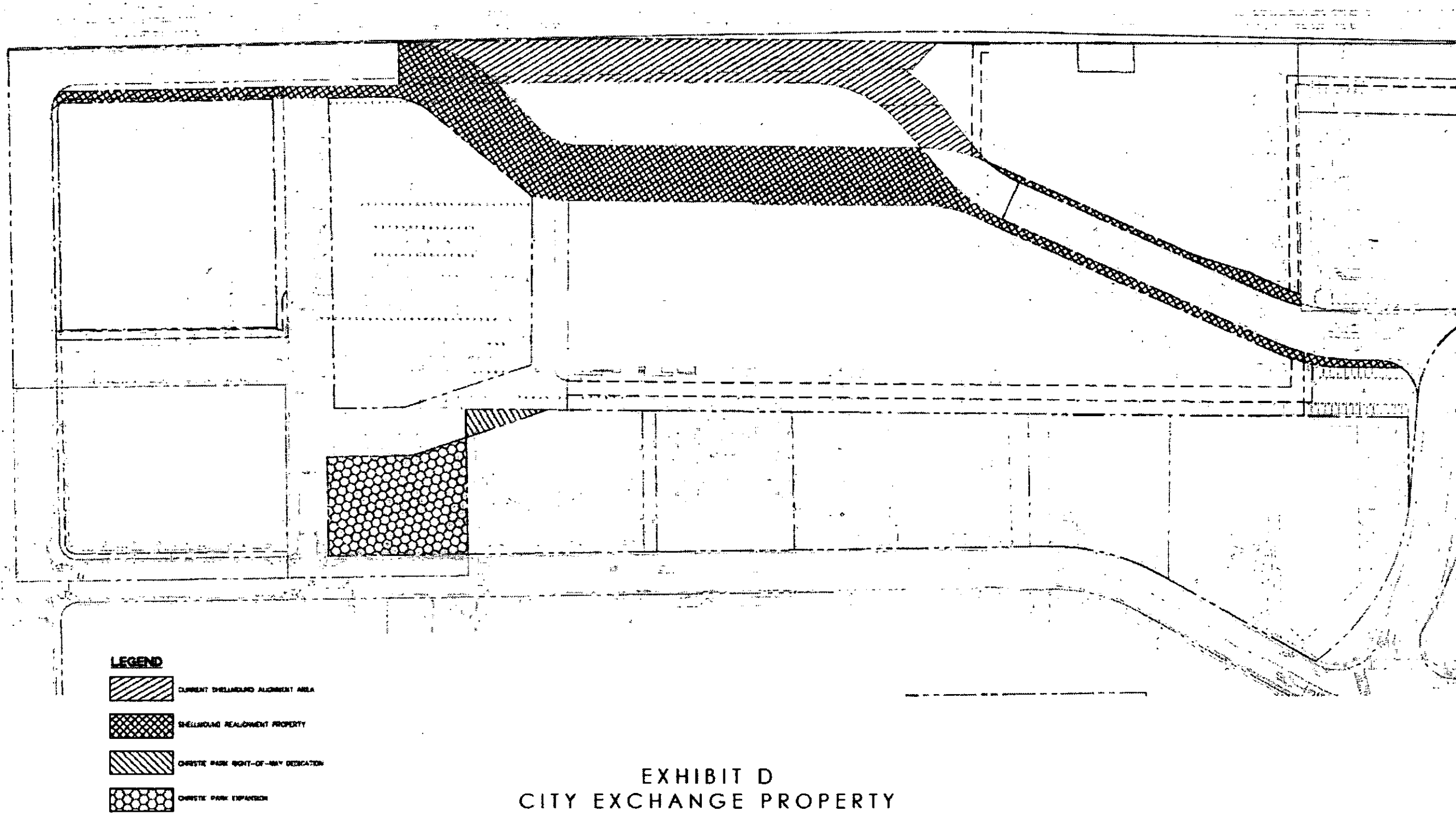


Exhibit C-1

Clarity Copy can be found at
2150 John Glenn Dr #100
Concord, CA 94528

EXHIBIT D

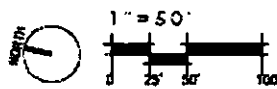
DEPICTION OF CITY EXCHANGE PROPERTIES



**EXHIBIT D
CITY EXCHANGE PROPERTY**

BKF
235 SHORELINE DRIVE, STE 200
REDWOOD CITY, CA 94063
650/422-8300
650/422-8300 (FAX)

EMERYVILLE MARKET PLACE
Emeryville, California



NOVEMBER 4, 2015

Exhibit D-1

EXHIBIT E

FORM OF AFFORDABLE HOUSING AGREEMENT

RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
City of Emeryville)
1333 Park Avenue)
Emeryville, CA 94608-3517)
Attention: City Attorney)
)

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

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT ("**Agreement**"), dated _____, 201_, is entered into by and between [DEVELOPER NAME] ("**Owner**"), and the CITY OF EMERYVILLE, a municipal corporation ("**City**"), and is made with reference to the following facts:

RECITALS

A. Owner owns that certain real property, designated as APN [NUMBER], located at [LOCATION] in the City of Emeryville, County of Alameda, State of California, more particularly described on Exhibit A attached hereto ("**Property**").

B. As provided in Emeryville Municipal Code Section 9-5.407(b), to ensure compliance with the Costa Hawkins Act and *Palmer/Sixth Street Properties L.P. v. City of Los Angeles*, 175 Cal.App.4th 1396 (2009), City may only approve a rental project with on-site affordable units if the applicant voluntarily agrees to do so in a recorded agreement with the City to limit rents in consideration for assistance provided by the City.

C. In consideration for the assistance provided by the terms of that certain Development Agreement dated [DATE], by and between City, AG-CCRP PUBLIC MARKET LP, a Delaware limited partnership, and AVALONBAY COMMUNITIES, INC., a Maryland corporation, recorded on [DATE] in the Official Records of Alameda County, Instrument No. [RECORDING NUMBER], Owner's predecessor-in-interest has elected to provide inclusionary units consistent with EMC Section 9-5.407(a) on the Property.

D. City and Owner now desire to establish certain mutually agreeable conditions and requirements related to review, development and ongoing ownership and operation of the Property.

E. The Development Agreement provides, among other things, for Owner's redevelopment of the Property with [a new one hundred sixty seven (167) unit rental apartment building, including eighteen (18) Affordable Units, together with structured parking and approximately [] square feet of ancillary retail (Parcel A); a new sixty six (66) unit rental apartment building, including seven (7) Affordable Units, together with structured parking and a 30,000 square feet grocery store (Parcel C); a new two hundred and twenty three (223) unit rental apartment building, including twenty-five (25) Affordable Units, together with structured parking (Parcel D)] .

F. The term "**Project**" means the Property and the Improvements to be constructed by Owner as set forth in the Development Agreement. "**Project Units**" means the [one hundred sixty seven (167)(Parcel A); sixty six (66)(Parcel C); two hundred and twenty three (223) (Parcel D)] residential apartment units to be constructed as part of the Improvements. Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Development Agreement.

G. Execution and recordation of this Affordable Housing Agreement against the Project is a condition of the Development Agreement.

H. Owner and City agree that the Project shall be subject to the conditions and restrictions, and the rights of City, set forth in this Agreement.

AGREEMENT

1. **USE OF THE PROPERTY.** The foregoing recitals are incorporated by reference into this Agreement. Owner covenants and agrees on behalf of itself and its heirs, executors, successors and assigns that Owner shall operate, use and maintain the Project in compliance with all of the following:

A. Rent and Income Restrictions.

(1) [Eight (8)(Parcel A); Three (3)(Parcel C); Eleven (11)(Parcel D)] Project Units shall be rented to and occupied by households, earning up to eighty percent (80%) of Area Median Income, as adjusted for household size in accordance with California Health and Safety Code section 50052.5, as amended or any successor statute thereto ("**Low Income Households**"), at an Affordable Rent (defined below) (each, an "**Affordable Low Income Unit**") and [Ten (10)(Parcel A); Four (4)(Parcel C); Fourteen (14)(Parcel D)] Project Units shall be rented to and occupied by households, earning up to one hundred twenty percent (120%) of Area Median Income, as adjusted for household size in accordance with California Health and Safety Code section 50052.5, as amended or any successor statute thereto ("**Moderate Income Households**"), at an Affordable Rent (defined below) (each, an "**Affordable Moderate Income Unit**") (collectively the Affordable Low Income Units and Affordable Moderate Income Units are referred to herein as the "**Affordable Units**"). The Affordable Low Income Units shall consist of [one (1) studio unit, two (2) one-bedroom unit, four (4) two-bedroom units, and one (1) three-bedroom units (Parcel A) as provided in Section 1.B below; of zero (0) studio units, one (1) one-bedroom unit, two (2) two-bedroom units, and zero (0) three-bedroom unit (Parcel C) as provided in Section 1.B below; of one (1) studio unit, four (4) one-bedroom units, five (5)

two-bedroom units, and one (1) three-bedroom units (Parcel D) as provided in Section 1.B below]. The Affordable Moderate Income Units shall consist of [two (2) studio units, three (3) one-bedroom units, four (4) two-bedroom units, and one (1) three-bedroom unit (Parcel A) as provided in Section 1.B below; of one (1) studio unit, one (1) one-bedroom unit, one (1) two-bedroom unit, and one (1) three-bedroom unit (Parcel C) as provided in Section 1.B below; of two (2) studio units, five (5) one-bedroom units, six (6) two-bedroom units, and one (1) three-bedroom unit (Parcel D) as provided in Section 1.B below].

(2) The Affordable Low Income Units shall only be rented to Low Income Households qualified in accordance with the terms of this Agreement and Applicable Laws ("**Eligible Low Income Households**"), at rental rates no greater than that considered as affordable rent for Low Income Households, adjusted for family size appropriate to the Affordable Low Income Unit, pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto ("**Affordable Low Income Rent**"). The Affordable Moderate Income Units shall only be rented to Moderate Income Households qualified in accordance with the terms of this Agreement and Applicable Laws ("**Eligible Moderate Income Households**") (collectively the Eligible Low Income Households and Eligible Moderate Income Households are referred to herein as the "**Eligible Households**"), at rental rates no greater than that considered as affordable rent for Moderate Income Households, adjusted for family size appropriate to the Affordable Moderate Income Unit, pursuant to California Health and Safety Code section 50053, as amended, or any successor statute thereto ("**Affordable Moderate Income Rent**"). "**Area Median Income**," as referenced in California Health and Safety Code section 50053, means the median household income (adjusted for family size appropriate to the unit) of the Metropolitan Statistical Area in which Alameda County is located, as established pursuant to California Health and Safety Code section 50093, as amended or any successor statute thereto. "**Adjusted for family size appropriate to the unit**" shall have the meaning set forth in California Health and Safety Code section 50052.5, as amended or any successor statute thereto. To the extent other regulatory covenants are in effect with respect to the Project (in addition to this Agreement), the most stringent income and rent requirements shall control. "**Applicable Laws**" means all applicable laws, ordinances, statutes, codes, orders, decrees, rules, regulations, official policies, standards and specifications (including any ordinance, resolution, rule, regulation, standard, official policy, condition, or other measure) of the United States, the State of California, the County of Alameda, City of Emeryville, or any other political subdivision in which the Project is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over City, Owner, or the Project. The monthly Affordable Low Income Rent for each Affordable Low Income Unit and the Affordable Moderate Income Rent for each Affordable Moderate Income Unit shall be calculated pursuant to City's then-current Affordable Rent and Income Levels Table. City's current Table is attached hereto for illustrative purposes as Exhibit B.

(3) In the Affordable Units, no less than one Occupant shall be allowed per bedroom and no more than two Occupants shall be allowed per bedroom. A studio shall count as a one-bedroom for the purposes of these occupancy requirements. If no Eligible Households apply within sixty (60) days of an Affordable Moderate Income Unit being available that meet these occupancy standards or no Eligible Low Income Households apply within sixty (60) days of an Affordable Low Income Unit being available that meet these occupancy standards, the City shall, upon request of the Owner, grant exceptions to the occupancy

standards, but only to the extent such exceptions are consistent with Applicable Laws, and do not increase City's obligations or liabilities under this Agreement, or diminish or impair City's rights and remedies under this Agreement. "Occupant" shall mean a person over the age of three (3) who occupies an Affordable Unit for more than fourteen (14) days or more during a one-month period month. "Tenant" shall mean the Occupant(s) who is/are identified in the lease for an Affordable Unit.

(4) Not more than once per year, Owner may adjust rents in occupied Affordable Units to the level allowed for the family size appropriate to the unit. Owner may adjust the rent upon vacancy of an Affordable Unit to the level allowed for the family size appropriate to the unit. City shall annually publish a list of all rent ceilings reflecting the annual adjustments in the income limits for Eligible Households provided by the U.S. Department of Housing and Urban Development and State of California Housing and Community Development Department. Owner must notify a tenant in writing of any increase in such tenant's monthly rent for an Affordable Unit at least sixty (60) days in advance of the effective rent adjustment date, and a copy of any such notification shall be sent to City simultaneously. The Owner shall report any rent increase(s) to the City in the Annual Report, including: (1) the rent adjustment for each Affordable Unit; (2) the new rental amount for each Affordable Unit; and (3) the effective date of the adjustment for each Affordable Unit. Failure to provide the notice and reporting required shall be considered a default by Owner under this Agreement.

(5) The determination of a status as an Eligible Household shall be made by Owner prior to initial occupancy of the Affordable Unit by such household and shall be subject to review and approval by City. The income of all Occupants residing in the Affordable Unit shall be considered for purposes of calculating the household income. Owner shall not discriminate against prospective tenants with qualified Public Housing Authority Section 8 certificates or vouchers who are otherwise qualified. In the Annual Report, the Owner shall report any changes in the Occupants of any Affordable Units to the City that are known by the Owner, including the name(s) and household size(s) of the Occupant(s) vacating the Affordable Unit(s) during the reporting period, and, if the Affordable Unit(s) has/have been reoccupied, the name, household size and income of the new Occupant(s) occupying the Affordable Unit(s).

(6) Immediately prior to the first anniversary date of the lease commencement of an Affordable Unit by an Eligible Household, and on each anniversary date thereafter, Owner shall re-certify the income of the Occupant(s) of such Affordable Unit by obtaining a completed Occupant Income Certification based upon the current income of each occupant of the Affordable Unit and Owner shall take all reasonable steps to verify with reliable documentation the income and household size of the Occupant(s). The Occupant Income Certification shall be in the form attached hereto as Exhibit C; provided, however, that City reserves the right to make any updates or changes as City deems necessary or desirable. All documentation obtained by Owner in connection with the annual Occupant Income Certification shall be retained by Owner for three (3) calendar years.

If an occupant of an Affordable Low Income Unit no longer qualifies as an Eligible Low Income Household due to an increase in income above the limitation set forth in Subsection 1.A(1) above, the occupant may continue to occupy the former Affordable Low Income Unit; provided, however, if (i) occupant qualifies as an Eligible Moderate Income Household and elects to

continue to occupy the former Affordable Low Income Unit, Owner shall notify City of said election by occupant, Owner may increase the rental rate for such former Affordable Low Income Unit to Affordable Moderate Income Rent and said Affordable Low Income Unit shall be re-designated as an Affordable Moderate Income Unit, and Owner shall rent the next available comparable Project Unit (i.e., similar square footage, similar configuration, same number of bedrooms and bathrooms) as a replacement Affordable Low Income Unit and the next available comparable Affordable Moderate Income Unit at market rate with the City's concurrence, not to be unreasonably withheld or delayed, that the Affordable Units continue to be appropriately dispersed throughout the Project; or (ii) occupant does not qualify as an Eligible Moderate Income Household and elects to continue to occupy the former Affordable Low Income Unit, Owner shall notify City of said election by occupant, Owner may increase the rental rate for such former Affordable Low Income Unit to market rate, and Owner shall rent the next available comparable Project Unit (i.e., similar square footage, similar configuration, same number of bedrooms and bathrooms) as a replacement Affordable Low Income Unit with the City's concurrence, not to be unreasonably withheld or delayed, that the Affordable Units continue to be appropriately dispersed throughout the Project. The Owner shall report to the City the address, unit number, size and bedroom/bathroom mix, as appropriate, of the Affordable Low Income Unit re-designated as an Affordable Moderate Income Unit, the Project Unit designated by Owner and agreed to by City as the replacement Affordable Low Income Unit, and the Affordable Moderate Income Unit designated by Owner and agreed to by City as a market rate Project Unit in the Annual Report. If an Affordable Low Income Unit becomes an Affordable Moderate Income Unit and the Developer provides a replacement Affordable Low Income Unit, the parties recognize this may result in a total increase in the number of Affordable Units. However, in no event shall this Section 1.A(6) require the Developer to rent more than one additional Affordable Unit than is otherwise required, meaning no more than nineteen (19) Affordable Units in Parcel A, eight (8) Affordable Units in Parcel C, or twenty-six (26) Affordable Units in Parcel D. When an excess Affordable Moderate Income Unit becomes vacant, there shall be no requirement to replace such unit. Further, there shall be no obligation to provide more than eight (8) Affordable Low Income Units in Parcel A, three (3) Affordable Low Income Units in Parcel C, or eleven (11) Affordable Low Income Units in Parcel D.

If an occupant of an Affordable Moderate Income Unit no longer qualifies as an Eligible Household due to an increase in income above the limitation set forth in Subsection 1.A(1) above, the occupant may continue to occupy the former Affordable Moderate Income Unit; provided, however, if occupant elects to continue to occupy the former Affordable Moderate Income Unit, Owner shall notify City of said election by occupant, Owner may increase the rental rate for such former Affordable Moderate Income Unit to market rate, and Owner shall rent the next available comparable Project Unit (i.e., similar square footage, similar configuration, same number of bedrooms and bathrooms) as a replacement Affordable Moderate Income Unit with the City's concurrence, not to be unreasonably withheld or delayed, that the Affordable Units continue to be appropriately dispersed throughout the Project. The Owner shall report to the City the address, unit number, size and bedroom/bathroom mix of the Project Unit designated by Owner and agreed to by City as the replacement Affordable Moderate Income Unit in the Annual Report.

(7) In lieu of designating another comparable Project Unit as a replacement Affordable Low Income Unit or Affordable Moderate Income Unit to meet the

requirement of Subsections 1.A(1) and 1.A(5) above, Owner may designate an occupied Project Unit as an Affordable Low Income Unit or an Affordable Moderate Income Unit if the Project Unit is then occupied by an Occupant meeting the income requirements for Low Income Households or Moderate Income Households, as appropriate, set forth in Subsection 1.A(1) above. Owner shall take all reasonable steps to verify with reliable documentation the income and household size of the Occupant(s) and provide notice of such a substitution to City with the documentation verifying that the Occupant(s) is an Eligible Low Income Household or Eligible Moderate Income Household as appropriate. In the event Owner makes such a substitution, the Owner shall report to the City the address and bedroom/bathroom mix of the substituted Affordable Low Income Unit or Affordable Moderate Income Unit, and the name of the occupant and size and income of the household occupying the Affordable Low Income Unit or an Affordable Moderate Income Unit in the Annual Report.

B. Designation of Affordable Units. The initial designation and location of the Affordable Units are set forth in the Site Plan attached hereto as Exhibit D. The appearance, materials, finished quality and amenities of the Affordable Units shall be comparable to the market rate Project Units and continue to be so during the affordability period. Attached hereto as Exhibit D is a list of the amenities and finishes that will be featured in each of the Project Units, including the Affordable Units.

C. Marketing and Leasing Program.

(1) Owner shall actively market the Affordable Units. No less than one hundred and twenty (120) calendar days prior to lease-up of the Affordable Units, Owner shall provide City with a copy of its marketing program for initial lease up of the Affordable Units ("**Affordable Units Marketing Program**") that is in conformance with the City's Affordable Units Marketing Program Procedures. City shall review the Affordable Units Marketing Program and either approve or request modifications to the Affordable Units Marketing Program within thirty (30) days after receipt. Failure of the City to respond within thirty (30) days shall be deemed approval. Owner shall provide monthly updates to the Affordable Units Marketing Program commencing thirty (30) days after the date the Affordable Units Marketing Program is initially approved by City until the Affordable Units are leased initially. Thereafter, Owner shall provide an update on the Affordable Units Marketing Program in the Annual Report.

(2) Owner is responsible for implementing the Affordable Units Marketing Program actively and in good faith. City may extend the required marketing period in its discretion if Owner delays implementation or otherwise fails to comply with the Affordable Units Marketing Program as approved by City.

D. Reporting Requirements.

(1) Owner shall submit to City annual reports ("**Annual Report**") which shall include all reporting required under this Agreement from the date of the previous Annual Report and include the following:

- a. A cover letter to the City describing the status of the Project and compliance with this Agreement, including any problems experienced during the reporting period, and any recommendations to address problems and enhance compliance;
- b. A signed copy of the Certificate of Continuing Program Compliance in the form attached hereto as Exhibit F; provided, however, that City reserves the right to make any updates or changes as City deems necessary or desirable;
- c. A copy of the current Project Marketing Plan;
- d. A copy of the current form of lease agreement used for market rate Project Units; and
- e. A copy of the current form of lease agreement used for Affordable Units.

In addition, the Annual Report shall include income certifications or re-certifications, for each Eligible Household of an Affordable Unit. The Annual Report shall be accompanied by an Income Certification Worksheet in a format and containing the information reasonably required by City attached hereto as Exhibit G; provided, however, that City reserves the right to make any updates or changes as City deems necessary or desirable, including all information necessary to meet reporting requirements imposed on City by Applicable Laws, and at a minimum, shall include the following with respect to each of the Affordable Units:

- a. Unit number;
- b. Unit square footage;
- c. Number of bedrooms and bathrooms in the unit;
- d. Head of household name(s);
- a. The number of Occupant(s) in the household;
- b. The number of Occupant(s) in the household under age of 18;
- c. Initial lease commencement date;
- d. Household Income limit applicable to Affordable Unit at initial lease commencement date; and at recertification date (if applicable);
- e. Actual Income of Household at lease commencement date; and at recertification date (if applicable);
- f. Gross Affordable Rent Limit (see Exhibit B);
- g. Utility Allowance Calculation;
- h. Utility Allowance;
- i. Section 8 Assistance (if applicable);
- j. Net Rent Paid by Household;
- k. Net Rent as a percentage of Household's Income;
- l. Next Recertification Date;
- m. Move out date (if applicable).

Each Annual Report shall include the Certificate of Continuing Program Compliance (Exhibit F) and Income Certification Worksheet (Exhibit G) and be submitted to the City annually on March 1st starting the year following issuance of the initial Certificate of Occupancy. Upon request by City, the annual Occupant Income Certification Form (Exhibit C) for each Occupant(s) of an

Affordable Unit shall be accompanied by the copies of the documents used to certify eligibility. Upon receipt of the Annual Report, the City may request additional information to confirm compliance with this Agreement. In the event the City requests such information, the Owner shall promptly supply such information to City in the format requested by City. Owner shall maintain all necessary documents, books and records, including property and financial records, in accordance with requirements prescribed by City with respect to all matters covered by this Agreement for a period of three (3) years following the date of submittal of the Annual Report to which such documents, books or records relate. Upon request for examination by City, Owner, at any time during normal business hours and upon reasonable notice, shall make available at the Property (or at another location within twenty miles of Emeryville) all material records with respect to matters covered by the Agreement. Owner shall permit City, at City's expense, to audit, examine, copy, and make excerpts or transcripts from such records.

E. City Approval of Lease Forms. City shall have the right to review and reasonably approve Owner's form of lease for the Affordable Units, including disclosures of the affordability restrictions on the Affordable Units, prior to Owner's use of such form. The City's first approval of the lease form shall specify which provisions of the lease may not be subsequently modified without the prior review and approval of the City.

2. CONVERSION TO OWNERSHIP RESIDENTIAL PROJECT

On October 22, 2015, City approved a tentative subdivision map affecting the Property pursuant to City of Emeryville Planning Commission Resolution No. SUBDIV 15-002, and accordingly approved the creation of [one hundred sixty seven (167) condominium units thereon (Parcel A); sixty six (66) condominium units thereon (Parcel C); two hundred and twenty three (223) condominium units thereon (Parcel D)]. Owner may convert the Project from a rental residential project to an ownership residential project by providing notice to City at least 120 days prior to the effective date of said conversion. Owner shall provide City with proof of a recorded Final Map for the Property, a recorded declaration of covenants, conditions and restrictions for the ownership residential project, a recorded condominium plan, and a final subdivision public report from the California Bureau of Real Estate authorizing the sale of the individual condominium units. Owner shall thereafter enter into an agreement with the City in accordance with Section 9-5.402(b) of the Emeryville Municipal Code which complies with the requirements of Sections 9-5.402 through 9.5.405. In accordance with Section 9-5.407 (c), said agreement shall provide for relocation benefits to the Tenants of the Affordable Units upon sale of the Affordable Units.

3. MANAGEMENT OF AFFORDABLE UNITS.

If Owner enters into a separate property management agreement ("**Management Agreement**") with a property management company or other organization in order to manage the Affordable Units (including leasing, property management, maintenance and repair services, and reporting obligations) and ensure that Owner's obligations under this Agreement with respect to the Affordable Units are satisfied ("**Property Manager**"), Owner shall comply with this Section 3. Property Manager shall have at least five (5) years' experience in the operation and management of similar size rental housing projects, and at least three (3) years' experience in the operation and management of rental housing projects containing below-market-rate units, without any

record of material violations of discrimination restrictions or other Applicable Laws. No less than sixty (60) calendar days prior to hiring any Property Manager or executing any amendment to a Management Agreement, Owner shall provide documentation to the City as is reasonably necessary to evaluate the proposed Property Manager's experience and qualifications or revisions to a Management Agreement. No Property Manager shall be hired, or Management Agreement signed or amended, without City's prior approval thereof, which shall not be unreasonably withheld or delayed. For the term of this Agreement, any change in Property Manager or amendment to the Management Agreement shall comply with the requirements of this Section and any material amendment shall require the prior written approval of City, which shall not be unreasonably withheld or delayed.

4. **TAXES.** Owner shall not apply for exemption from the payment of real or personal property taxes on the Project; provided, however, the Owner shall have all rights under Applicable Law to appeal the valuation of the Project (including but not limited to the Property, any improvements, fixtures or appurtenances, and any personal property) for tax purposes.

5. **NO IMPAIRMENT OF LIEN.** No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument; provided, however, that any successor in interest to the Project shall be bound by such covenants, conditions, restrictions, limitations and provisions, whether such successor's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

6. **DURATION.** The covenants and restrictions in this Agreement shall remain in effect until the date which is fifty-five (55) years following the date of recording of this Agreement.

7. **PRIORITY OF DOCUMENTS; SUBORDINATION AGREEMENT.** Owner's covenants with respect to the use, maintenance, and operation of the Project set forth herein shall run with the land and be binding on Owner and its successors and assigns for the period of time set forth herein. This Agreement shall have priority over the liens of all mortgages, deeds of trust and other liens (other than the lien for current, unpaid property taxes) and Owner shall cause all such mortgagees, deed of trust beneficiaries and other lien holders to execute and deliver to City for recordation in the Official Records of Alameda County, a subordination agreement, in a form reasonably acceptable to City, subordinating such mortgages, deeds of trust and other liens to this Agreement thereby ensuring the priority of this Agreement over all such mortgages, deeds of trust and other liens.

8. **SUCCESSORS AND ASSIGNS.** The covenants contained herein shall inure to the benefit of City and its successors and assigns and shall be binding upon Owner and any successor in interest to the Project. The covenants shall run in favor of City and its successors and assigns for the entire period during which such covenants shall be in force and effect, without regard to whether City is an owner of any land or interest therein to which such covenants relate. In the event of any breach of any such covenants, or breach of any of Owner's obligations under this Agreement, City and its successors and assigns shall have the right to exercise all of the rights and remedies and to maintain any actions at law or suits in equity or

other proper proceedings to enforce the curing of such breach. Upon recordation of the grant deed to the Property, the prior Owner shall be released from all further obligations and liabilities under this Agreement arising after the date of such transfer of ownership. The covenants contained herein shall be for the benefit of and shall be enforceable only by City, and its successors and assigns.

9. **DEFAULT.** Any failure by Owner to perform any term or provision of this Agreement shall constitute a "Default" hereunder if Owner does not cure such failure within thirty (30) days following written notice of default from City, unless such failure is not of a nature which can be cured within such thirty (30) day period, Owner does not commence substantial efforts to cure the failure within thirty (30) days and thereafter prosecute to completion with diligence and continuity the curing of such failure. Any notice of default given under this Agreement shall identify the nature of the failure in performance which City claims constitutes the Default and the manner in which such Default may be satisfactorily cured. Any failure or delay by City in asserting any of its rights or remedies, including specific performance, as to any Default shall not operate as a waiver of any Default or of any such rights or remedies or deprive City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

10. **REMEDIES.** If a Default occurs under this Agreement, City may exercise any right or remedy which it has under this Agreement, or which is otherwise available at law or in equity or by statute, and all of its rights and remedies shall be cumulative.

11. **ESTOPPEL CERTIFICATE.** Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the current, actual knowledge of the certifying party, (a) this Agreement is in full force and effect and a binding obligation of the parties; (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications; and (c) the requesting party is not in Default in the performance of its obligations under the Agreement, or if in Default, to describe therein the nature and extent of any such defaults. The party receiving a request hereunder shall execute and return a certificate in reasonable form, or give a written, detailed response explaining why it will not do so, within forty-five (45) days following the receipt of the request. City's City Manager or City Attorney shall be authorized to execute any certificate requested by Owner hereunder. Owner and City acknowledge that a certificate hereunder may be relied upon by those tenants, transferees, investors, partners, bond counsel, underwriters, bond holders and mortgagees identified therein. City acknowledges a certificate hereunder issued in connection with the proposed transfer of the Property shall be binding and conclusive with respect to whether there is any Default of the prior Owner under this Agreement.

12. **EXPENSES.** At City's request, which may be made at any time (but no more than once per year) during the term of this Agreement, Owner shall deposit with City Five Thousand Dollars (\$5,000.00) for payment of City's costs and expenses incurred in connection with the monitoring and/or enforcement by City of any of Owner's obligations under this Agreement. City may expend such sums to reimburse itself for City's actual out-of-pocket expenses incurred in connection with such monitoring and/or enforcement activities.

13. **NOTICES, DEMANDS AND COMMUNICATIONS BETWEEN THE PARTIES.** Any approval, disapproval, demand, document or other notice to be provided under this Agreement shall be given in writing and shall be sent (a) for personal delivery by a delivery service that provides a record of the date of delivery, the individual to whom delivery was made, and the address where delivery was made; (b) by first-class certified United States mail, postage prepaid, return receipt requested; or (c) by a nationally recognized overnight courier service and marked for next day business delivery. All notices shall be addressed to the party to whom such notice is to be given at the property address stated herein or to such other address as a party may designate by written notice to the other. Any written notice, demand or communication shall be deemed received (a) immediately if delivered by personal delivery as provided hereinabove; (b) on the third (3rd) day from the date it is postmarked if delivered by first-class mail, postage prepaid, return receipt requested; and (c) on the next business day if sent via nationally recognized overnight courier and marked for next day business delivery. Notices sent by a party's attorney on behalf of such party shall be deemed sent by such party.

To Agency: City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attention: City Manager
Telephone: (510) 596-4300

With a copy to: City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attention: City Attorney
Telephone: (510) 596-4370

To Owner: [Name][Address][Address]Attention:
[Name]Phone:[Number]
Facsimile: [Number]

With copies to: [Name]
[Address]
[Address]
Attention: [Name]
Phone: [Number]
Facsimile: [Number]

14. **ATTORNEYS' FEES.** In any action or proceeding which either party brings against the other to enforce its rights hereunder, each party shall pay their own fees, costs, and expenses incurred, including their own attorneys' fees.

15. **MISCELLANEOUS.** Each party agrees to cooperate with the other in the implementation and administration of this Agreement and, in that regard, shall execute any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of the Agreement. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. The words "include" and "including" shall be construed as if followed by the words "without limitation." All exhibits and attachments hereto are incorporated by reference as though fully restated herein. This Agreement shall be interpreted as though prepared jointly by both parties, and shall be construed in accordance with and be governed by the laws of the State of California. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby. A waiver by either party of a breach of any of the covenants, conditions or agreements hereunder to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof. No waiver by City of any of the conditions hereof shall be effective unless in a writing expressly identifying the scope of the waiver and signed on behalf of an authorized official of City. Any alteration, change or modification of or to the Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party hereto.

[Signatures on following page]

IN WITNESS WHEREOF, City and Owner have caused this Agreement to be executed on their behalf by their respective duly authorized persons.

"OWNER"

[Name]

Dated: _____

By: _____
[Signature must be notarized]

Name: _____

Its: _____

By: _____
[Signature must be notarized]

Name: _____

Its: _____

"CITY"

CITY OF EMERYVILLE, a municipal corporation

Dated: _____

By: _____
City Manager
[Signature must be notarized]

EXHIBIT A
Legal Description

Exhibit A

EXHIBIT B

Project Affordable Rent and Income Levels

CITY OF EMERYVILLE AFFORDABLE HOUSING PROGRAM AGREEMENT ON AFFORDABLE UNITS [Apartment]				
201_ Rent Calculation for Affordable Units				
Unit	Unit #/Type	# Bedrooms/Square Footage (approx.)	Income Level	Monthly Rent*
Units	Apartment	Studio [Insert] sf	Low or Moderate	\$____
Units	Apartment	1 bedroom/1 bath [Insert] sf	Low or Moderate	\$____
Units	Apartment	2 bedroom/1 bath [Insert] sf	Low or Moderate	\$____
Unit	Apartment	3 bedroom/2 bath [Insert] sf	Low or Moderate	\$____
<p>* Low Income rents are based on 30% of 60% of Year 201_ area gross median income for Alameda County, adjusted for household size. Moderate Income rents are based on 30% of 110% of Year 201_ area gross median income for Alameda County, adjusted for household size. Affordable rent shall mean the total of monthly payments for a rental including a reasonable allowance for utilities and any service charges or fees required of tenants, such as for on-site parking. Utility allowance and charges/fees must be deducted from rents shown above.</p> <p>Note: Initial rents shown in this table will be adjusted by City to reflect annual income and/or rent limits available on date that Certificate of Occupancy is received.</p>				

Exhibit B

EXHIBIT C

OCCUPANT INCOME CERTIFICATION FORM

OCCUPANT INCOME CERTIFICATION

☐ Initial ☐ Recertification ☐ Other _____
 Certification

Effective Date: _____
 Move-in Date: _____
 (MM/DD/YYYY)

PART I. DEVELOPMENT DATA

Property Name: _____	County: _____	# Bedrooms: _____
Address: _____	Unit Number: _____	

PART II. HOUSEHOLD COMPOSITION

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	F/T Student (Y or N)	Social Security or Alien Reg. No.
1			HEAD			
2						
3						
4						
5						
6						
7						

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment or Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	\$	\$	\$	\$

Add totals from (A) through (D), above TOTAL INCOME \$

PART IV. INCOME FROM ASSETS

HH Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
TOTALS:			\$	\$
Enter Column (H) Total		Passbook Rate		\$
If over \$5000 \$_____ X		2.00%	=	(J) Imp \$
Enter the greater of the total of column I or J: imputed income			TOTAL INCOME FROM	\$
(L) Total Annual Household Income from all Sources [Add (E) + (K)]				\$

Exhibit C

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature	(Date)	Signature	(Date)
Signature	(Date)	Signature	(Date)

Sections Below To Be Completed by Developer/Representative

PART V. DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page 1	<div style="border: 1px solid black; width: 150px; height: 50px; display: flex; align-items: center; justify-content: center;">\$</div>
Current Income Limit per Family Size:	\$
Household Income at Move-in:	\$
Household Size at Move-in:	
Method of Income Verification	

PART VI. RENT

Tenant Paid Rent	\$	Rent Assistance:	\$								
Utility Allowance	\$	Other non-optional charges:	\$								
Utility Paid by Tenant (Check all that apply)	<table border="0"><tr><td><input type="checkbox"/> Heating Electric</td><td><input type="checkbox"/> Heating Gas</td></tr><tr><td><input type="checkbox"/> Cooking Electric</td><td><input type="checkbox"/> Cooking Gas</td></tr><tr><td><input type="checkbox"/> Hot Water Electric</td><td><input type="checkbox"/> Hot Water Gas</td></tr><tr><td><input type="checkbox"/> Water</td><td><input type="checkbox"/> Sewer</td></tr><tr><td><input type="checkbox"/> Trash</td><td><input type="checkbox"/> Electrical Other</td></tr></table>	<input type="checkbox"/> Heating Electric	<input type="checkbox"/> Heating Gas	<input type="checkbox"/> Cooking Electric	<input type="checkbox"/> Cooking Gas	<input type="checkbox"/> Hot Water Electric	<input type="checkbox"/> Hot Water Gas	<input type="checkbox"/> Water	<input type="checkbox"/> Sewer	<input type="checkbox"/> Trash	<input type="checkbox"/> Electrical Other
<input type="checkbox"/> Heating Electric	<input type="checkbox"/> Heating Gas										
<input type="checkbox"/> Cooking Electric	<input type="checkbox"/> Cooking Gas										
<input type="checkbox"/> Hot Water Electric	<input type="checkbox"/> Hot Water Gas										
<input type="checkbox"/> Water	<input type="checkbox"/> Sewer										
<input type="checkbox"/> Trash	<input type="checkbox"/> Electrical Other										
GROSS RENT FOR UNIT: (Tenant paid rent plus Utility Allowance & Other non-optional charges)	<div style="border: 1px solid black; width: 150px; height: 50px; display: flex; align-items: center; justify-content: center;">\$</div>	Unit Meets Rent Restriction at:	<input type="checkbox"/> 60% <input type="checkbox"/> 50% <input type="checkbox"/> 40% <input type="checkbox"/> 30% <input type="checkbox"/> ____%								
Maximum Rent Limit for this Unit:	\$										

SIGNATURE OF DEVELOPER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Occupant Income Certification is/are eligible under the provisions of California Health and Safety Code Section 50053 as amended, and the Affordable Housing Covenant, to live in a unit in this Project.

SIGNATURE OF DEVELOPER/REPRESENTATIVE DATE

NAME EMAIL

Exhibit C

EXHIBIT D

Site Plan

[to be inserted prior to execution]

Exhibit D

EXHIBIT E

List of Amenities

[to be inserted prior to execution]

Exhibit E

EXHIBIT F

[CHECK WITH CITY STAFF FOR UPDATED FORM PRIOR TO EXECUTING]

[Project Name] Apartments

Period through _____

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

CITY OF EMERYVILLE

The undersigned does hereby certify that it is in continuing compliance with the Affordable Housing Agreement executed by the undersigned and recorded in the records of the County of Alameda, California, and that to the knowledge of the undersigned no default exists under said Agreement. Specifically, it is hereby confirmed that each qualified tenant currently residing in the Affordable Unit as defined by said Agreement has completed an Occupant Income Certification in the form approved by the City of Emeryville and that:

Since the beginning of the Agreement term, not less than five percent (5%) of the total Project Units (i.e. eight (8) units (Parcel A); three (3) units (Parcel C); eleven (11) units (Parcel D)) has been continuously occupied by or held vacant and available for occupancy by qualified low income tenants. Since the beginning of the Agreement term, not less than six percent (6%) of the total Project Units (i.e. ten (10) units (Parcel A); four (4) units (Parcel C); fourteen (14) units (Parcel D)) has been continuously occupied by or held vacant and available for occupancy by qualified low income tenants.

As of the date of the Certificate:

Total Low Income Units occupied: _____ (# Units)
A. As percent of total Project Units: _____ %

Total Low Income Units vacant: _____ (#Units)
B. As percent of total Project Units _____ %

(**A. and B. should add to 5%)

Total Moderate Income Units occupied: _____ (# Units)
C. As percent of total Project Units: _____ %

Total Moderate Income Units vacant: _____ (#Units)
D. As percent of total Project Units _____ %

(**C. and D. should add to 6%)

Attached is a separate sheet listing all information required by the Affordable Housing Agreement Section 1.D(1).

Exhibit E

[OWNER]

By: _____
Authorized Owner Representative

Exhibit E

EXHIBIT G

[CHECK WITH CITY STAFF FOR UPDATED FORM PRIOR TO EXECUTING]

[Project Name] Apartments

Period through _____

INCOME CERTIFICATION WORKSHEET

CITY OF EMERYVILLE

Exhibit G - Income Certification for Low Income Units

	Unit #	Income Level of Unit	SQ FT	Unit Size Bdrm/Ba	Head of Household Name	No. of Occ	No. of Minor Children	Move-in Date	Income Limit at Move-in	Household Income at Move-in	Re-Cert Income Limit	Re-Cert Household Income	Gross Rent Limit	Utility Allow	Contract Rent	Sec. 8 Assist.	Net Rent Paid	% Rent vs. Income	Next Re-Cert Date	Move Out Date
1	212	LI															\$0	#DIV/0!		
2																	\$0			
3																	\$0			
4																	\$0			
5																	\$0			
6																	\$0			
7																	\$0			
8																	\$0			
9																	\$0			
10																	\$0			
11																	\$0			
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25																	\$0			
26																	\$0			
27																	\$0			
28																	\$0			
29																	\$0			
30																	\$0			
31																	\$0			
32																	\$0			
33																	\$0			
Disabled Household																				
34																	\$0.00			
35																	\$0.00			

Exhibit E

EXHIBIT F

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: City of Emeryville 1333 Park Avenue Emeryville, CA 94608-3517 Attention: City Attorney	
---	--

This document is exempt from the payment of a recording fee pursuant to Government Code § 27363

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is entered into as of the ____ day of _____, 20__, by and among _____, a _____ ("Assignor"), _____, a _____ ("Assignee"), and the CITY OF EMERYVILLE, a California municipal corporation ("City").

RECITALS

A. City, acting pursuant to its authority under California Government Code Section 65864, *et seq.*, and Article 11 of Chapter 7 of Title 9 of the Emeryville Municipal Code ("EMC") has entered into that certain Development Agreement dated _____, 2015, with Developer recorded in the Official Records of Alameda County on _____, 2015 as document no. _____ ("DA") with respect to the Property. The DA provides, among other things, for certain vested rights and for the provision of Affordable Housing Units.

B. Assignor is the fee owner of the real property subject to the DA more particularly described in Exhibit 1 attached hereto and incorporated herein ("**Property**").

C. Assignor desires to transfer its interest in the Property to Assignee concurrently with execution of this Agreement and Assignor desires to so acquire such interest in the Property from Assignor.

D. Assignor desires to assign to Assignee and Assignee desires to assume, without qualification, all rights and obligations of Assignor under the DA with respect to the Property. Upon execution of this Agreement and transfer to Assignee of legal title to the Property, Assignor desires to be released from any and all obligations under the DA with respect to the Property.

AGREEMENT

NOW, THEREFORE, Assignor and Assignee hereby agree as follows:

Exhibit F-1

1. Assignment by Assignor. Assignor hereby assigns, transfers and grants to Assignee, and its successors and assigns, all of Assignor's rights, title and interest and obligations, duties, responsibilities, conditions and restrictions under the DA with respect to the Property from and after the Effective Date (defined in Section 15 below), which are more particularly defined as follows: _____ (collectively, "**Rights and Obligations**").

2. Acceptance and Assumption by Assignee. Assignee, for itself and its successors and assigns, hereby accepts such assignment and assumes all such Rights and Obligations without qualification. Assignee agrees, expressly for the benefit of City, to comply with, perform and execute all of the covenants and obligations of Assignor arising from or under the DA with respect to the Property on or after the Effective Date.

3. Release of Assignor. Assignee hereby fully releases Assignor from all Rights and Obligations. Both Assignor and Assignee acknowledge that this Agreement is intended to fully assign all of Assignor's Rights and Obligations to Assignee, and it is expressly understood that Assignor shall not retain any Rights and Obligations whatsoever.

4. Substitution of Assignor. Assignee hereafter shall be substituted for and replace Assignor in the DA with respect to the Property. Whenever the term "Developers" appears in the DA, it shall hereafter mean Assignee with respect to the Property.

5. Assignor and Assignee Agreements, Indemnifications and Waivers.

a. Assignee represents and warrants to City as follows:

(i) As of the Effective Date, Assignee is the sole fee owner of the Property, and no other person or entity holds any legal or equitable interests in the Property;

(ii) As of the Effective Date, Assignee is: (i) duly organized and validly existing under the laws of the State of _____; (ii) qualified and authorized to do business in the State of California and has duly complied with all requirements pertaining thereto; and (iii) is in good standing and has all necessary powers under the laws of the State of California to enter into and perform the undertakings and obligations of Developers under the DA;

(iii) No approvals or consents of any persons are necessary for the execution, delivery or performance of the DA by Assignee, except as have been obtained;

(iv) The execution and delivery of this Agreement and the performance of the obligations of Developers under the DA by Assignee have been duly authorized by all necessary action and approvals; and

(v) As of the Effective Date, the DA, including the obligation to provide Affordable Housing Units under Section 7.1 of the DA, are valid obligations of Assignee and enforceable in accordance with their terms.

Exhibit F-2

b. Assignor and Assignee hereby acknowledge and agree that City has not made, and will not make, any representation or warranty that the assignment and assumption of the DA provided for hereunder will have any particular tax implications for Assignor or Assignee.

c. Assignor and Assignee each hereby waives and releases and each hereby agrees to indemnify and hold City harmless from any and all damages, liabilities, causes of action, claims or potential claims against City (including attorneys' fees and costs) arising out of or resulting from the assignment and assumption of the Rights and Obligations.

d. Assignor acknowledges and agrees that the Rights and Obligations have been fully assigned to Assignee by this Agreement and, accordingly, that Assignee shall have the exclusive right to assert any claims against City with respect to such Rights and Obligations. Accordingly, without limiting any claims of Assignee under the DA, Assignor hereby waives and releases any and all claims or potential claims by Assignor against City, whether known or unknown, to the extent arising directly or indirectly out of the DA or the Project contemplated therein,

6. DA in Full Force and Effect. Except as specifically provided herein with respect to the assignment, all the terms, covenants, conditions and provisions of the DA with respect to the Property, including the obligation to provide Affordable Housing Units under Section 7.1 of the DA, are hereby ratified and shall remain in full force and effect.

7. Recording. Assignor shall cause this Agreement to be recorded in The Official Records of Alameda County, California, and shall promptly provide conformed copies of the recorded Agreement to Assignee and City.

8. Successors and Assigns. All of the terms, covenants, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, pursuant to Section 20.3 of the DA.

9. Assignee Address for Notices.

The address of Assignee for the purpose of notices, demands and communications under Section 19 of the DA shall be:

Attention: _____
Telephone: _____
Facsimile: _____

With a copy to:

Exhibit F-3

Attention: _____
Telephone: _____
Facsimile: _____

10. Applicable Law/Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions under this Agreement shall be brought only in the Superior Court of the County of Alameda, State of California.

11. Interpretation. All parties have been represented by counsel in the preparation and negotiation of this Agreement, and this Agreement shall be construed according to the fair meaning of its language. The rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement. Unless the context clearly requires otherwise: (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; and (e) "includes" and "including" are not limiting.

12. Headings. Section headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants or conditions of this Agreement.

13. Severability. Except as otherwise provided herein, if any provision(s) of this Agreement is (are) held invalid, the remainder of this Agreement shall not be affected, except as necessarily required by the invalid provisions, and shall remain in full force and effect unless amended or modified by mutual consent of the parties.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties to this Agreement had executed the same counterpart.

15. Effective Date. The Effective Date of this Agreement shall be the date upon which Assignee obtains fee title to the Property and delivers evidence of the transfer to City ("**Effective Date**"). For the purposes of this Section, the evidence of transfer shall consist of a duly recorded deed and title report.

IN WITNESS WHEREOF, Assignor and Assignee have entered into this Agreement as of the date first above written.

[Signatures follow on separate page]

Exhibit F-4

ASSIGNOR:

_____,
a _____

By: _____
Name: _____
Title: _____
[Notary Acknowledgment Required]

ASSIGNEE:

_____,
a _____

By: _____
Name: _____
Title: _____
[Notary Acknowledgment Required]

Exhibit F-5

Exhibit 1

Property Legal Description

Exhibit 1-1

EXHIBIT F1

DEPICTION OF PARCEL C GROCERY STOREFRONT DESCRIBED IN SECTION 8.1.3



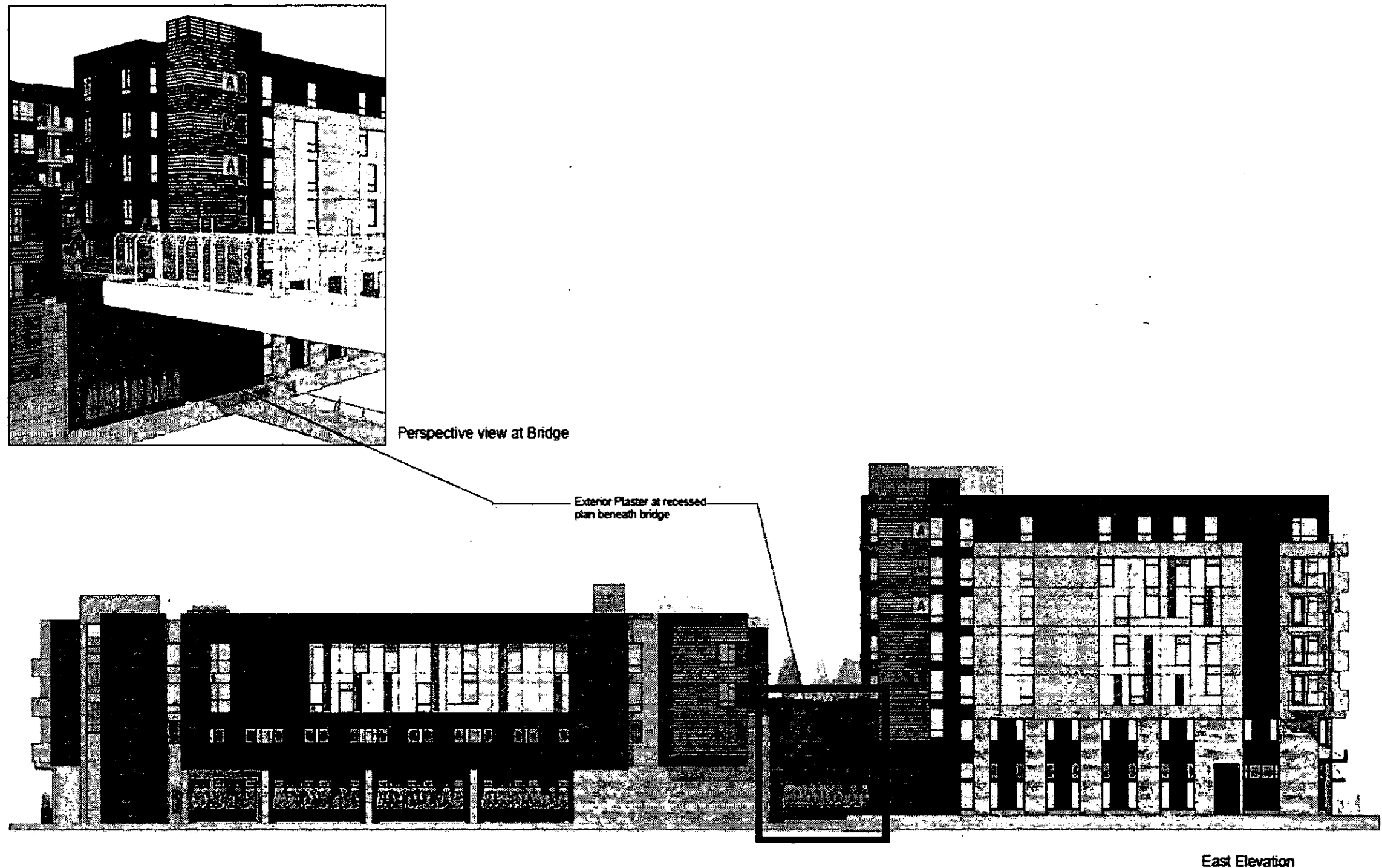
Chicago - Clarity Copy Can be found at
2150 John Glean Dr #100
Concord, CA 94528

Exhibit 1-2

EXHIBIT F2

DEPICTION OF PARCEL A BUILDING EXTERIOR WHERE BOARD FORMED CONCRETE IS NOT REQUIRED

AS DESCRIBED IN SECTION 8.1.4



Avalon Public Market- Shellmound Residential Build-
ing
Berkeley, California

Window Exhibit
2015-1827 TCAP 2014-02 1-02

TS AvalonBay
COMMUNITIES

East Elevation Material Revision

1

Exhibit 1-3

EXHIBIT G

FORM OF PUBLIC MARKET STREETS PROPERTY EXCHANGE AGREEMENT

THIS PUBLIC MARKET STREETS PROPERTY EXCHANGE AGREEMENT (“**Agreement**”) is made by and between the CITY OF EMERYVILLE, a California municipal corporation (“**City**”) and AG-CCRP PUBLIC MARKET, LP, a Delaware limited partnership (“**CCRP**”) as of the Effective Date indicated under City’s signature block, below (each a “**Party**” and collectively the “**Parties**”).

RECITALS

A. City has an interest in certain real property located in the City of Emeryville, County of Alameda, State of California (“**City Property**”). That portion of the City Property as shown and more particularly depicted on Exhibit A attached hereto and incorporated by reference is referred to herein as the “**Current Shellmound Alignment Area**.”

B. CCRP is the owner of certain real property located in the City of Emeryville, County of Alameda, State of California designated as APNs 049-1556-001, 049-1556-002, and 049-1556-003 (“**CCRP Property**”). That portion of the CCRP Property as shown and more particularly depicted on Exhibit B attached hereto and incorporated by reference is referred to herein as “**New Shellmound Alignment Area**.”

C. On July 15, 2008, the City adopted an ordinance (Ordinance No. 08-004) approving a Planned Unit Development - Mixed Use Designation for the Marketplace Redevelopment Project and approved a Preliminary Development Plan (“**Marketplace PDP**”) for the CCRP Property. The ordinance provides that the Marketplace PDP will provide for a cohesive, integrated, well-planned development which will contribute to the general well-being of the surrounding neighborhood and community.

D. The Marketplace PDP contemplates the realignment of a portion of Shellmound Street to the west whereby the Current Shellmound Alignment Area will be replaced by the New Shellmound Alignment Area (“**Shellmound Re-Alignment**”) to allow for development on the Current Shellmound Alignment Area. Further, the Marketplace PDP contemplates the dedication of public right of way for 62nd Street, 63rd Street and Market Drive, which, along with the New Shellmound Alignment Area, is collectively referred to herein as the “**Public Market Streets**.”

E. The property subject to the Marketplace PDP (“**PDP Property**”) was initially investigated for hazardous materials during its first redevelopment in the early 1980s and then again during construction in the late 1980s. In the early 1990s, the California Department of Toxic Substances Control (“**DTSC**”) became involved in the redevelopment project and took over as the lead environmental agency to review PDP Property conditions and the previous investigation activities. Based on DTSC’s review, and because the PDP Property was effectively capped with buildings, landscaping, and paved parking lots, DTSC concluded that the PDP

Property did not pose a threat to human health or the environment and that no further action was required.

F. To provide a mechanism for long-term management of the PDP Property and Current Shellmound Alignment Area, DTSC required two environmental deed restrictions: (1) a Covenant to Restrict Use of Property limiting a portion of the PDP Property to shopping center and related commercial uses, research and development uses, recorded in the Official Records of Alameda County as Instrument No. 95174319 on August 7, 1995 ("**1995 Deed Restriction**"), and (2) a Covenant to Restrict Use of Property limiting Shellmound Street to roadway purposes, recorded in the Official Records of Alameda County as Instrument No. 96159160 on June 28, 1996, as amended in the First Amendment to Covenant of Deed Restriction, recorded in the Official Records of Alameda County as Instrument No. 97163553 on July 1, 1997 ("**Shellmound Street Deed Restriction**").

G. As part of the Shellmound Re-Alignment, the 1995 Deed Restriction and Shellmound Street Deed Restriction will be modified to reflect the realigned location ("**Shellmound Street Deed Restriction Amendment**").

H. On June 25, 2015, the City of Emeryville Planning Commission reviewed and recommended approval of a Development Agreement for the Marketplace PDP between the City, CCRP and Avalonbay Communities, Inc., a Maryland corporation ("**AVB**"), and further found and determined in accordance with Government Code Section 65402 that the abandonment and vacation of the Current Shellmound Alignment Area and dedication and acceptance of the Public Market Streets are consistent with the Emeryville General Plan.

I. On October 22, 2015, more detailed plans for the Public Market Streets were considered and approved by the City of Emeryville Planning Commission pursuant to Planning Commission Resolution No. SUBDIV15-002 ("**Marketplace Tentative Map**").

J. On November 17, 2015, the City Council of the City of Emeryville adopted Resolution No. 15-144 and thereby found and determined that the abandonment and vacation of the Current Shellmound Alignment Area and dedication and acceptance of the new Shellmound Street alignment, 62nd Street, 63rd Street and Market Drive to be consistent with the Emeryville General Plan in accordance with Government Code Section 65402, and accordingly approved the abandonment and vacation of the Current Shellmound Alignment Area pursuant to Streets and Highways Code Section 8330(a) ("**Abandonment Resolution- Street**").

K. On November 17, 2015, in accordance with Chapter 4, Part 3, Division 9 of the Streets and Highways Code, §§8333, 8335, the City Council adopted Resolution No. 15-145 to summarily vacate a five foot (5') wide public service easement and abandon in place the sanitary sewer main located therein traversing the CCRP Property which public service easement will be superseded by the relocation of the public service easement and sanitary sewer main to the future location of 63rd Street between Shellmound Street and Christie Avenue ("**Abandonment Resolution - Sewer**"). In accordance with the Abandonment Resolution-Sewer, the City Manager has been authorized to accept the grant of a temporary easement for the relocation of the sewer main along the future 63rd Street alignment between Shellmound Street and Christie Avenue ("**Temporary Sewer Easement**"), and as already provided pursuant to EMC §9-6.603

to enter into a public improvement agreement providing for the design, construction, installation, inspection and acceptance of the completed sanitary sewer by and between the City and CCRP. The Parties acknowledge that the Temporary Sewer Easement is to be terminated by City concurrently with the recording of the Certificate of Public Market Streets Acceptance relating to the future 63rd Street alignment between Shellmound Street and Christie Avenue.

L. After duly noticed public meetings on November 17, 2015 and December 1, 2015, the City Council of the City of Emeryville adopted Ordinance No. 15-010 and thereby approved the Development Agreement for the Marketplace PDP between the City, CCRP and AVB and thereby found and determined in accordance with Government Code Section 65402 that the abandonment and vacation of the Current Shellmound Alignment Area and dedication and acceptance of the of the new Shellmound Street alignment, 62nd Street, 63rd Street and Market Drive are consistent with the Emeryville General Plan and further approved this Agreement. The vacation and abandonment of the Current Shellmound Alignment Area is contingent upon conditions specified in this Agreement.

M. The Marketplace Tentative Map requires the design, improvement and offers of dedication by CCRP of public rights of way on, over and across the Public Market Streets for public roadway, sidewalk, drainage, sanitary facilities, and public utility (such as water, gas, electrical, cable and telecommunication) purposes which will be accepted by City once the Public Market Street Design & Improvements (as defined in Section 12) are completed in accordance with this Agreement. In exchange, CCRP wishes to acquire from the City the Current Shellmound Alignment Area once the Public Market Street Improvements are completed in accordance with this Agreement. The Parties desire to accomplish those goals, all on the terms and conditions set forth herein.

N. The potential impacts on the environment resulting from the vacation and abandonment of public roadway, property exchanges, rights of way dedication and Public Market Street Improvements were analyzed in the environmental impact report prepared pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) for the Marketplace Redevelopment Project, certified by the City on January 15, 2008 ("**Marketplace EIR**") by Resolution No. 08-09 and applied to the Marketplace PDP on July 15, 2008 by Resolution 08-126.

O. Concurrently with the execution of this Agreement, the Parties will enter into that certain Public Market Street Improvements Agreement ("**Street Improvements Agreement**") pursuant to which CCRP will complete or cause to be completed certain design and improvement work as provided in the Marketplace Tentative Map with respect to the Public Market Streets (collectively, the "**Public Market Streets Design & Improvements**").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Property Exchanges.

1.1 Current Shellmound Alignment Area from City to CCRP.

a. In consideration of CCRP's (i) commitment to perform the Public Market Streets Design & Improvements as set forth in the Street Improvements Agreement and (ii) grant to City of irrevocable offers of dedication with respect to the Public Market Streets on the Marketplace Tentative Map, upon completion of the Public Market Streets Design & Improvements, City shall accept the Public Market Streets and abandon the public right of way in the Current Shellmound Alignment Area so that the underlying fee title to the Current Shellmound Alignment Area can be transferred to CCRP.

b. Upon CCRP's satisfaction of the Acceptance Conditions pursuant to Section 12.4[Acceptance of Public Market Streets], the City Manager shall execute, acknowledge and deliver into Escrow (i) a grant deed in the form attached hereto as Exhibit C ("**City Grant Deed**") granting the City's interest in the Current Shellmound Alignment Area to CCRP, (ii) Certificate(s) of Public Market Streets Acceptance in the form attached hereto as Attachment Exhibit D ("**Certificate of Public Market Streets Acceptance**"), (iii) a copy of the Abandonment Resolution-Street in a form acceptable for recording, and (iv) the Shellmound Street Deed Restriction Amendment approved by DTSC and executed by the City. Recordation of the City Grant Deed and Abandonment Resolution-Street shall be contingent upon, and occur concurrently with, recordation of the Certificate(s) of Public Market Streets Acceptance and Shellmound Street Deed Restriction Amendment.

c. Also as part of the Close of Escrow the City shall have the right to reserve a temporary easement (in form and substance reasonably approved by the Parties) over a portion of the Current Shellmound Alignment Area as more particularly depicted on Exhibit E attached hereto for purposes of providing temporary access for pedestrians and bicycles from the pedestrian bridge to the New Shellmound Alignment Area. This temporary easement shall automatically terminate once Parcel A (also referred to as the Shellmound Building and designated as APN 049-1556-003) provides permanent public access from the pedestrian bridge east of Parcel A to the New Shellmound Alignment Area. City shall execute a quitclaim deed or other such document as may be reasonably required by CCRP or Escrow Agent to eliminate the encumbrance of the temporary easement on Parcel A.

1.2 Dedication of Public Market Streets from CCRP to City.

a. In consideration of City's abandonment of the public right of way in the Current Shellmound Alignment Area and grant of fee title to the Current Shellmound Alignment Area to CCRP, CCRP shall (a) provide an irrevocable offer to dedicate the Public Market Streets to City as a condition of the Marketplace Tentative Map in a form and substance acceptable to the City, (b) complete the Public Market Streets Design & Improvements and (c) upon completion of the Public Market Streets Design & Improvements by CCRP, City shall accept the offer of dedication of the Public Market Streets pursuant to the Certificate of Public Market Streets Acceptance.

b. The irrevocable offer of dedication shall provide for the survival of obligations described in Section 13.10.

c. As part of the dedication and as provided in General Note 10 on the Tentative Map, CCRP may reserve the right for vertical, airspace and doorway encroachments from buildings into the right-of-way as approved in Final Development Plans approved for the project pursuant to EMC Section 9-7.1011.

d. Prior to Close of Escrow, CCRP shall execute, acknowledge, and deliver into Escrow for recording the Shellmound Street Deed Restriction Amendment. Recordation of the Shellmound Street Deed Restriction Amendment shall be contingent upon, and occur concurrently with, recordation of the Certificate(s) of Public Market Streets Acceptance, City Grant Deed, and Abandonment Resolution-Street.

2. Exchange Value. The Parties agree that the value of the New Shellmound Alignment Area is approximately equal to the value of the Current Shellmound Alignment Area. For tax reporting purposes, the value of the New Shellmound Alignment Area is \$ _____ Dollars (\$ _____) and the value of the Current Shellmound Alignment Area is \$ _____ Dollars (\$ _____) (each, an "Exchange Value"). [VALUE AGREED TO BE \$25/sq.ft.; FINAL VALUE TO BE INSERTED AFTER LAND AREA IS FINALIZED TENTATIVE MAP APPROVAL]

3. Condition of Title. "Title Company" means Chicago Title Company.

3.1 Current Shellmound Alignment Area.

a. The City shall cooperate with CCRP as reasonably necessary for CCRP to obtain from the Title Company a current preliminary title report for the Current Shellmound Alignment Area ("Current Alignment Area Title Report") and legible copies of all of the documents underlying any exceptions referred to in the Current Alignment Area Title Report (together with the Current Alignment Area Title Report, the "Current Alignment Area Title Documents"). CCRP shall have ten (10) business days after receipt of the Current Alignment Area Title Documents from the Title Company to deliver to City written notice (the "Current Alignment Area Objection Notice") of such exceptions to title which are not permissible to CCRP ("Current Alignment Area Unpermitted Exceptions"). Failure of CCRP to deliver the Current Alignment Area Objection Notice to City within said ten (10) business day period shall be deemed to be an election by CCRP to accept the conveyance of the Current Shellmound Alignment Area subject to all of the exceptions to title set forth in the Current Alignment Area Title Report, and all of said exceptions shall be deemed to be "City Exchange Property Permitted Exceptions". Any exceptions which CCRP does not object to shall also be considered as City Exchange Permitted Exceptions. If CCRP delivers the City Exchange Property Objection Notice to City as aforesaid, City shall have the right, but not the obligation, at City's cost, during the ten (10) business day period following delivery of the City Exchange Property Objection Notice to (a) cause the City Exchange Property Unpermitted Exceptions to be removed from the City Exchange Property Title Report or commit to causing them to be removed on or before to the Close of Escrow, (b) cause the Title Company to issue an endorsement insuring CCRP against loss or damage to CCRP that may be caused by such

Current Alignment Area Unpermitted Exceptions on terms reasonably acceptable to CCRP or commit to causing the same on or before the Close of Escrow, or (c) elect to do neither (a) or (b). If City elects not to or does not cause (or commit to cause) the Current Alignment Area Unpermitted Exceptions to be removed from the Current Alignment Area Title Report or to be endorsed over within such ten (10) business day period, City shall not be deemed to be in default under this Agreement; however, a condition to the performance by CCRP of its obligations hereunder shall be deemed not to have been fulfilled, entitling CCRP, as its sole right and remedy on account thereof, to elect (such election to be exercised by written notice thereof delivered to City within five (5) business days after the expiration of said ten (10) business day period) either to: (x) terminate this Agreement; or (y) accept the conveyance of the Current Shellmound Alignment Area subject to such Current Alignment Area Unpermitted Exceptions. City shall not voluntarily create any new exceptions to title following the Effective Date.


b. After the initial review in accordance with Section 3.1.a. and provided that CCRP has not elected to terminate this Agreement, CCRP shall have the right to cause Title Company to reissue from time to time the Title Report prior to Close of Escrow. CCRP shall have the right to object to any new exceptions other than the Current Alignment Area Permitted Exceptions (or those deemed to be such in accordance with the provisions of Section 3.1.a) which may appear of record or be revealed by any updated Title Report. The time periods for objecting to and curing the additional exceptions and for terminating this Agreement shall be the same as those set forth in Section 3.1.a above, commencing with the date CCRP receives the updated Title Report, and, if necessary, the Close of Escrow shall be extended for such purposes.

4. Title Insurance Policies.

4.1 CCRP Policy. Following recordation of the City Grant Deed, Escrow Agent shall provide CCRP with an ALTA owner's policy of title insurance for the Current Shellmound Alignment Area in the amount of the Exchange Value, issued by Title Company, together with any endorsements that CCRP may reasonably request. Such policy shall show fee simple title to the Current Shellmound Alignment Area vested in CCRP, subject only to the City Exchange Property Permitted Exceptions and the printed exceptions and stipulations in the policy.

4.2 Premiums. CCRP shall pay the title policy premium for its respective title insurance policy.

5. Escrow.

5.1 Escrow, Escrow Agent. CCRP has opened an escrow ("**Escrow**") in accordance with this Agreement at Chicago Title Company, Chicago Title Insurance Company, 700 S. Flower Street., Suite 3305, Los Angeles, CA 90017 ("**Escrow Agent**"), Order Numbers  Escrow Agent is hereby empowered to act under this Agreement and the joint escrow instructions.

5.2 Joint Escrow Instructions. This Agreement, together with any supplemental escrow instructions prepared by Escrow Agent and executed by the Parties, constitutes the joint

escrow instructions of the Parties. Any amendment of, or supplement to, any escrow instructions must be in writing.

5.3 Escrow Account. All funds received in Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other escrow trust account in any state or national bank doing business in the State of California. All disbursements shall be made by check from such account.

6. Escrow Agent Authorization. Escrow Agent is authorized to, and shall:

6.1 Pay and Charge CCRP. Pay and charge CCRP for: (a) any amount necessary to place title to the Current Shellmound Alignment Area in the condition necessary to satisfy Section 3.1 [Condition of Title; Current Shellmound Alignment Area], and (b) all Escrow fees, recording fees and other costs and expenses of Escrow payable by CCRP under Section 6.5 [Escrow Fees, Charges and Costs].

6.2 Recordation and Delivery. Record the City Grant Deed, the Abandonment Resolution, the Certificate(s) of Public Market Streets Acceptance, the Shellmound Street Deed Restriction Amendment, and deliver the title policy(ies), closing statements, and Non-Foreign Transferor Declaration to the applicable Parties, when conditions of the Escrow have been fulfilled by City and CCRP.

6.3 Close of Escrow. The term “Close of Escrow,” if and where written in these instructions, shall mean the date the City Grant Deed, the Abandonment Resolution-Street, Certificate(s) of Public Market Streets Acceptance, the Shellmound Street Deed Restriction Amendment, and any other necessary instruments of conveyance are recorded in the office of the Alameda County Recorder. Recordation of instruments delivered through Escrow is authorized if necessary or proper in the issuance of the policy(ies) of title insurance pursuant to Section 4 [Title Insurance Policies].

6.4 Closing Date. The Parties hereto agree to do all acts necessary to close this Escrow in the shortest possible time. Subject to the foregoing, all time limits within which any matter specified is to be performed may be extended by mutual agreement of the Parties.

6.5 Escrow Fees, Charges and Costs. CCRP shall pay all usual fees, charges, and costs which arise in this Escrow. No portion of taxes (including transfer taxes) or recording fees shall be charged to City as it is a public entity. CCRP shall pay only the transfer tax on the New Shellmound Alignment Area.

6.6 FIRPTA. The Parties agree to execute and deliver as directed by Escrow Agent any instrument, affidavit, and statement required for compliance with the Foreign Investment in Real Property Tax Act (“FIRPTA”), including the Non- Foreign Transferor Declaration required by Escrow Agent.

6.7 Tax Requirements. Escrow Agent shall prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, and tax withholding forms including an IRS 1099-S form, if any such forms are provided for or required by law and be responsible for withholding any applicable taxes.

7. Pro Rations; Tax Adjustment Procedure for Current Shellmound Alignment Area. Escrow Agent shall not be concerned with proration of property taxes and assessments on the Current Shellmound Alignment Area as it is currently exempt from property taxes.

8. Property Loss, Damage, Insurance. Loss or damage to the New Shellmound Alignment Area, by earthquake or other casualty, occurring prior to recordation of the Certificate of Public Market Streets Acceptance, shall be at the risk of CCRP and CCRP shall rebuild at its sole cost and expense. Loss or damage to the Current Shellmound Alignment Area, by earthquake or other casualty, occurring prior to recordation of the City Grant Deed, shall be at the risk of City and shall be responsible, at its sole cost and expense, for any restoration work. Insurance policies for earthquake or casualty are not to be transferred, and each Party will cancel its own policies (if any and if applicable) as of Close of Escrow.

9. Conditions Precedent to Close of Escrow.

9.1 City's Conditions Prior to Close of Escrow. The obligation of City to record the Abandonment Resolution-Street and City Grant Deed and thereby transfer the Current Shellmound Alignment Area to CCRP, and to record the Certificate of Public Market Streets Acceptance, Shellmound Street Deed Restriction Amendment and Termination of Temporary Sewer Easement and thereby accept the Public Market Streets from CCRP, is subject to the satisfaction, or waiver by City, as applicable, of all of the following conditions:

a. CCRP shall have satisfied the Acceptance Conditions set forth in Section 12.4.

b. The Shellmound Street Deed Restriction Amendment as set forth in Section 12.2 shall have been approved by DTSC, executed by City and recorded or ready to record concurrently with Close of Escrow

c. CCRP shall deliver through Escrow such other funds and documents as are necessary to comply with CCRP's obligations under this Agreement.

d. CCRP shall not be in default of any of its obligations under this Agreement, and all of CCRP's representations and warranties made as of the Effective Date shall continue to be true and correct as of Close of Escrow.

CCRP shall use its good faith efforts to undertake all reasonable efforts in satisfying the above-referenced conditions and City shall, upon CCRP's request, reasonably cooperate with CCRP in CCRP's efforts. For the avoidance of doubt, the failure of any of the conditions set forth in this Section 9.1 or the failure to satisfy any such condition by any specified date shall not provide City any right to terminate this Agreement.

9.2 CCRP's Conditions Precedent to Close of Escrow. The obligation of CCRP to accept fee title to the Current Shellmound Alignment Area from City is subject to the satisfaction, or waiver by CCRP, of all of the following conditions:

a. City shall deliver through Escrow an executed, acknowledged and recordable City Grant Deed sufficient to convey fee simple title in the Current Shellmound

Alignment Area to CCRP as set forth in Section 3.1 [Condition of Title; Current Shellmound Alignment Area]

b. City shall deliver through Escrow the Abandonment Resolution-Street as set forth in Section 1.1(b).

c. City shall deliver through Escrow executed, acknowledged and recordable Certificate(s) of Public Market Streets Acceptance.

d. City shall deliver through Escrow the Shellmound Street Deed Restriction Amendment approved by DTSC and executed by the City as set forth in Section 12.2.

e. City shall deliver through Escrow the Termination of Temporary Sewer Easement executed by the City as set forth in Section 12.3.

f. City shall deliver to Escrow a Non-Foreign Transferor Declaration as required by Escrow Agent.

g. City shall not be in default of any of its obligations under this Agreement, and all of City's representations and warranties made as of the Effective Date shall continue to be true and correct as of Close of Escrow.

h. City shall deliver through Escrow such other funds and documents as are necessary to comply with City's obligations under this Agreement.

i. CCRP shall have approved the condition of title to the Current Shellmound Alignment Area, and Escrow Agent shall have committed to deliver to CCRP a title insurance policy as required by Section 4 [Title Insurance Policies].

City shall use its good faith efforts to undertake all reasonable efforts in satisfying the above-referenced conditions and CCRP shall, upon City's request, reasonably cooperate with City in City's efforts. For the avoidance of doubt, the failure of any of the conditions set forth in this Section 9.2 or the failure to satisfy any such condition by any specified date shall not provide CCRP any right to terminate this Agreement.

10. Condition of Current Shellmound Alignment Area. CCRP acknowledges and agrees that prior to Close of Escrow it will have had full opportunity to inspect and investigate every aspect of the Current Shellmound Alignment Area including all matters related to legal status or requirements, physical condition, zoning, environmental condition, title and all other matters of significance. CCRP acknowledges and agrees that the Current Shellmound Alignment Area is being transferred by City to CCRP in an "AS IS" condition and "WITH ALL FAULTS" as of Close of Escrow.

Except as expressly set forth in this Agreement, no statements, representations or warranties have been made or are made and no responsibility has been or is assumed by City, or by any officer, employee, person, firm, agent or representative acting or purporting to act on behalf of City, as to any matters concerning, or that might in any manner affect, the Current Shellmound Alignment Area, including the condition or repair thereof or the value or income

potential thereof (the Exchange Value was estimated by the Parties for tax purposes only and may or may not represent the actual value of the applicable property), and CCRP is not relying upon any such statement, representation or warranty. CCRP acknowledges that City has requested that CCRP inspect fully the Current Shellmound Alignment Area and investigate all matters relevant thereto. CCRP shall rely solely upon the results of CCRP's own inspections or other information obtained or otherwise available to CCRP, rather than any information that may have been provided by City to CCRP, other than City's express representations and warranties set forth in this Agreement or in the documents executed by City in connection with this Agreement.

11. Property Inspection and Testing.

11.1 Rights. Within fifteen (15) days of the Effective Date CCRP at its expense may (but is not required to) inspect and investigate the Current Shellmound Alignment Area, including conducting such tests of the soils, groundwater and/or improvements on the Current Shellmound Alignment Area as CCRP shall deem appropriate ("**CCRP Tests**").

11.2 Permission to Enter on Premises. City hereby grants to CCRP and CCRP's authorized agents permission to enter upon the Current Shellmound Alignment Area at all reasonable times prior to Close of Escrow. The foregoing grants of permission include entry for the purpose of conducting the City Tests and the CCRP Tests.

11.3 Test Indemnities. CCRP shall indemnify, hold harmless, and defend City, from and against all Claims arising out of or related to (or alleged to arise out of or relate to) the CCRP Tests. CCRP further agrees to repair as nearly as reasonably can be accomplished any damage to the Current Shellmound Alignment Area by the CCRP Tests and will restore damaged areas to as near their original condition as can be reasonably accomplished, in the event that the Close of Escrow does not occur.

12. Public Market Streets Design & Improvements.

12.1 Scope. CCRP shall complete or cause to be completed the design, improvement and construction of the Public Market Streets Design & Improvements substantially in accordance with improvement plans approved City under the Streets Improvement Agreement and the terms and conditions of the Streets Improvement Agreement.

12.2 Shellmound Street Deed Restriction Amendment. As part of CCRP's construction obligations, CCRP shall process with DTSC the Shellmound Street Deed Restriction Amendment to reflect the abandonment of the Current Shellmound Alignment Area and dedication of the New Shellmound Alignment Area. CCRP shall provide the City with drafts of the Shellmound Street Deed Restriction Amendment for review and approval and shall include the City in all communications with DTSC regarding such amendment. The City shall cooperate with CCRP's efforts in obtaining such amendment, which shall include, without limitation, executing documents necessary to effectuate such amendment for purposes of this Agreement. Once approved by DTSC, City shall execute and deliver through Escrow the Shellmound Street Deed Restriction Amendment as provided in Section 9.2(d)[CCRP's Conditions Prior to Close of Escrow].

12.3 Termination of Temporary Sewer Easement. As part of CCRP's construction obligations, CCRP is obligated to abandon the sanitary sewer main located within a five foot (5') wide public service easement that traverses the CCRP Property in an east-west direction and construct a new thirty inch sewer main within the future location of 63rd Street between Shellmound Street and Christie Avenue. In connection with this obligation the City adopted the Abandonment Resolution-Sewer and CCRP granted to City the Temporary Sewer Easement as provided in Recital K. Once the Acceptance Conditions set forth in Section 12.4 below have been satisfied, the City Manager shall execute, acknowledge and deliver a quitclaim deed or other such instrument as required by CCRP or Escrow Agent in order to terminate the encumbrance of the Temporary Sewer Easement ("**Termination of Temporary Sewer Easement**").

12.4 Acceptance of Public Market Streets. The City's acceptance of Public Market Streets Design & Improvements may occur in phases consistent with the Streets Improvement Agreement and Tentative Map. The City shall accept the Public Market Streets once (a) the Public Works Director has determined in the Public Works Director's reasonable discretion that all phases (if there are more than one) of Public Market Streets Design & Improvements are complete according to the terms of the Streets Improvement Agreement, and (b) DTSC has issued the Certificate of Completion (as defined in the Streets Improvement Agreement) for the New Shellmound Alignment Area ("**Acceptance Conditions**"). Once the Acceptance Conditions have been satisfied, the City Manager shall execute, acknowledge and deliver Certificate(s) of Public Market Streets Acceptance as provided in Section 1.1(b).

13. Warranties, Representations, and Covenants of City. City hereby warrants, represents, and covenants to CCRP that, to City's actual knowledge:

13.1 Pending Claims. There are no actions, suits, claims, legal proceedings, or any other proceedings affecting the Current Shellmound Alignment Area or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.

13.2 Encroachments. There are no encroachments onto the Current Shellmound Alignment Area by improvements on any adjoining property.

13.3 City's Title. Until Close of Escrow, City shall not do anything which would impair City's title to the Current Shellmound Alignment Area.

13.4 Conflict with Other Obligation. Neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restrictions, or other agreement or instrument to which City or the Current Shellmound Alignment Area may be bound.

13.5 Authority. City is the owner of and has the full right, power, and authority to transfer the Current Shellmound Alignment Area to CCRP and to accept the Public Market Streets as provided herein and to carry out City's obligations hereunder. Each Party executing this Agreement on behalf of City is duly and validly authorized to do so on behalf of City.

13.6 Bankruptcy. City is not the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for City to be able to transfer the Current Shellmound Alignment Area as provided herein.

13.7 Right to Possession. No person or entity other than City has the right to use, occupy, or possess the Current Shellmound Alignment Area or any portion thereof. Prior to the Close of Escrow, City shall not enter into any lease or other agreement, respecting use, occupancy, or possession of the Current Shellmound Alignment Area or any portion thereof, without the written consent of CCRP.

13.8 Non-Foreign Transferor. City is not a "foreign person" within the meaning of FIRPTA or any similar state statute, and City will comply with all of the requirements of the FIRPTA and any similar state statute in connection with this transaction.

13.9 Change of Situation. Until Close of Escrow, City shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 13 (13.1 through 13.8, inclusive) not to be true as of Close of Escrow, immediately give written notice of such fact or condition to CCRP.

13.10 Operation, Management, Maintenance and Repair Obligations. City acknowledges and agrees that it shall have the sole obligation of, and liability with respect to, operating, managing, maintaining and repairing the Public Market Streets and the improvements thereon, including but not limited to the use of the Public Market Streets by members of the general public, at City's sole cost and expense. Further, solely with respect to the New Shellmound Alignment Area, City acknowledges and agrees that it shall have the obligation of, and liability with respect to, compliance with all requirements imposed by Department of Toxic Substance Control ("DTSC") including, without limitation, making all repairs, maintenance, replacements and improvements and doing all work necessary to maintain the New Shellmound Alignment Area in compliance with applicable law, and in good and safe condition and repair.

Notwithstanding any contrary provision of this Agreement, AG-CCRP shall have the right to access and use (a) the New Shellmound Alignment Area as necessary to satisfy AG-CCRP's obligations with respect to any reporting agreement with DTSC or (b) the Public Market Streets as necessary to maintain any storm water treatment measures therein. Prior to entering the Public Market Streets, including the New Shellmound Alignment Area, AG-CCRP shall secure an encroachment permit from City, and AG-CCRP's exercise of the foregoing rights shall not unreasonably interfere with the use of the Public Market Streets for public right of way and utility purposes.

CCRP's irrevocable offer of dedication for the Public Market Streets provided for in Section 1.2(b) shall provide for survival and recordation of the obligations in this Section 13.10.

14. Warranties, Representations, and Covenants of CCRP. CCRP hereby warrants, represents, and/or covenants to City that, to the best of CCRP's knowledge:

14.1 Pending Claims. There are no actions, suits, claims, legal proceedings, or any other proceedings affecting the New Shellmound Alignment Area or any portion thereof, at law, or in equity before any court or governmental agency, domestic or foreign.

14.2 Encroachments. There are no encroachments onto the New Shellmound Alignment Area by improvements on any adjoining property.

14.3 CCRP's Title. CCRP shall not do anything which would impair CCRP's title to the New Shellmound Alignment Area.

14.4 Conflict with Other Obligation. Neither the execution of this Agreement nor the performance of the obligations herein will conflict with, or breach any of the provisions of any bond, note, evidence of indebtedness, contract, lease, covenants, conditions and restrictions, or other agreement or instrument to which the New Shellmound Alignment Area may be bound.

14.5 Authority. CCRP is the owner of the CCRP Property, including the New Shellmound Alignment Area, and has the full right, power, and authority to dedicate the Public Market Streets to City, as provided herein and to carry out CCRP's obligations hereunder. Each party executing this Agreement on behalf of CCRP is duly and validly authorized to do so on behalf of CCRP.

14.6 Bankruptcy. CCRP is not the subject of a bankruptcy proceeding, and permission of a bankruptcy court is not necessary for CCRP to be able to dedicate the Public Market Streets as provided herein.

14.7 Right to Possession. No person or entity other than CCRP has the right to use, occupy, or possess the Public Market Streets or any portion thereof. Prior to the Close of Escrow, CCRP shall not enter into any lease or other agreement, respecting use, occupancy, or possession of the Public Market Streets or any portion thereof that may interfere with the Public Market Streets, without the written consent of City.

14.8 Non-Foreign Transferor. CCRP is not a "foreign person" within the meaning of the FIRPTA any similar state statute and each will comply with all of the requirements of the FIRPTA and any similar state statute in connection with this transaction.

14.9 Change of Situation. Until Close of Escrow, CCRP shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 14 (14.1 through 14.8, inclusive) not to be true as of Close of Escrow, immediately give written notice of such fact or condition to City.

15. Contingency. Completion of the transactions contemplated under this Agreement, and the Escrow created hereby, is contingent upon the specific acceptance and approval of this Agreement by City. The execution of this Agreement by City and the delivery of same to Escrow Agent constitutes said acceptance and approval.

16. Brokers. Each Party warrants and represents to the other Parties that it has not engaged the services of any agent, finder or broker in connection with the transaction which is the subject of this Agreement, and that it is not liable for any real estate commissions, broker's fees or finder's fees which may accrue by means of the transfer of the New Shellmound Alignment Area and/or the Current Shellmound Alignment Area. Each Party agrees to indemnify, hold harmless, and defend the other Parties from and against any and all Claims (except personal injury, death, or property damage) which may result from any broker, agent or

finder, licensed or otherwise, which it has employed in connection with the transaction covered by this Agreement.

17. Waiver. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions or conditions hereof.

18. Counterparts. The Parties agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the Parties hereto, notwithstanding all of the Parties are not signatory to the original or the same counterparts. For all purposes, including recordation, filing and delivery of this Agreement, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

19. Legal and Equitable Relief. Consistent with Sections 9.1 and 9.2, for the avoidance of doubt, the failure of any of the conditions set forth in Section 9.1 shall not provide City any right to terminate this Agreement and the failure of any of the conditions set forth in Section 9.2 shall not provide City any right to terminate this Agreement. Each Party shall have the right (but not the obligation) to prosecute any proceedings at law or in equity against any other Party, or any other person or entity, violating or attempting to violate or defaulting in the performance of any of the provisions contained in this Agreement in order to prevent such Party, person, or entity from violating or attempting to violate or defaulting in the performance of any of the provisions of this Agreement or to recover damages for any such violation or default. It is agreed that damages would be an inadequate remedy for violation of this Agreement by any Party and, therefore, injunctive or other appropriate equitable relief shall be available to the other Party. Neither party shall be entitled to any special, consequential or punitive damages in the event of a breach by the other party.

20. Attorneys' Fees. In the event that any action is brought by any party hereto as against the other Party /ies for the enforcement or declaration of any right or remedy in or under this Agreement or for the breach of any covenant or condition of this Agreement, each Party shall be responsible for all of their own fees, costs, including, but not limited to, attorneys' fees and expert witness fees.

21. Notices. Any notice to be given or other document to be delivered by any Party to the other hereunder shall be in writing and shall be deemed to have been duly given and received (a) upon personal delivery, (b) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, (c) the immediately succeeding business day after deposit with Federal Express or other equivalent overnight courier, addressed to the Party for whom intended, set forth in this Section 21, or (iv) the date of transmission via facsimile, addressed to the Party for whom intended, as set forth in this Section 21, provided such transmission is provided before 5:00 p.m. Monday through Friday, excluding holidays; transmissions provided after 5:00 p.m. or on a holiday or weekend, shall be deemed to have been given and received on the next regular business day. Any Party hereto may from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

If to City: City of Emeryville
1333 Park Avenue
Emeryville, CA 94608
Attention: City Attorney
Telephone: (510) 596-4381

With copies to: Burke, Williams & Sorensen
1901 Harrison Street, Suite 900
Oakland, CA 94612
Attention: Michael Biddle
Telephone: (510) 273-8780

If to CCRP: AG-CCRP Public Market, L.P.
c/o City Center Realty Partners
170 Grant Avenue, 6th Floor
San Francisco, California 94108
Attention: Mark Stefan
Telephone: (415) 395-2908

With copies to: Holland & Knight
50 California St., Suite 2800
San Francisco, CA 94111
Attention: Tamsen Plume
Telephone: (415) 743-6900

22. Relationship Between the Parties; Authority; Binding Effect. This Agreement does not create any partnership or agency between the Parties, each of which is, and at all times shall remain, solely responsible for all acts of its officials, employees, agents, contractors and any subcontractors, including any negligent acts or omissions. No Party is an agent of any other Party, and no Party has any authority to act on behalf of or to bind any other Party to any obligation whatsoever. Each person executing this Agreement on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the party it purports to bind. Each of the terms, covenants and conditions of this Agreement shall extend to and be binding on and shall inure to the benefit the Parties and each of their respective successors and assigns and all those taking by, under, or through it or them.

23. No Third Party Beneficiaries. Notwithstanding anything else in this Agreement to the contrary, nothing herein is intended to create any third party benefit, and there are no third party beneficiaries of this Agreement.

24. Assignment. CCRP shall have the right to assign its rights and obligations under this Agreement, provided that such assignee concurrently takes title to the entire New Shellmound Alignment Area and assumes CCRP's rights and obligations hereunder, as applicable, and that the City Attorney provides written approval of the form of the assignment agreement, which approval shall not be unreasonably withheld, conditioned or delayed.

25. Entire Agreement; Interpretation. The recitals above and exhibits attached hereto are incorporated by reference as though fully restated herein and comprise part of this Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and no prior oral or written understanding shall be of any force or effect with respect to the matters covered herein. The titles to the sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by the Parties. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement.

26. Severability. If any term, provision, condition, or covenant of this Agreement or its application to any Party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

27. Default. Each provision of this Agreement to be performed by City or CCRP shall be deemed both a covenant and a condition and shall be a material consideration for the Parties' performance hereunder, as appropriate, and any breach thereof by a Party, shall be deemed a material default hereunder. Failure or delay by any Party to perform any covenant, condition or provision of this Agreement within the time provided herein constitutes a default under this Agreement. The injured Party shall give written notice of default to the defaulting Party, specifying the default complained of. The defaulting Party shall immediately commence to cure such default and shall diligently complete such cure within fifteen (15) days from the date of the notice.

28. Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation made by or on behalf of any other Party, or any other Party's officials, officers, directors, agents, representatives, employees, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

29. Cooperation. Each Party agrees to cooperate with the other Parties in the consummating this Agreement and, in that regard, to sign and deposit with Escrow Agent any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement.

30. Recordation. CCRP shall have the right to record a memorandum of this

Agreement, in form and content reasonably acceptable to both parties, regarding the existence, the term and binding nature of this Agreement.

[Signatures Appear On Next Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CITY:

CITY OF EMERYVILLE,
a California municipal corporation

By: _____

Name: _____

Its: City Manager

Date: _____
"Effective Date"

APPROVED AS TO FORM:

By: _____
City Attorney

CCRP:

AG-CCRP PUBLIC MARKET, LP,
a Delaware limited partnership

By: _____

Name: _____


Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____
AG- CCRP Attorney

CONSENT OF ESCROW AGENT

Escrow Agent hereby acknowledges receipt of a copy of a fully executed original of this Agreement. Escrow Agent hereby agrees (i) to be and serve as Escrow Agent pursuant to this Agreement; and (ii) subject to further escrow instructions mutually agreeable to the parties and Escrow Agent, to be bound by the Agreement in the performance of its duties as Escrow Agent and to hold and disburse all funds received by Escrow Agent in accordance with the provisions of this Agreement; provided, however, Escrow Agent shall have no obligation, liability, or responsibility under any amendment to the Agreement unless and until the same is accepted by Escrow Agent in writing. Escrow Agent has assigned this Agreement Order Number 

CHICAGO TITLE COMPANY

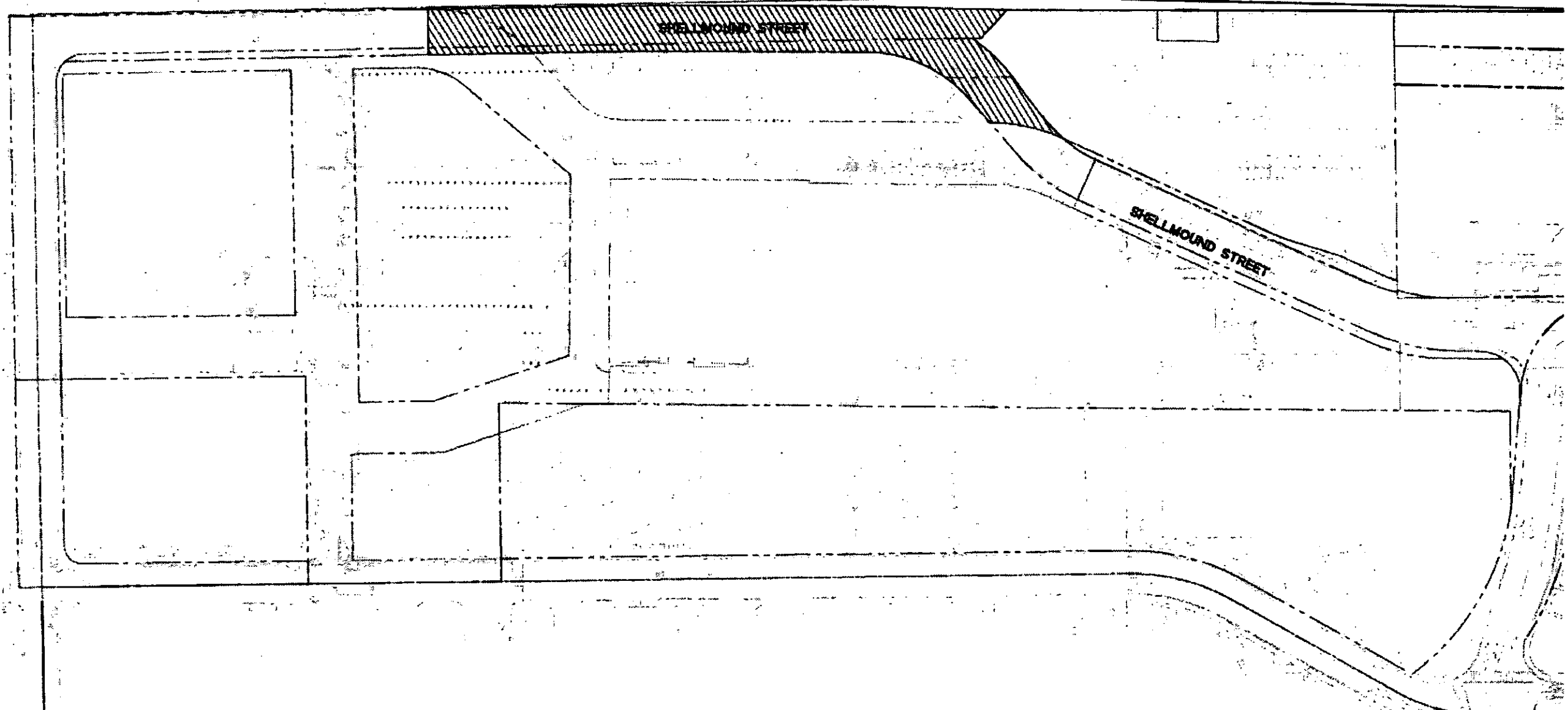
By: _____

Name: _____

Its: _____

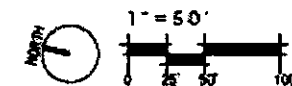
EXHIBIT A

DEPICTION OF THE CURRENT SHELLMOUND ALIGNMENT AREA



DEPICTION OF CURRENT
SHELLMOUND STREET ALIGNMENT

EMERYVILLE MARKET PLACE
Emeryville, California

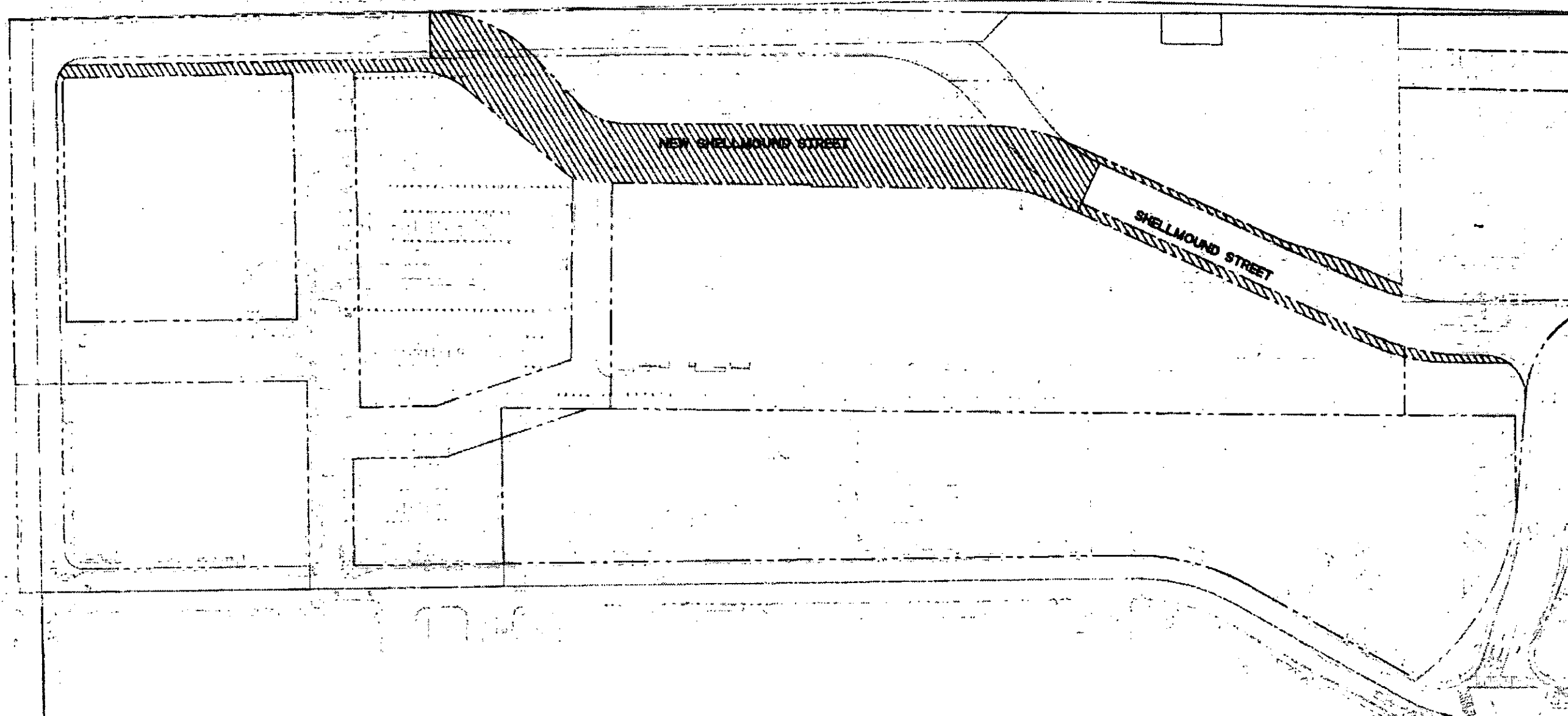


NOVEMBER 4, 2015

Clarity Copy Can be found at
Chicago title
2150 John Glenn Dr #100
Concord, CA 94528

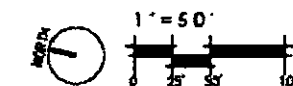
EXHIBIT B

DEPICTION OF THE NEW SHELLMOUND ALIGNMENT AREA



DEPICTION OF NEW SHELLMOUND STREET ALIGNMENT

EMERYVILLE MARKET PLACE
Emeryville, California



NOVEMBER 4, 2015

Clarity copy can be found at:
Chicago title
2150 John Glenn Dr #100
Concord, CA 94528

EXHIBIT C
CITY GRANT DEED

Recording Requested by and)
After Recordation Mail to:)
)
AG-CCRP Public Market, L.P.)
c/o City Center Realty Partners)
170 Grant Avenue, 6th Floor)
San Francisco, California 94108)

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

GRANT DEED

For valuable consideration, the receipt of which is hereby acknowledged, the CITY OF EMERYVILLE, a California municipal corporation ("Grantor"), hereby grants to AG-CCRP PUBLIC MARKET, LP, a Delaware limited partnership ("Grantee"), all of Grantor's right, title, and interest in and to the real property located in the City of Emeryville, California, described in Attachment No. 1 attached hereto.

Dated: _____, 2015 CITY OF EMERYVILLE

By: _____

Name: _____

Its: City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

ATTACHMENT NO. 1 TO GRANT DEED

Legal Description of Current Shellmound Alignment Area



June 9, 2015
BKF No. 20050045
Page 1 of 2

EXHIBIT A LEGAL DESCRIPTION VACATION OF A PORTION OF SHELLMOUND STREET

All that real property situate in the City of Emeryville, County of Alameda, State of California, described as follows:

Being a portion of Shellmound Street as shown on that certain "Parcel Map 9938" filed for record on December 6, 2011 in Book 318 at Pages 66-69, Records of Alameda County.

Commencing at the northeasterly corner of "PARCEL TWO" as shown on said "Parcel Map 9938" thence along the northeasterly line of said "PARCEL TWO," South 14°21'18" East, 91.29 feet to the **Point of Beginning** of this description;

Thence North 87°49'26" East, 51.07 feet to the northeasterly line of Shellmound Street as shown on said "Parcel Map 9938";

Thence along said northeasterly line the following six (6) courses:

- 1) South 14°21'17" East, 195.94 feet to the beginning of a tangent curve to the right, having a radius of 2,500.00 feet;
- 2) Along said tangent curve, through a central angle of 1°17'29", for an arc length of 56.35 feet;
- 3) South 13°03'48" East, 228.33 feet to the beginning of a tangent curve to the right, having a radius of 1,000.00 feet;
- 4) Along said tangent curve, through a central angle of 1°04'15", for an arc length of 18.69 feet;
- 5) South 11°59'33" East, 126.20 feet, to the beginning of a tangent curve to the left, having a radius of 1,000.00;
- 6) Along said tangent curve, through a central angle of 0°23'16", for an arc length of 6.77 feet to the northeasterly corner of "PARCEL THREE" as shown on said "Parcel Map 9938";

Thence along the general northerly line of said "PARCEL THREE," the following six (6) courses:

- 1) North 60°09'08" West, 42.67 feet to the beginning of a non-tangent curve to the left, having a radius of 5,635.65 feet, from the center of said curve a radial line bears North 76°21'19" East;
- 2) Along said non-tangent curve, through a central angle of 0°05'32", for an arc length of 9.08 feet to the beginning of a non-tangent curve to the right, having a radius of 196.00 feet, from the center of said curve a radial line bears South 68°49'19" East;
- 3) Along said non-tangent curve through a central angle of 20°30'58", for an arc length of 70.18 feet to a point of reverse curvature;
- 4) Along said reverse curve, having a radius of 500.00 feet, through a central angle of 6°08'45", for an arc length of 53.63 feet;
- 5) South 35°32'55" West, 3.00 feet to the beginning of a tangent curve to the left, having a radius of 149.00 feet;
- 6) Along said tangent curve, through a central angle of 24°34'21", for an arc length of 63.90 feet;

Thence leaving said northerly line, North 78°45'12" West, 48.00 feet to a point on the general northeasterly line of "PARCEL TWO" of said "Parcel Map 9938", said point being also the beginning of a non-tangent

curve to the right, having a radius of 196.02 feet, from the center of said curve a radial line bears South 79°01'21" East;

Thence along said northeasterly line the following seven (7) courses:

- 1) Along said non-tangent curve, through a central angle of 24°34'12", for an arc length of 84.06 feet;
- 2) North 35°32'55" East, 79.50 feet to the beginning of a tangent curve to the left, having a radius of 146.00 feet;
- 3) Along said tangent curve, through a central angle of 34°05'01", for an arc length of 86.85 feet to a point of compound curvature;
- 4) Along said compound curve, having a radius of 148.72 feet, through a central angle of 14°31'44", for an arc length of 37.71 feet;
- 5) North 13°03'49" West, 228.33 feet to the beginning of a tangent curve to the left, having a radius of 2,450.00 feet;
- 6) Along said tangent curve, through the central angle of 1°17'29", for an arc length of 55.22 feet;
- 7) North 14°21'18" West, 206.57 feet to the **Point of Beginning** of this description.

Containing an area of 41,041 square feet or 0.942 acres, more or less

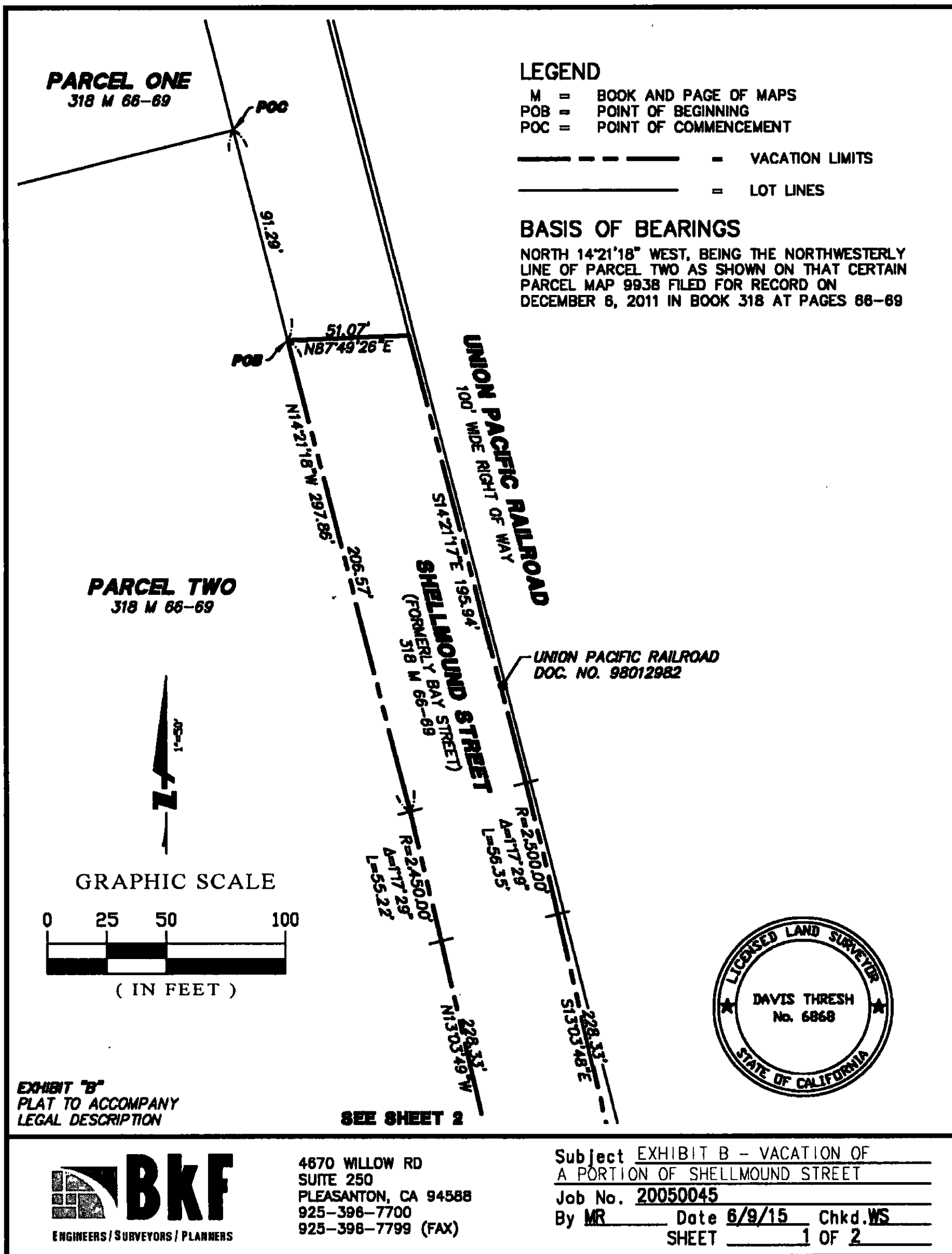
A plat showing the above-described area is attached hereto and made a part hereof as Exhibit B.

For: BKF Engineers

Davis Thresh, P.L.S. No. 6868

Dated

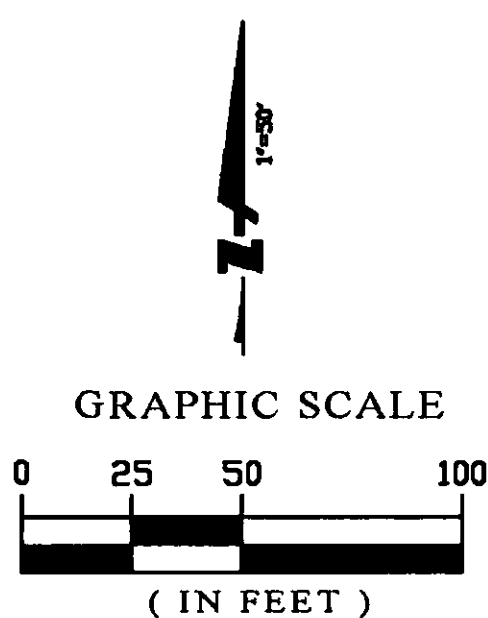




Curve Table			
	Radius	Delta	Length
C1	1,000.00'	1°04'15"	18.69'
C2	1,000.00'	0°23'16"	6.77'
C3	5,635.65'	0°05'32"	9.08'

PARCEL TWO
318 M 66-69

PARCEL THREE
318 M 66-69



ENGINEERS / SURVEYORS / PLANNERS

4670 WILLOW RD
SUITE 250
PLEASANTON, CA 94588
925-398-7700
925-398-7799 (FAX)

Subject EXHIBIT B -- VACATION OF
A PORTION OF SHELLMOUND STREET

Job No. 20050045

By MR Date 6/9/15 Chkd. WS
SHEET 2 OF 2

EXHIBIT D

Recording Requested by and)
After Recordation Mail to:)
)
City of Emeryville)
1333 Park Avenue)
Emeryville, CA 94608-3517)

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

CERTIFICATE OF PUBLIC MARKET STREETS ACCEPTANCE

For valuable consideration, the receipt of which is hereby acknowledged, the CITY OF EMERYVILLE, a California municipal corporation ("City"), is in receipt of an Irrevocable Offer of Dedication ("Offer of Dedication"), by AG-CCRP PUBLIC MARKET, LP, a Delaware limited partnership ("AG-CCRP"), pertaining to certain real property situated in the City of Emeryville, County of Alameda, State of California, for public rights of way and public utility purposes, more particularly described in Exhibit A-1 and depicted in Exhibit A-2. The Offer of Dedication is dated _____, 2015, and recorded in the Official Records of Alameda County, California, on _____, 2015 as Instrument No. _____.

Said Offer of Dedication was made by AG-CCRP to City pursuant to the terms of that certain Public Market Streets Property Exchange Agreement dated _____, 2015, by and between City and AG-CCRP, and pursuant to the conditions of approval of the Marketplace Tentative Map approved by the City of Emeryville Planning Commission on October 22, 2015, pursuant to Resolution No. SUBDIV 15-002.

By executing and recording this Certificate of Public Market Streets Acceptance, City hereby accepts into the City's public right of way system that certain property more particularly described in Exhibit B-1 and depicted in Exhibit B-2.

Dated: _____, 2015 CITY OF EMERYVILLE

By: _____

Name: _____

Its: City Manager

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT A-1

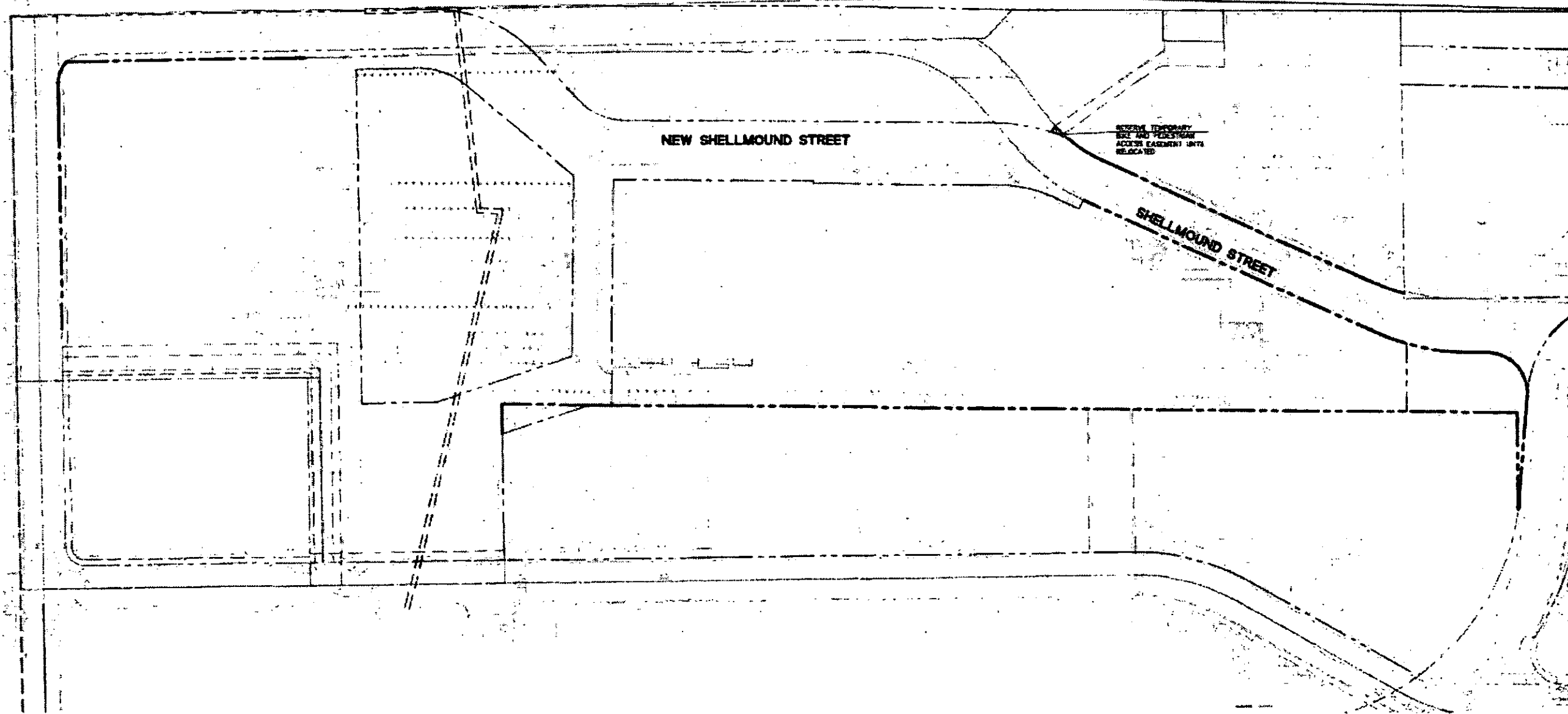
EXHIBIT A-2

EXHIBIT B-1

EXHIBIT B-2

EXHIBIT E

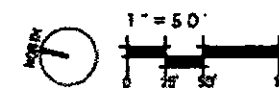
DEPICTION OF TEMPORARY ACCESS EASEMENT



DEPICTION OF TEMPORARY ACCESS EASEMENT



EMERYVILLE MARKET PLACE
Emeryville, California



NOVEMBER 4, 2015

Clarity Copy can be found at: Chicago title
2150 John Glenn Dr #100
Concord, CA 94528

Exhibit G

OAK #4848-2476-8809 v5
05610-1004

EXHIBIT H

FORM OF PUBLIC MARKET STREETS IMPROVEMENT AGREEMENT

Recording Requested by and
After Recordation Mail To:

City Attorney
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

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

PUBLIC MARKET STREETS IMPROVEMENT AGREEMENT

THIS PUBLIC MARKET STREETS IMPROVEMENT AGREEMENT ("**Agreement**") is made and entered into this ____ day of _____, by and between AG-CCRP, a Delaware limited liability company ("**CCRP**") and the CITY OF EMERYVILLE, a municipal corporation ("**City**").

RECITALS

A. City has an interest in certain real property located in the City of Emeryville, County of Alameda, State of California ("**City Property**"), currently used for road purposes and generally known as Shellmound Street, as shown and more particularly depicted on Exhibit A and legally described as set forth in Exhibit A-1, attached hereto and incorporated by reference is referred to herein as the "**Current Shellmound Alignment Area**."

B. CCRP is the owner of certain real property located in the City of Emeryville, County of Alameda, State of California designated as APNs 049-1556-001, 049-1556-002, 049-1556-003, 049-1556-004 ("**CCRP Property**") as legally described and set forth in Exhibit B-1. That portion of the CCRP Property as shown and more particularly depicted on Exhibit B-2 attached hereto and incorporated by reference is referred to herein as "**New Shellmound Alignment Area**."

C. On July 15, 2008, the City adopted an ordinance (Ordinance No. 08-004) approving a Planned Unit Development - Mixed Use Designation for the Marketplace Redevelopment Project and approved a Preliminary Development Plan ("**Marketplace PDP**"). The Marketplace PDP contemplates realignment of Shellmound Street whereby the Current Shellmound Alignment Area will be replaced by the New Shellmound Alignment Area (the "**Shellmound Re-Alignment**"). Further, the Marketplace PDP contemplates the dedication of public right of way for 62nd Street, 63rd Street and Market Drive, which, along with the New Shellmound Alignment Area, are collectively referred to herein as the "**Public Market Streets**." The Shellmound Re-Alignment, 62nd Street, 63rd Street and Market Drive are depicted on Exhibit

C. More detailed design plans for the Public Market Streets were considered and approved by the Planning Commission in connection with the Marketplace Tentative Map, approved by the Planning Commission by Resolution No. SUBDIV 15-002 on October 22, 2015 (“**Marketplace Tentative Map**”).

D. The street improvements contemplated for the Public Market Streets were analyzed in the environmental impact report prepared pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) for the Marketplace Redevelopment Project, certified by the City on January 15, 2008 (“**Marketplace EIR**”) by Resolution No. 08-09 and applied to the Marketplace PDP on July 15, 2008 by Resolution 08-126.

E. In order to provide for the Public Market Streets, including the Shellmound Re-Alignment, CCRP and the City have entered into that certain Public Market Streets Property Exchange Agreement of even date herewith (“**Exchange Agreement**”), which sets for the terms and conditions of the City’s abandonment and vacation of the Current Shellmound Alignment Area and conveyance of the fee title to the Current Shellmound Alignment Area to CCRP, and CCRP’s dedication, design and improvement of public rights of way on, over and across the Public Market Streets for public roadway, sidewalk, drainage, sanitary facilities, and public utility purposes to the City (the “**Exchange**”).

F. Pursuant to the Exchange Agreement and as a condition precedent to the Exchange, CCRP has agreed to complete certain street design and improvements work with respect to the Public Market Streets and certain other work related to the completion of the Public Market Streets, all of which are described in the Marketplace Tentative Map and incorporated herein by this reference (collectively, the “**Public Market Street Improvements**”) pursuant to a separate improvement agreement.

G. The City and CCRP desire to enter into this Agreement to set forth CCRP’s obligations with respect to the Public Market Street Improvements.

H. Upon completion of the Public Market Street Improvements in accordance with this Agreement, the parties will complete the Exchange in accordance with the Exchange Agreement and the City will be solely responsible for operating, managing and maintaining the Public Market Streets in accordance with the Exchange Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Incorporation by Reference. The Recitals set forth above are incorporated herein by this reference as if set forth in full, except where expressly modified herein.

2. Notice of Commencement. CCRP shall use good faith efforts to provide the City written notice at least ninety (90) days prior of its intent to commence construction of any portion of the Public Market Street Improvements.

3. Construction of Public Market Street Improvements. CCRP shall, at its sole cost and expense, do and perform and cause to be done and performed in a good and workmanlike manner all of the Public Market Street Improvements in accordance with plans and specifications prepared by or on behalf of CCRP, once approved by the City Engineer (the “**Plans and Specifications**”). All Plans and Specifications shall comply with Condition of Approval III.C. and IV.A.1. of the Marketplace Tentative Map.

Prior to recording of the Final Map that creates Parcel C as described in the Marketplace Tentative Map, CCRP shall have prepared or caused to have been prepared Plans and Specifications for those Public Market Street Improvements described in Condition of Approval III.A.3.b., III.A.9.a., III.A.1. (survey monuments), and if applicable, III.A.9.b. and IV.B.1. of the Marketplace Tentative Map.

Prior to recording of the Final Map that creates Parcel D as described in the Marketplace Tentative Map, CCRP shall have prepared or caused to have been prepared Plans and Specifications for those Public Market Street Improvements described in Condition of Approval III.A.4.b., III.A.9.a., III.A.1. (survey monuments), and if applicable, III.A.9.b. and IV.B.1. of the Marketplace Tentative Map.

Concurrent with the recording of a Final Map that creates Parcel C or Parcel D as described in the Marketplace Tentative Map, a Final Map shall also be recorded that creates Parcel E as described in the Marketplace Tentative Map and that certain Christie Park Expansion Improvement Agreement by and between City and CCRP dated _____, 201_. To the extent that there are any inconsistencies between the Tentative Map and the Christie Park Expansion Improvement Agreement with respect to the timing for the Christie Park Plans and Specifications or the provision of security, the Christie Park Expansion Improvement Agreement shall control and shall be deemed to supersede any conflicting language in the Tentative Map.

Prior to recording of the Final Map that creates Parcel B as described in the Marketplace Tentative Map, CCRP shall have prepared or caused to have been prepared Plans and Specifications for those Public Market Street Improvements described in Condition of Approval III.A.6.b., III.A.9.a., and if applicable, III.A.9.b. and IV.B.1. of the Marketplace Tentative Map.

Prior to recording of the Final Map that creates Parcel A as described in the Marketplace Tentative Map, CCRP shall have prepared or caused to have been prepared Plans and Specifications for those Public Market Street Improvements described in Condition of Approval III.A.7.b., III.A.9.a., and if applicable, III.A.9.b. and IV.B.1. of the Marketplace Tentative Map, as well as improvements required pursuant to that certain Agreement for Exchange of Real Property and Joint Escrow Instructions for Relocation of the Parcel A Pedestrian Easement by and between City and Avalonbay Communities, Inc., a Maryland corporation, dated _____, 201_.

The City shall diligently review and process such plans. As each stage of improvement plans for each portion of the Public Market are approved by the City, the more complete and more recently approved plans shall be the "Plans and Specifications." All such work shall be completed in compliance with all applicable federal, state and local laws, ordinances, rules, regulations and policies and shall be performed on a lien-free basis.

a. Compliance with Soil Management Plans. The Public Market Street Improvements shall each be undertaken and performed in accordance with the terms of the applicable Soil Management Plans approved by Department of Toxic Substances Control ("DTSC"), which present the environmental management procedures to be followed by environmental consultants, construction contractors and workers, and other property owner representatives as part of the redevelopment construction ("SMP").

b. SMP Implementation. As part of the Public Market Street Improvements, CCRP shall prepare Implementation Plan Memorandums ("IPMs"), as provided in the approved SMPs. The IMPs will serve as the guide for the management of environmental conditions at the Public Market Streets.

c. Completion Report. Within thirty (30) days of completion of soil excavation, grading, earthwork, export and disposal on and from one or more of the Public Market Streets and Current Shellmound Alignment Area, CCRP shall prepare and provide to City a Completion Report for each street as it is completed under this Agreement, as required by the SMPs ("**Completion Report**"), addressing all such activities on the Public Market Streets and Current Shellmound Alignment Area for review and comment by City prior to submission to DTSC. The City shall provide comments on each Completion Report within ten (10) business days of receipt of such report. CCRP shall reasonably incorporate revisions to address City comments to each Completion Report before submitting to DTSC. CCRP shall provide DTSC's approval of each Completion Report ("**Certificate of Completion**") to the City, which approval shall state that all material aspects of the applicable SMPs have been followed and completed during the Public Market Street Improvements.

d. On-Going Reporting. Concurrent with DTSC's issuance of the Certificate of Completion for the New Shellmound Alignment Area and the Current Shellmound Alignment Area, CCRP shall execute a reporting agreement(s) with DTSC to ensure conditions associated with the New Shellmound Alignment Area and Current Shellmound Alignment Area remain protective of human health and the environment and that the conditions established in the Shellmound Street Deed Restriction Amendment (as such term is defined in the Exchange Agreement) are maintained. Within fifteen (15) business days of a request from CCRP or its consultants, the City shall provide information requested for the purpose of reporting to DTSC, including information related to maintenance and monitoring of the New Shellmound Alignment Area. Upon the closing of the Exchange, the City shall have the sole obligation for maintenance and monitoring obligations imposed by DTSC as set forth in the Exchange Agreement.

4. Standards. The Public Market Street Improvements shall be constructed in accordance with the Plans and Specifications and CCRP shall do, or cause to be done, all work and furnish all materials necessary to complete the Public Market Street Improvements in substantial conformance with said Plans and Specifications or with any changes required or ordered by the City Engineer, which in its reasonable opinion are necessary or required to complete the work. All costs of checking said Plans and Specifications and all inspections of the work have been or shall be paid by CCRP. Any approval by the City Engineer shall not relieve CCRP, or its engineers or architects from liability under this Agreement.

5. Time of Commencement and Completion. Upon commencement of the Public Market Street Improvements work, such work shall be prosecuted with due diligence to its completion and in accordance with applicable Tentative Map Conditions of Approval.

6. Right of Entry. City hereby grants to CCRP and its contractors, subcontractors, engineers, architects, agents, employees and representatives a right of entry over, upon, across and through the Current Shellmound Alignment Area and, after the Close Escrow (as such term is defined in the Exchange Agreement), as applicable, the New Shellmound Alignment Area for pedestrians, vehicles, construction equipment and machinery, staging (including, without limitation, staging of soil, construction equipment, construction materials, etc.) and such purposes as may be necessary to perform the Public Market Street Improvements work contemplated in this Agreement. The foregoing rights shall include the right to perform demolition and excavation work, perform site grading work, perform construction work, and stage equipment and materials within each Area and take any other act as may be necessary or appropriate in the performance of the Public Market Street Improvements. The foregoing rights shall continue until the Public Market Street Improvements are completed in accordance with the terms and conditions of this Agreement or CCRP's breach in accordance with Paragraph 13 below. Notwithstanding the foregoing, this access right shall not include any right to stage soil or construction materials or equipment on the Current Shellmound Alignment until the New Shellmound Alignment has been accepted by the City under the terms of this Agreement and the public is no longer using the Current Shellmound Alignment. Any diversion of traffic on the Current Shellmound Alignment will require an encroachment permit.

7. Encroachment Permit. If and to the extent required by applicable laws, codes, ordinances or municipal or other governmental requirement, CCRP shall apply for and obtain an encroachment permit from the Department of Public Works prior to starting any construction of Public Market Street Improvements in any property currently owned by City. The Department of Public Works shall issue an encroachment permit within ten (10) business days of receipt of a complete application. No fees shall apply to any encroachment activities conducted under this Agreement.

8. Inspection Services. CCRP acknowledges that City may inspect the construction of the Public Market Street Improvements and agrees to pay City's customary costs for these inspection services. Costs of inspection services include, but are not limited to, office checking of maps and plans, field checking, inspection and testing. City staff and agents shall at all times during construction of the Public Market Street Improvements have access to the work.

Concurrent with delivery of the Notice of Commencement, CCRP shall make an initial deposit of Twenty Five Thousand Dollars (\$25,000) to pay for the City's inspection costs. As necessary, the City may reconcile the account throughout the construction period and request an additional deposit from CCRP. CCRP shall deposit the required amount within fifteen (15) business days after receipt of notice to CCRP of the additional amount due or City may stop inspections of the Public Market Street Improvements. Upon recording of the Certificate(s) of Public Market Streets Acceptance as provided in the Exchange Agreement, City shall reconcile the final account within thirty (30) calendar days thereafter. If money is owing City, CCRP shall deposit the required amount within thirty (30) calendar days after receipt of notice to CCRP of the additional amount due. If any inspection deposit funds remain after final reconciliation of the

account, City shall promptly refund CCRP the amount owed within thirty (30) calendar days thereafter.

9. Acceptance of Public Market Street Improvements. Final acceptance of the each of the Public Market Street Improvements as they are completed under the terms of this Agreement shall be by the City Engineer or his or her representative. The City Engineer or his or her representative shall accept any and all work on any portion of the Public Market Street Improvements to be performed under this Agreement, if such work substantially conforms, in the City Engineer's reasonable judgment, with the Plans and Specifications for such portion of the Public Market Street Improvements and/or the ordinances and standards of the City (including, for example, vehicular and bicycle lanes to allow travel in each direction). No work of any portion of the Public Market Street Improvements shall be accepted by City unless and until any and all liens and stop notices have been paid, discharged and released with respect to such portion of the Public Market Street Improvements or City has been provided with other assurances which City deems to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of City from the effect of such lien or bonded stop notice. No periodic or progress inspection or approval shall bind the City to accept the Public Market Street Improvements or to waive any defect in the same or any breach of this Agreement. Notwithstanding the foregoing, pedestrian sidewalks, street trees and other improvements from the edge of sidewalk to the right-of-way ("**Deferred Sidewalk Improvements**") that are directly adjacent to portions of the CCRP Property that are currently, or will be undergoing construction within a reasonably proximate period of time need not be completed for the City to accept the Public Market Street Improvements, subject to an agreement with the City Engineer, in his or her reasonable discretion, regarding an acceptable schedule to complete the Deferred Sidewalk Improvements, as applicable, and provided that applicable standards under the Americans with Disabilities Act are satisfied during any period of construction. Once the City Engineer or his representative has determined in his reasonable discretion that any portion of Public Market Street Improvements have been completed, the City shall execute, acknowledge and deliver a Certificate of Public Market Streets Acceptance for such portion of the Public Market Street Improvements in a form substantially similar to Exhibit D.

10. Repairs and Replacement. CCRP shall replace or repair any portion of the Public Market Street Improvements which have been destroyed or damaged prior to the recording of the Certificate of Public Market Streets Acceptance for such portion of the Public Market Street Improvements. Any such repair or replacement shall be to the satisfaction and subject to the approval of the City Engineer. CCRP shall repair to the satisfaction of the City Engineer any damage to the utilities systems, concrete work, street paving or other public improvements that may occur in connection with the Shellmound Street Improvements work. All maintenance, repair and restoration of the Public Market Street Improvements after the recording of the Certificate of Public Market Streets Acceptance for each portion of the Public Market Street Improvements shall be the sole obligation of the City, except as provided in (i) Condition of Approval III.D.3. of the Marketplace Tentative Map, (ii) Condition of Approval III.A.3.b.i.b (relating to 62nd Street), and (iii) Section 12 below.

11. Improvements Security.

a. Performance Security. CCRP shall, prior to commencement of any portion of the Public Market Street Improvements, deposit with City for the benefit of City an adequate and satisfactory improvement security, in a form provided by City, equal to one hundred percent (100%) of the estimated total cost of completion of the such portion of the Public Market Street Improvements, and otherwise meeting all applicable requirements of Chapter 5 of Division 2 of Title 7 of the California Government Code, to guarantee performance of design, construction and installation of each portion of the Public Market Street Improvements. The amount of security shall be approved by the City Engineer for each portion of the Public Market Street Improvements, as applicable. The performance security for each portion of the Public Market Improvements shall be kept in full force until recording of the Certificate of Public Market Streets Acceptance for that portion of the Public Market Street Improvements. The City Engineer, in his sole discretion, may release a portion of the security given for faithful performance of each portion of the Public Market Street Improvements as such work progresses upon application by CCRP in accordance with the procedures set forth in Government Code Section 66499.7.

b. Payment Security. CCRP shall, prior to commencement of the Public Market Street Improvements, deposit with City, for the benefit of City, adequate security in a form provided by City to ensure payment to the contractors, subcontractors, laborers, suppliers and materialmen performing each portion of the Public Market Street Improvements, consistent with all applicable requirements of Chapter 5 of Division 2 of Title 7 of the California Government Code. The total amount of the labor and materials payment security shall be equal to one hundred percent (100%) of the estimated total costs to construct each portion of the Public Market Street Improvements, as applicable. The amount of security shall be approved by the City Engineer for each portion of the Public Market Street Improvements, as applicable. Security given to secure payment to the contractors, subcontractors and to persons furnishing labor, materials or equipment with respect to each portion of the Public Market Street Improvements shall, six (6) months after the completion and acceptance of such work, be reduced to an amount equal to the total claimed by all claimants for whom liens have been filed with respect to such portion of the Public Market Street Improvements and of which notice has been given to the City, plus an amount reasonably determined by the City Engineer to be required to assure the performance of any other obligations secured by the security with respect to such portion of the Public Market Street Improvements. The balance of the security for such portion of the Public Market Street Improvements shall be released upon the settlement of all claims and obligations for which the security was given.

c. Warranty Period Security. Prior to the release by City of the performance security for any portion of the Public Market Street Improvements, CCRP shall deposit with City adequate security in a form provided by City warranting such portion of the Public Market Street Improvements for a period of one (1) year after the recording of the Certificate of Public Market Streets Acceptance for that portion of the Public Market Street Improvements. The amount of the warranty period security shall be equal to ten percent (10%) of the total estimated costs to construct such portion of the Public Market Street Improvements.

d. General Requirements for Security. All security required under this Agreement shall be provided as required under Government Code Section 66499 and in a form provided by and acceptable to City. Any additions, alterations or modifications to this Agreement or to the approved plans and specifications for any portion of the Public Market Street Improvements, including any extension of time within which the work hereunder may be completed, shall not release or exonerate any surety or sureties of improvement securities given in connection with this Agreement. City may retain for any security released an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees. Neither a preliminary acknowledgment of completion, nor acceptance, nor the existence of any security for any portion of the Public Market Street Improvements shall be construed as a limitation on liability on the part of CCRP under this Agreement.

12. Warranty. CCRP expressly warrants and guarantees all work performed hereunder and all materials used therein for a period of one (1) year after recording of each Certificate of Public Market Streets Acceptance by the City. CCRP also warrants that the Public Market Street Improvements shall fulfill their design functions and be fit for their ordinary and intended purposes, be free from defects in design, materials and workmanship, and perform satisfactorily.

CCRP agrees that for a period of one (1) year after acceptance of each portion of the Public Market Street Improvements, CCRP will: (a) promptly repair any defects or failures which may appear in such portion of the Public Market Street Improvements, as the case may be, during the one-year period; and (b) correct the causes of said defects or failures in such portion of the Public Market Street Improvements, as the case may be. If CCRP fails to act promptly or in accordance with this requirement, following written notice and an opportunity to cure as provided for in this Agreement, or should an emergency require immediate action, City as to the Public Market Street Improvements, may make the necessary repairs, replacements or other work and CCRP shall reimburse City, as applicable, such costs including a fifteen percent (15%) administrative fee. No security given for the warranty of work shall be released until the expiration of the warranty period and until any claims filed during the warranty period have been settled.

13. Breach of Agreement; Performance by City. If CCRP refuses or fails to satisfactorily complete the Public Market Street Improvements in accordance with this Agreement, and thereafter does not commence to complete such work within thirty (30) calendar days of written notice from the City of such failure and thereafter diligently pursue such work to completion, or if CCRP or CCRP's contractors, subcontractors, agents or employees otherwise violate this Agreement and do not cure or commence to cure such violation within thirty (30) calendar days after receipt of written notice from City of such violation and thereafter diligently pursue such cure to completion, or if delay in the construction of any portion of the Public Market Street Improvements, in the reasonable opinion of the City Engineer, poses any danger to property or public safety, or if CCRP should be adjudged a bankrupt, or shall make a general assignment for the benefit of creditors, or if a receiver should be appointed in the event of CCRP's insolvency, the City may, without relieving CCRP of any of its obligations hereunder, take over the work and prosecute same to completion by any method City may deem advisable for the account and at the expense of CCRP.

14. Encroachment Permits for Others. CCRP hereby agrees that in that period of time between execution of this Agreement and the acknowledgment of completion and acceptance by City of the Public Market Street Improvements, City may require persons other than CCRP to obtain encroachment permits for work other than that contemplated by this Agreement within the Current Shellmound Alignment Area. In the event of issuance of such encroachment permits, the CCRP shall not be relieved from responsibility as set forth in this Agreement, and acceptance or issuance of such encroachment permits shall not be construed as an act indicating acknowledgment of completion of any work required by this Agreement.

15. Cost of Public Market Street Improvements. City shall not be responsible for any of the costs of the design or construction of the Public Market Street Improvements or for the performance or non-performance of the work of construction of the Public Market Street Improvements, and CCRP shall hold City free and harmless from any claim or liability regarding the costs of the Public Market Street Improvements resulting from or arising out of the same.

16. No Liability of City. Neither the City nor any of its officers, agents, or employees (collectively, the “City Parties”) shall be liable to CCRP, its contractors, subcontractors, officers, agents, or employees, for any error or omission, injury or damage that may result to any person or property or any obligations or any obligation whatsoever, arising out of or in connection with any work to be performed or the failure to perform under this Agreement. Notwithstanding any contrary provision of this Agreement, City shall be responsible, at its sole cost and expense, for repairing, replacing and restoring any and all damage to or destruction of any improvements or any component thereof caused by City or any of the City Parties. City shall complete such repair, replacement and/or restoration within thirty (30) calendar days after City’s receipt of CCRP’s notice of such damage or destruction, provided that if such repair reasonably cannot be completed within thirty (30) calendar days, such period shall be extended as reasonably necessary so long as City diligently completes such repairs.

17. Indemnification. This indemnification provision shall survive expiration or termination of this Agreement for a period of the later of (i) ten (10) years from the final Certificate of Public Market Streets Acceptance or (ii) the expiration of the applicable statute of limitations for construction defects for Public Market Street Improvements, as applicable. CCRP shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City and their respective officers and employees from and against any and all third party suits or actions at law or in equity, claims, liabilities, obligations, losses, damages, costs and expenses (including reasonable attorneys’ fees), including, but not limited to, bodily injury, sickness, disease or death of any person or damage to real or personal property, tangible or intangible (collectively “Claims”) arising directly from the performance or failure to perform the Public Market Street Improvements as required under this Agreement or acts, omissions, negligence or willful misconduct of CCRP or its contractors, subcontractors, agents or employees under this Agreement. CCRP’s indemnity obligations under this Paragraph 17 shall not extend to Claims to the extent occasioned by the active negligence or willful misconduct of City or its or their officers, employees, agents, representatives, contractors or subcontractors. CCRP’s indemnity obligations shall apply regardless of whether any insurance policies, self-insurance or joint self-insurance maintained by City has been determined to be applicable to such Claims and regardless

of whether or not City has prepared, supplied or approved of the Plans and Specifications for the Public Market Street Improvements.

18. Insurance. Prior to commencing any portion the Public Market Street Improvements, CCRP shall obtain and maintain, or cause to be maintained, in full force at CCRP's own expense, insurance for such portion of the Public Market Street Improvements as described below against claims which may arise out of or result from the performance of the Public Market Street Improvements performed by CCRP, its Contractor and Subcontractors of any tier, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All policies shall be written on an occurrence basis. All insurance shall be written by companies that are authorized to write business in the State of California and have, at all times, a Best's rating of "A- X" (A minus X) or better by AM Best & Company, and with coverage and policy limits as follows (unless otherwise specified herein):

(a) Commercial General Liability insurance written on Insurance Services Office ("ISO") Commercial General Liability Coverage "occurrence" form CG 00 01 or another Commercial General Liability "occurrence" form providing equivalent coverage and including Broad Form Comprehensive General Liability coverage, blanket contractual liability coverage, Independent Contractors coverage, coverage for bodily injury (including death), property damage (including loss of use thereof) and products and completed operations with limits of not less than \$2,000,000 per occurrence. Limits may be provided in a "layered" program utilizing primary, umbrella or excess liability policies and shall be maintained for at least 1 year following completion of the Work.

(b) Comprehensive auto liability for all owned, hired and non-owned vehicles brought onto City premises with combined single limits of not less than \$1,000,000 per occurrence.

(c) Worker's Compensation insurance as required by the State of California.

(d) Employer's liability insurance on all employees, for occupational accidents or disease, with limits of not less than \$1,000,000 per occurrence.

(e) Contractor's Pollution Liability Insurance in an amount not less than Two Million Dollars (\$2,000,000) per claim or accident.

(f) Equipment and Personal Property insurance adequate to cover the value of all tools and equipment, including rentals, used in performing the Work.

In each policy of insurance described above, CCRP shall name or, cause City to be named, Additional Insureds under the policies required in clauses 18 (a), (b), (d) and (e) above. All policies shall provide for (i) at least thirty (30) days written notice to City prior to cancellation, and (ii) at least ten (10) days written notice to City for cancellation due to non-payment of applicable premiums. All policies of insurance shall contain full Waivers of Subrogation in favor of City. CCRP or their Contractors' insurance coverage shall be primary insurance with respect to any other insurance or self-insurance programs maintained by City and such other insurance or self-insurance programs shall be excess and non-contributory. Prior to the commencement of any Work, CCRP shall deliver to City a certificate of insurance

evidencing the coverage provided by each policy and provide replacement certificates fifteen (15) days prior to the expiration of any required coverage.

19. Title to Public Market Street Improvements. Title to and ownership of each portion of the Public Market Street Improvements shall vest absolutely in the City upon recording of the Certificate of Public Market Streets Acceptance for such portion of the Public Market Street Improvements.

20. Final Drawings. Upon completion of each portion of the Public Market Street Improvements and prior to final acceptance of such portion thereof, CCRP shall provide the City with one set of "as built" drawings in the format specified by the City Engineer for the applicable portion. The drawings shall be certified by CCRP as being "as-built" and shall reflect the job actually constructed including any changes.

21. Attorneys' Fees. In the event that any action is brought by any party hereto as against another party hereto for the enforcement or declaration of any right or remedy in or under this Agreement or for the breach of any covenant or condition of this Agreement, each party shall be responsible for their own fees, costs and expenses incurred, including their own attorneys' fees.

22. Compliance with Law. CCRP shall, at CCRP's expense, obtain all necessary permits and licenses for the Public Market Street Improvements hereunder, give all necessary notices and pay all fees and taxes required by law. In the performance of this Agreement, CCRP shall comply with all applicable laws, ordinances, and regulations.

23. Assignment. This Agreement may be assigned by CCRP with the prior approval of City, not to be unreasonably withheld, conditioned or delayed. Upon assignment, CCRP shall be released from all obligations under this Agreement.

24. Governing Law. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California.

25. Notices. All notices shall be in writing and delivered in person, by facsimile (provided notice is also delivered using one of the other permitted methods of delivery), by nationally recognized overnight courier service (such as FedEx) or sent by registered mail, postage prepaid to the following addresses:

City:

City of Emeryville
1333 Park Avenue
Emeryville, California 94608
Attention: City Manager
Facsimile: (510) 596-3724

with a copy to:

City of Emeryville
1333 Park Avenue
Emeryville, California 94608
Attention: City Attorney
Facsimile: (510) 596-3724

And with a copy to:

City of Emeryville
1333 Park Avenue
Emeryville, California 94608
Attention: City Engineer
Facsimile: (510) 596-3724

CCRP:

AG-CCRP Public Market, L.P.
c/o City Center Realty Partners
170 Grant Avenue, 6th Floor
San Francisco, California 94108
Attention: Mark Stefan
Telephone: (415) 395-2908

With copies to:

Holland & Knight
50 California St., Suite 2800
San Francisco, CA 94111
Attention: Tamsen Plume/Chelsea Maclean
Telephone: (415) 743-6900

26. Authority. The parties represent that the individuals executing this Agreement have the authority to do so.

27. Further Assurances; Amendments. City and CCRP agree to mutually consider reasonable requests for amendments to this Agreement that may be made by any of them, or by lending institutions or bond counsel or financial consultants to City or CCRP, provided such requests are consistent with this Agreement and would not materially alter the basic business terms hereof. No amendment hereto shall be effective unless in writing and signed by the parties hereto.

28. Counterparts. This Agreement may be executed in counterparts, and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument.

29. Interpretation. This Agreement is the product of negotiations between the parties, and it shall not be construed as if it had been prepared by one of the parties, but rather as if all parties have prepared the same. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

[SIGNATURE PAGES FOLLOW]

CITY:

CITY OF EMERYVILLE,
a California municipal corporation

By: _____

Name: _____

Its: City Manager

Date: _____
 “Effective Date”

APPROVED AS TO FORM:

By: _____
 City Attorney

CCRP:

AG-CCRP PUBLIC MARKET, LP,
a Delaware limited partnership

By: _____

Name: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____
 CCRP Attorney

ACKNOWLEDGMENT

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

State of California .)

)

County of)

On _____, 20__ before me, _____, 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.

Signature _____

(Seal)

ACKNOWLEDGMENT

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

State of California)

)

County of)

On _____, 20__ before me, _____, 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.

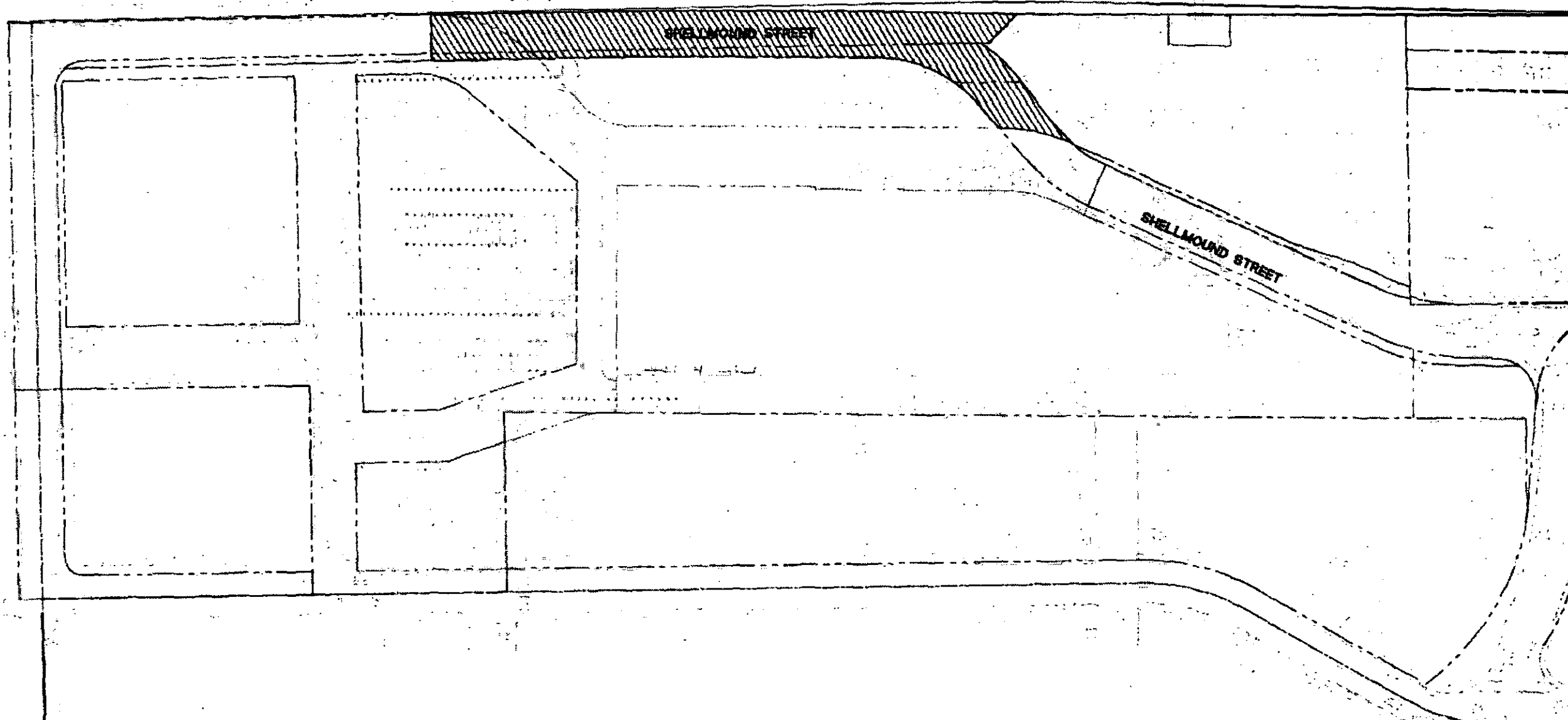
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

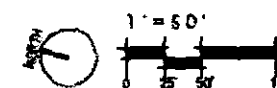
EXHIBIT A-1
DEPICTION OF CURRENT SHELLMOUND ALIGNMENT AREA



DEPICTION OF CURRENT
 SHELLMOUND STREET ALIGNMENT



EMERYVILLE MARKET PLACE
 Emeryville, California



NOVEMBER 4, 2015

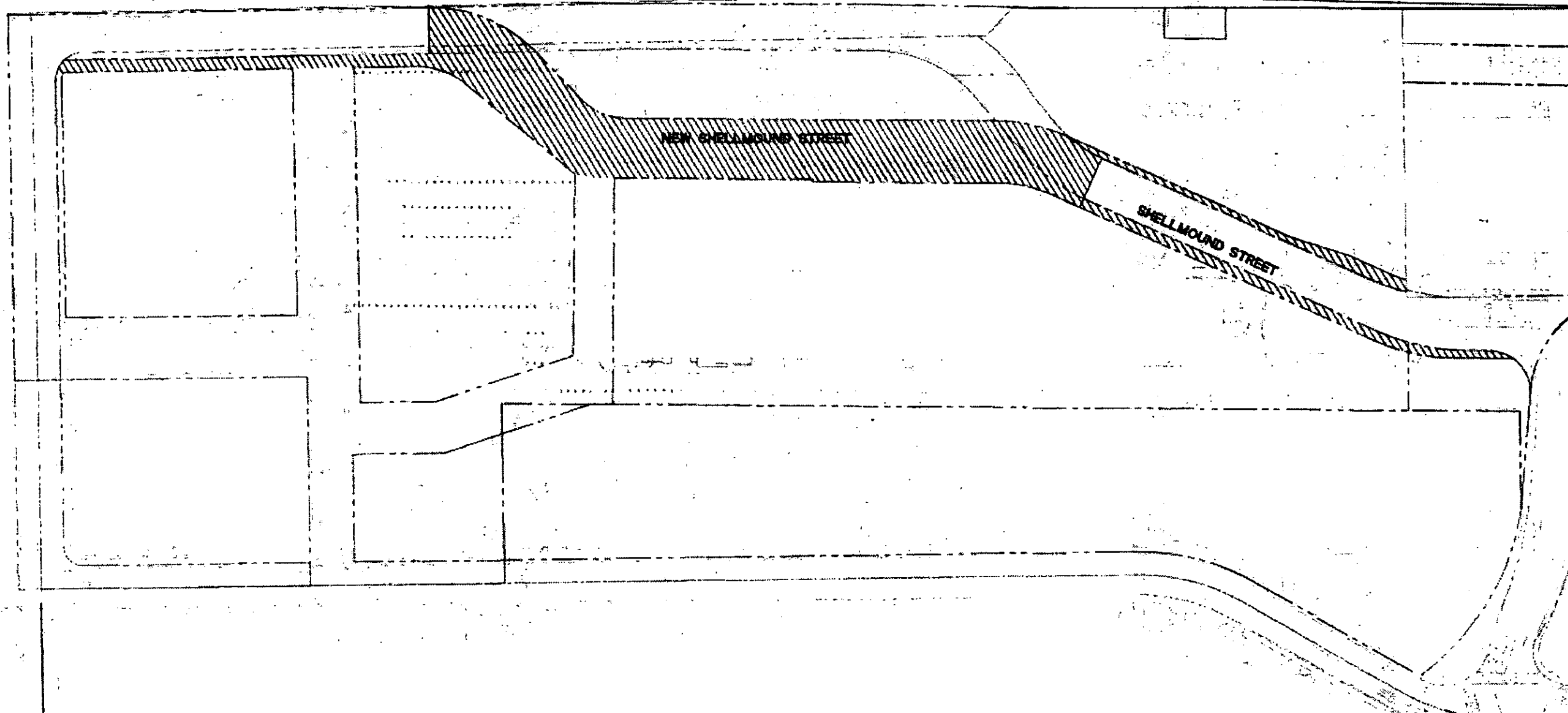
*Clarity Copy Can be found at
 Chicago title
 2150 John Glenn Dr #100
 Concord, CA 94528*

EXHIBIT A-2

CURRENT SHELLMOUND ALIGNMENT AREA LEGAL DESCRIPTION

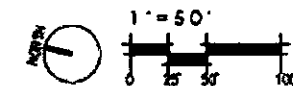
EXHIBIT B-1

DEPICTION OF NEW SHELLMOUND ALIGNMENT AREA



**DEPICTION OF NEW
SHELLMOUND STREET ALIGNMENT**

EMERYVILLE MARKET PLACE
Emeryville, California



NOVEMBER 4, 2015

Clarity Copy Can be found at:
Chicago office
2150 John Glenn Dr #100
Concord, CA 94528

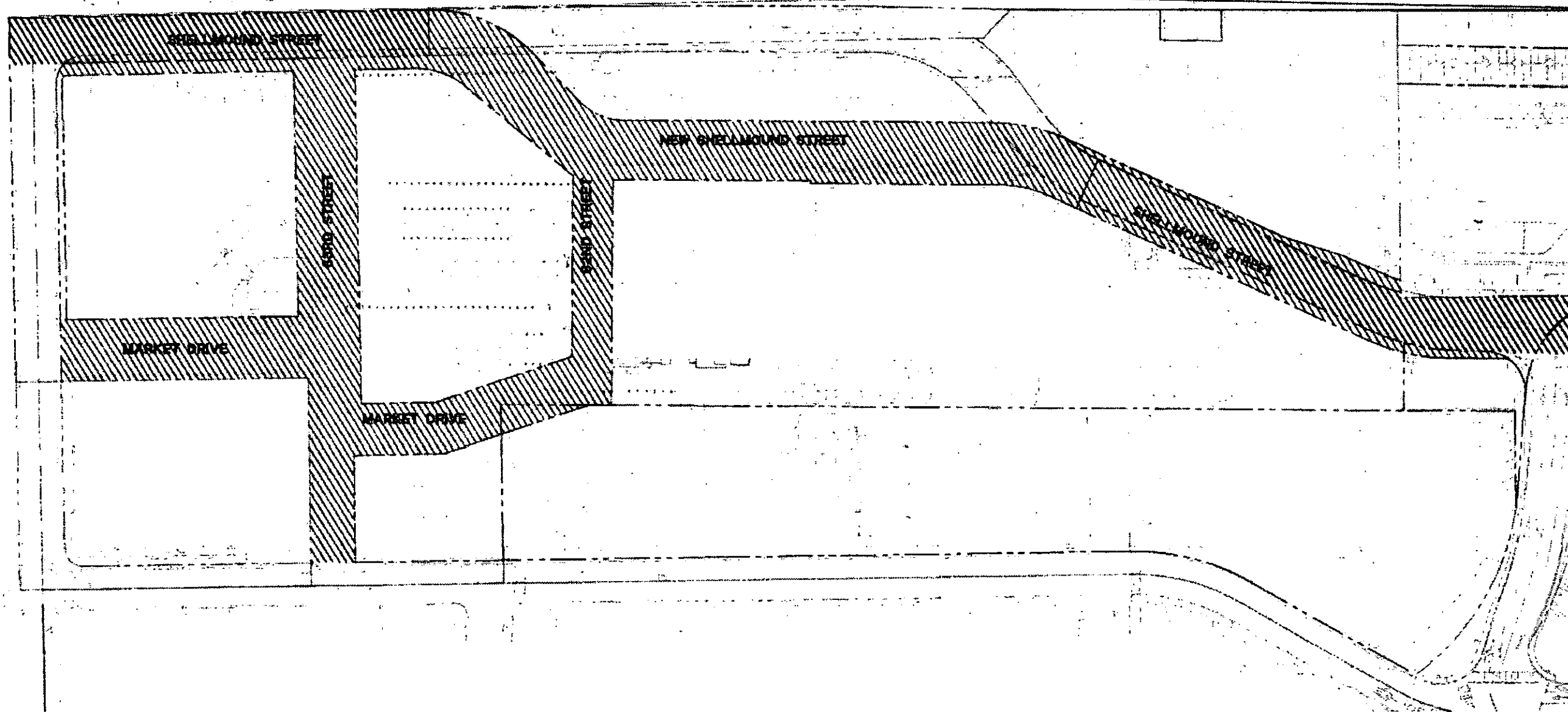
H-18

EXHIBIT B-2

NEW SHELLMOUND ALIGNMENT AREA LEGAL DESCRIPTION

EXHIBIT C

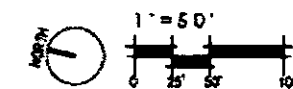
DEPICTION OF PUBLIC MARKET STREETS



DEPICTION OF PUBLIC MARKET STREETS
SHELLMOUND STREET ALIGNMENT



EMERYVILLE MARKET PLACE
Emeryville, California



NOVEMBER 4, 2015

Clarity Copy Can be found at:
Chicago Itrc
2150 John Glenn Dr #100
Concord, CA 94528

EXHIBIT D

CERTIFICATE OF PUBLIC MARKET STREETS ACCEPTANCE

This is to certify that the City of Emeryville hereby accepts the Public Market Streets Improvements.

CITY OF EMERYVILLE

By: _____

Name: _____

Its: _____

Dated: _____, 201__

EXHIBIT I

FORM OF CHRISTIE PARK EXPANSION IMPROVEMENT AGREEMENT

Recording Requested by and
After Recordation Mail To:

City Attorney
City of Emeryville
1333 Park Avenue
Emeryville, CA 94608

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

**CHRISTIE PARK EXPANSION
IMPROVEMENT AGREEMENT**

THIS CHRISTIE PARK IMPROVEMENT AGREEMENT (“**Agreement**”) is made and entered into this ____ day of _____, between AG-CCRP PUBLIC MARKET L.P., a Delaware limited partnership (“**AG-CCRP**”) and the CITY OF EMERYVILLE, a municipal corporation (“**City**”). AG-CCRP and City are sometimes collectively referred to herein as the “**Parties**”.

RECITALS

City owns in fee certain real property located in the City of Emeryville, County of Alameda, State of California, currently used for park purposes and generally known as Christie Park, as shown and more particularly depicted on Exhibit A attached hereto and incorporated by reference is referred to herein as the “**Existing Christie Park**.”

A. AG-CCRP is the owner of certain real property located in the City of Emeryville, County of Alameda, State of California designated as APNs 049-1556-001, 049-1556-002, 049-1556-003, 049-1556-004 (“**AG-CCRP Property**”). A portion of the AG-CCRP Property is contemplated for an expansion of the Existing Christie Park, as shown and more particularly described in Exhibit B attached hereto and incorporated by reference is referred to herein as “**Christie Park Expansion Area**.” (The Existing Christie Park and Christie Park Expansion Area are sometimes referred to herein collectively as the “**Property**”).

B. On July 15, 2008, the City adopted an ordinance (Ordinance No. 08-004) approving a Planned Unit Development - Mixed Use Designation for the Marketplace Redevelopment Project and approved a Preliminary Development Plan (“**Marketplace PDP**”). The Marketplace PDP contemplates the expansion of the Existing Christie Park onto the Christie Park Expansion Area and the improvement of the Property (“**Christie Park Expansion**”).

C. Consistent with the Marketplace PDP, the Planning Commission approved a Final Development for the Christie Park Expansion by Resolution No. FDP 14-001 on February 26, 2015 (“**Park FDP**”).

D. The dedication of fee title to the Christie Park Expansion Area was considered and approved by the Planning Commission in connection with the Marketplace Tentative Map, approved by the Planning Commission by Resolution No. SUBDIV 15-002 on October 22, 2015 (“**Tentative Map**”).

E. On December 1, 2015, the City Council adopted Ordinance No. [REDACTED] approving the Development Agreement among AG-CCRP, Avalonbay Communities, Inc. and the City to facilitate development on the AG-CCRP Property (“**Development Agreement**”).

F. The Christie Park Expansion was analyzed in the environmental impact report prepared pursuant to the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.) for the Marketplace Redevelopment Project, certified by the City on January 15, 2008 (“**Marketplace EIR**”) by Resolution No. 08-09 and applied to the Marketplace PDP on July 15, 2008 by Resolution 08-126.

G. The City and CCRP desire to enter into this Agreement to set forth AG-CCRP’s obligations with respect to the completion of the improvements required to complete the Christie Park Expansion (“**Christie Park Improvements**”).

H. Upon acceptance by the City of fee title to the Christie Park Expansion Area and completion of the Christie Park Improvements in accordance with this Agreement, the City will be solely responsible for operating, managing and maintaining the Property.

I. In order to accomplish the purposes outlined in the Marketplace PDP and the Park FDP, the City and AG-CCRP desire to enter into this agreement to set forth the Parties’ obligations with respect to the dedication and acceptance of the Christie Park Expansion Area and completion of the Christie Park Improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City hereby determines in accordance with Section 9-5.1911 (d) of Article 19 of Chapter 5 of Title 9 of the Emeryville Municipal Code (“**EMC**”) that it is in the City’s best interests for the Christie Park Improvements to be constructed by AG-CCRP and accordingly the Parties agree as follows:

1. Incorporation by Reference. The Recitals set forth above are incorporated herein by this reference as if set forth in full, except where expressly modified herein.

2. Acceptance of Fee Title to Christie Park Expansion Area. The City acknowledges that AG-CCRP may seek grant funding for environmental excavation and fill activities related to the Christie Park Expansion Area, and that such funding requires fee ownership by the City. Fee

title to the Christie Park Expansion Area shall be transferred to the City pursuant to (a) or (b) of this Section 2.

(a) Early Transfer to Facilitate Brownfields Funding. If the Developer elects to pursue brownfields funding, the City agrees, to cooperate in good faith with AG-CCRP to expedite the acceptance of fee title to the Christie Park Expansion Area notwithstanding that the Plans and Specifications, inclusive of the Excavation and Fill Work, have not been prepared or approved by the City Engineer, nor the Christie Park Improvements completed and accepted by the City as required by the Tentative Map. Accordingly, within thirty (30) calendar days after receipt of written notice from AG-CCRP of the need for City to accept fee title to the Christie Park Expansion Area, City shall either (i) accept the irrevocable offer of dedication set forth in AG-CCRP's submittal of a Final Map that provides for an irrevocable offer to dedicate the Christie Park Expansion Area as provided in Tentative Map Condition of Approval III.A.5.d [Dedication], or (ii) execute a certificate of acceptance of a grant deed from AG-CCRP granting fee title to the Christie Park Expansion Area as described in a metes and bounds description acceptable to the City Engineer, provided that AG-CCRP provides to City adequate security required by Section 13 [Improvements Security], plus an amount to prepare and complete the Plans and Specifications for the Christie Park Improvements. The provision of security under this Section 2 shall be based on a good faith estimate to (x) prepare and complete the Plans and Specifications for the Christie Park Improvements and to (y) complete construction of the Christie Park Improvements. The requirement to provide security under this Section 2(a) for purposes of the City's acceptance of fee title to the Christie Park Expansion Area shall not require the completion of the Plans and Specifications to determine a more precise estimate of the cost of the Christie Park Improvements.

(b) Later Transfer at City Acceptance of Christie Park Improvements. If Developer elects not to pursue brownfields funding pursuant to Section 19 [Brownfields Funding] below, the City shall execute a certificate of acceptance of a grant deed from AG-CCRP granting fee title to the Christie Park Expansion Area within thirty (30) days after the City's issuance of the City Certificate of Acceptance for Christie Park Improvements, as provided in Section 10 [Acceptance of Christie Park Improvements].

3. Commencement of Construction. AG-CCRP shall use good faith efforts to provide the City written notice at least ninety (90) days prior of its intent to commence construction of the Christie Park Improvements.

4. Construction of Christie Park Improvements. AG-CCRP shall, at its sole cost and expense, do and perform and cause to be done and performed in a good and workmanlike manner all of the Christie Park Improvements in accordance with those certain plans and specifications prepared by or on behalf of CCRP, once approved by the City Engineer under the terms of this Agreement (the "**Plans and Specifications**"). AG-CCRP shall work towards one hundred percent (100%) improvement plans for the Christie Park Improvements. All Plans and Specifications shall comply with Tentative Map Condition of Approval III.A.5.b., III.A.5.d., III.C., IV.A.1., and if applicable, III.A.9.b. and IV.B.1.

The City shall diligently review and process such plans. As each stage of improvement plans are approved by the City, the more complete and more recently approved plans shall be the "**Plans**

and Specifications.” All such work shall be completed in compliance with all applicable federal, state and local laws, ordinances, rules, regulations and policies and shall be performed on a lien-free basis.

(a) Christie Park Expansion Area Excavation and Fill Work. The Plans and Specifications shall include, as necessary, and the Christie Park Improvements shall be undertaken and performed in accordance with the terms of the (i) Soil Management Plan For Redevelopment Construction Park Parcels, Public Market Emeryville, 6330 Christie Avenue, Emeryville, California, prepared by PES Environmental Inc. dated September 2, 2014 and approved by the Department of Toxic Substances Control (“DTSC”) on November 21, 2014, which presents the environmental management procedures to be followed by environmental consultants, construction contractors and workers, and other property owner representatives as part of the redevelopment construction (“SMP”), and (ii) Tentative Map Condition of Approval III.A.5.d. [Dedications] requiring (a) the Christie Park Expansion Area to be excavated four (4) feet below existing ground surface and backfill with clean backfill (“**Excavation and Fill Work**”) and (b) that the Excavation and Fill Work shall meet final grades as provided in the Park FDP and Plans and Specifications. The Excavation and Fill Work shall not be required on the Existing Christie Park.

(b) SMP Implementation. As part of the Christie Park Improvements, AG-CCRP shall prepare Implementation Plan Memorandums (“IPMs”), as provided in the approved SMP. The IMP will serve as the guide for the management of environmental conditions.

(c) Completion Report. Within thirty (30) days of completion of soil excavation, grading, earthwork, export and disposal on and from the Property and the Excavation and Backfill Work, AG-CCRP shall prepare and provide to City a Completion Report, as required by the SMP (“**Completion Report**”), addressing all such activities on the Property for review and comment by City prior to submission to the Department of Toxic Substances Control (“DTSC”). The City shall provide comments on the Completion Report consistent with Section 9.1(iii) of the Development Agreement. AG-CCRP shall reasonably incorporate revisions to address City comments to the Completion Report before submitting the Completion Report to DTSC. AG-CCRP shall provide DTSC’s approval of the Completion Report (“**Certificate of Completion**”) to the City, which approval shall state that all material aspects of the SMP and Excavation and Fill Work have been followed and completed for the Property with respect to the Christie Park Improvements.

(d) On-going Reporting. Upon DTSC's issuance of the Certificate of Completion, the City shall have the sole obligation for maintenance and monitoring obligations imposed by DTSC. Within fifteen (15) business days of a request from City or its consultants, AG-CCRP shall provide information requested for the purpose of reporting to DTSC.

5. Standards. The Christie Park Improvements shall be constructed in accordance with the Plans and Specifications and AG-CCRP shall do, or cause to be done, all work and furnish all materials necessary to complete the Christie Park Improvements in substantial conformance with said Plans and Specifications or with any changes required or ordered by the City Engineer, which in its reasonable opinion are necessary or required to complete the work. All costs of checking said Plans and Specifications and all inspections of the work shall be paid

by AG-CCRP. Any approval by the City Engineer shall not relieve AG-CCRP, or its engineers or architects from liability under this Agreement.

6. Time of Completion. Upon commencement of the Christie Park Improvements work, such work shall be prosecuted with due diligence to its completion. The Christie Park Improvements shall be completed in accordance with Tentative Map Condition of Approval III.A.5.e [Construction Completion Timing] requiring improvements as described in Tentative Map Condition of Approval III.A.5.b [Public Improvements (to be completed with Final Map)] designed, constructed, installed, dedicated and completed and ready for acceptance by City upon the earlier of (i) twelve (12) months after issuance of a temporary certificate of occupancy for Parcel C residential building improvements, (ii) twelve (12) months after issuance of a temporary certificate of occupancy for Parcel D residential building improvements, or (iii) twelve (12) months after issuance of a final certificate of occupancy for the Parcel C grocery store improvements.

7. Right of Entry. The City hereby grants to AG-CCRP and its contractors, subcontractors, engineers, architects, agents, employees and representatives a right of entry over, upon, across and through the Property for pedestrians, vehicles, construction equipment and machinery, staging (including, without limitation, staging of soil, construction equipment, construction materials, etc.) and such purposes as may be necessary to perform and complete the Christie Park Improvements contemplated in this Agreement. The foregoing rights shall include, without limitation, the right to perform demolition and excavation work, perform site grading work, perform construction work, and stage equipment and materials within the Property and take any other act as may be necessary or appropriate in the completion of the Christie Park Improvements. The foregoing rights shall continue until the Christie Park Improvements are completed in accordance with the terms and conditions of this Agreement or AG-CCRP's breach in accordance with Section 13 [Improvements Security] below.

8. Encroachment Permit. If and to the extent required by applicable laws, codes, ordinances or municipal or other governmental requirement, AG-CCRP shall apply for and obtain an encroachment permit from the Department of Public Works prior to starting any construction of Christie Park Improvements. The Department of Public Works shall issue an encroachment permit within ten (10) days of receipt of a complete application. No fees shall apply to any encroachment activities conducted under this Agreement.

9. Inspection Services. AG-CCRP acknowledges that City may inspect the construction of the Christie Park Improvements and AG-CCRP agrees to pay City's customary costs for these inspection services. Costs of inspection services include, but are not limited to, office checking of maps and plans, field checking, inspection and testing. City staff and agents shall, at all times during construction of the Christie Park Improvements, have access to the work. Consistent with Tentative Map Condition of Approval III.A.5.c [Improvement Agreement], AG-CCRP shall make an initial deposit of Twenty Five Thousand Dollars (\$25,000) to pay for the inspection costs. As necessary, the City may reconcile the account throughout the construction period and request an additional deposit from AG-CCRP. AG-CCRP shall deposit the required amount within fifteen (15) days after receipt of notice to AG-CCRP of the additional amount due or City may stop inspections of the Christie Park Improvements. Upon issuing the City Certificate of Acceptance for the Christie Park

Improvements (defined below), City shall reconcile the final account within thirty (30) days thereafter. If money is owing City, AG-CCRP shall deposit the required amount within thirty (30) days after receipt of notice to AG-CCRP of the additional amount due. If any inspection deposit funds remain after final inspection, City shall promptly refund AG-CCRP the amount owed within thirty (30) days thereafter.

10. Acceptance of Christie Park Improvements. Final acceptance of the Christie Park Improvements on the Property shall be by the City Engineer or his representative. The City Engineer or his representative shall accept the Christie Park Improvements unless such improvement fails to substantially conform, in his or his representative's reasonable judgment, with the Plans and Specifications for such improvement and/or the ordinances and standards of the City; provided, however, that no part of the Christie Park Improvements shall be accepted by City unless and until any and all liens and stop notices have been paid, discharged and released with respect to such portion of the Christie Park Improvements or City has been provided with other assurances which City deems to be reasonably satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of City from the effect of such lien or bonded stop notice. No periodic or progress inspection or approval shall bind the City to accept the Christie Park Improvements or to waive any defect in the same or any breach of this Agreement. Once the City Engineer has determined in his reasonable discretion that Christie Park Improvements have been completed, the City shall execute, acknowledge and deliver a Certificate of Acceptance for the Christie Park Improvements ("**City Certificate of Acceptance for Christie Park Improvements**") in the form attached hereto as Exhibit C.

11. Repairs and Replacement. AG-CCRP shall replace or repair any portion of the Christie Park Improvements which have been destroyed or damaged prior to the City's issuance of the City Certificate of Acceptance for Christie Park Improvements. Any such repair or replacement shall be to the satisfaction and subject to the approval of the City Engineer. AG-CCRP shall repair to the satisfaction of the City Engineer any damage to the utilities systems, concrete work, street paving or other public improvements that may occur in connection with the Christie Park Improvements work. Except as provided in Tentative Map Condition of Approval III.D.3 [Maintenance of Street Trees, Stormwater C3 plantings and other vegetation in the Public Right of Way] and for AG-CCRP's warranty as set forth in Section 14 [Warranty] below, following City's issuance of the City Certificate of Acceptance for Christie Park Improvements, City shall be solely responsible, at its sole cost, expense and liability, for all obligations with respect to the Christie Park Improvements, including, without limitation, management, maintenance, repair and replacement thereof.

12. Timing for Christie Park Plans and Specifications. AG-CCRP shall complete Plans and Specifications for those Christie Park Improvements described in Tentative Map Condition of Approval III.A.5.b [Public Improvements (to be included in Final Map)] prior to the earlier of (a) commencement of the Christie Park Improvements, or (b) issuance of a final certificate of occupancy for the (x) grocery store on Parcel C, (y) the residential building on Parcel C or (z) residential building on Parcel D if said improvements have not already been completed and accepted by the City, consistent with Tentative Map Condition of Approval III.A.5.c [Improvement Agreement], which requires AG-CCRP to provide security for Christie Park Improvements prior to the issuance of such certificates of occupancy. This Section 12 expressly supersedes any requirement to prepare the Plans and Specifications at an earlier stage,

including Tentative Map Condition of Approval III.A.5.b. providing that a Final Map that creates Parcel E shall include improvement plans for the Christie Park Improvements.

13. Improvements Security.

(a) Performance Security. AG-CCRP shall deposit with City for the benefit of City an adequate and satisfactory improvement security equal to one hundred percent (100%) of the estimated total cost of the Christie Park Improvements, and otherwise meeting all applicable requirements of Chapter 5 of Division 2 of Title 7 of the California Government Code, to guarantee performance of construction and installation of the Christie Park Improvements. The performance security for the Christie Park Improvements shall be kept in full force until City accepts the Christie Park Improvements. The City Engineer, in his sole discretion, may release a portion of the security given for faithful performance of the Christie Park Improvements as such work progresses upon application by AG-CCRP in accordance with the procedures set forth in Government Code Section 66499.7.

(b) Payment Security. AG-CCRP shall deposit with City, for the benefit of City, adequate security to ensure payment to the contractors, subcontractors, laborers, suppliers and materialmen performing the Christie Park Improvements work, consistent with all applicable requirements of Chapter 5 of Division 2 of Title 7 of the California Government Code. The total amount of the labor and materials payment security shall be equal fifty percent (50%) of the estimated total costs to construct the Christie Park Improvements. Security given to secure payment to the contractors, subcontractors and to persons furnishing labor, materials or equipment with respect to the Christie Park Improvements shall, six (6) months after the completion and acceptance of such work, be reduced to an amount equal to the total claimed by all claimants for whom liens have been filed with respect to the Christie Park Improvements and of which notice has been given to the City, plus an amount reasonably determined by the City Engineer to be required to assure the performance of any other obligations secured by the security with respect to the Christie Park Improvements. The balance of the security for the Christie Park Improvements shall be released upon the settlement of all claims and obligations for which the security was given.

(c) Warranty Period Security. Prior to the release by City of the performance security for the Christie Park Improvements, AG-CCRP shall deposit with City adequate security warranting the Christie Park Improvements for a period of one (1) year after the date of City's acceptance of such work. The amount of the warranty period security shall be equal to ten percent (10%) of the total estimated costs to construct the Christie Park Improvements.

(d) General Requirements for Security. All security required under this Agreement shall be provided as required under Government Code Section 66499 and in a form acceptable to City. Any additions, alterations or modifications to this Agreement or to the approved Plans and Specifications for the Christie Park Improvements, including any extension of time within which the work hereunder may be completed, shall not release or exonerate any surety or sureties of improvement securities given in connection with this Agreement. City may retain for any security released an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorneys' fees. Neither a preliminary acknowledgment of completion, nor acceptance, nor the existence of any security for the Christie Park

Improvements shall be construed as a limitation on liability on the part of AG-CCRP under this Agreement.

(e) Timing for Security. Security shall be provided at the earlier of: (i) transfer of fee title for the Christie Park Expansion Area to the City pursuant to Section 2(a) [Early Transfer to Facilitate Brownfields Funding] of this Agreement, if Developer elects to pursue brownfields funding; (ii) commencement of the Christie Park Improvements; or (iii) issuance of a final certificate of occupancy for the (x) grocery store on Parcel C, (y) the residential building on Parcel C or (z) residential building on Parcel D (pursuant to Tentative Map Condition of Approval III.A.5.c [Improvement Agreement] which requires AG-CCRP to provide security for Christie Park Improvements prior to the issuance of such certificates of occupancy).

14. Warranty. AG-CCRP expressly warrants and guarantees all work performed hereunder and all materials used therein for a period of one (1) year after completion and final acceptance thereof by the City. AG-CCRP also warrants that the Christie Park Improvements shall fulfill their design functions and be fit for their ordinary and intended purposes, be free from defects in design, materials and workmanship, and perform satisfactorily.

AG-CCRP agrees that for a period of one (1) year after acceptance of the Christie Park Improvements, AG-CCRP will: (a) promptly repair any defects or failures which may appear in the Christie Park Improvements, as the case may be, during the one-year period; and (b) correct the causes of said defects or failures in the Christie Park Improvements, as the case may be. If AG-CCRP fails to act promptly or in accordance with this requirement, following written notice and an opportunity to cure as provided for in this Agreement, or should an emergency require immediate action, City as to the Christie Park Improvements, make the necessary repairs, replacements or other work and AG-CCRP shall reimburse City, as applicable, such costs including a fifteen percent (15%) administrative fee. No security given for the warranty of work shall be released until the expiration of the warranty period and until any claims filed during the warranty period have been settled.

15. Breach of Agreement; Performance by City. If AG-CCRP refuses or fails to satisfactorily complete the Christie Park Improvements within the time specified herein, and thereafter does not commence to complete such work within thirty (30) days of written notice from the City of such failure and thereafter diligently pursue such work to completion, or if AG-CCRP or AG-CCRP's contractors, subcontractors, agents or employees otherwise violate this Agreement and do not cure or commence to cure such violation within thirty (30) days after receipt of written notice from City of such violation and thereafter diligently pursue such cure to completion, or if delay in the construction of the Christie Park Improvements, in the reasonable opinion of the City Engineer, poses any danger to property or public safety, or if should be adjudged a bankrupt, or shall make a general assignment for the benefit of creditors, or if a receiver should be appointed in the event of AG-CCRP's insolvency, then the City may, without relieving AG-CCRP of any of its obligations hereunder, take over the work and prosecute same to completion by any method City may deem advisable for the account and at the expense of AG-CCRP.

16. Encroachment Permits for Others. AG-CCRP hereby agrees that in that period of time between execution of this Agreement and the acknowledgment of completion and acceptance by City of the Christie Park Improvements, City may require persons other than AG-CCRP to obtain encroachment permits for work other than that contemplated by this Agreement. In the event of issuance of such encroachment permits, the AG-CCRP shall not be relieved from responsibility as set forth in this Agreement, and acceptance or issuance of such encroachment permits shall not be construed as an act indicating acknowledgment of completion of any work required by this Agreement.

17. Cost of Christie Park Improvements. City shall not be responsible for any of the costs of the Christie Park Improvements or for the performance or non-performance of the Christie Park Improvements work, and AG-CCRP shall hold City free and harmless from any claim or liability regarding the costs of the Christie Park Improvements resulting from or arising out of the same.

18. Credit Against Park Impact Fees. In exchange for AG-CCRP's design and construction of the Christie Park Improvements and the dedication of fee title to the Christie Park Expansion Area, AG-CCRP shall be entitled to credit(s) against park impact fee ("**Park Impact Fees**") pursuant to Article 19 of Chapter 5 of Title 9 of the EMC in accordance with the following process. This Agreement shall serve as the "public improvement agreement" required by Section 9-5.1913 of Article 19 of Chapter 5 of Title 9 of the EMC.

(a) Submission of Estimate and Appraisal. Prior to commencing construction of the Christie Park Improvements, AG-CCRP shall submit a good faith estimate of the following:

(i) The cost of providing the Christie Park Improvements (including construction and design) ("**Estimate**"). The Estimate may include costs related to the implementation of the SMP on the Existing Christie Park but shall exclude any costs related to the Excavation and Fill Work and/or implementation of the SMP on the Christie Park Expansion Area.

(ii) An appraisal prepared by a qualified appraiser of the current fair market value of the Christie Park Expansion Area (assuming the completion of all Excavation and Fill Work required under Section 4.a. [Christie Park Expansion Area Excavation and Fill Work]) ("**Appraisal**").

(b) Optional City Appraisal. If requested by the City after review of the Appraisal, the City may direct the preparation of a property appraisal by an expert selected by the City who is qualified to express an opinion as to the value of the Christie Park Expansion Area pursuant to California Civil Code of Civil Procedure Section 1255.010 ("**City Appraisal**"). The City shall make good faith efforts to expedite the preparation of the City Appraisal, if any is requested. AG-CCRP shall be responsible for all costs and expenses of preparation of the City Appraisal.

(c) Maximum Amount of the Credit. The final amount of the credit (the "**Maximum Credit**") shall be (i) the fair market value of the Christie Park Expansion Area

based on the Appraisal (or the City Appraisal, if one is prepared under Section 18(b)[Optional City Appraisal]) (the “**Land Value**”) PLUS (ii) the lesser of: (a) AG-CCRP’s actual cost of providing the Christie Park Improvements to be evidenced by the submittal of written documentation to the satisfaction of the City pursuant to Section 18(d)[Documentation of Creditable Costs], below, and (b) the Estimate, LESS (iii) fifty percent (50%), if any, of any Brownfields Funding received by City and assigned and delivered to AG-CCRP pursuant to Section 19 [Brownfields Funding].

(d) Documentation of Creditable Costs. Once Christie Park Improvements have commenced, AG-CCRP may submit documentation to the City of actual costs incurred related to the design and construction for the Christie Park Improvements. Costs incurred related to the design of the Christie Park Improvements shall not include any costs, expenses or fees of any kind or nature incurred by or on behalf of AG-CCRP to secure the approvals for the Park FDP or the Tentative Map. Within twenty (20) days after receipt thereof, the City shall notify AG-CCRP in writing whether actual costs have been approved or whether additional reasonable documentation is needed to demonstrate any such costs. The City shall provide AG-CCRP an opportunity to meet and confer regarding the demonstration of actual costs and opportunity to re-submit documentation of actual costs, if necessary. Approved costs shall be referred to as “**Creditable Costs.**”

(e) Credit Towards Park Impact Fees. The Land Value plus the Creditable Costs less the Brownfields Funding (the “**Final Credit**”) shall be applied, up to the Maximum Credit, against the Park Impact Fees for any new development projects within AG-CCRP Property (“**Eligible Projects**”). Allocation of Final Credit against the Park Impact Fees among the Eligible Projects shall be on a **first come, first served basis** by the City. AG-CCRP shall be solely responsible for entering into any private agreements with third party purchasers of the Eligible Projects related to the amount of the Final Credit.

(f) Potential Reimbursement. AG-CCRP shall be entitled to reimbursement from the City provided that (i) AG-CCRP completes construction of approved Final Development Plans under the Marketplace PDP within the term of the Development Agreement and (ii) Final Credit remains available. To request reimbursement, AG-CCRP may submit a written request to the Director of Planning no later than one hundred and eight days (180) days after the issuance of the last certificate of occupancy for new development authorized on the AG-CCRP Property under the Marketplace PDP. The request shall identify the specific dollar amount of the Final Credit balance. The City shall issue the reimbursement within thirty (30) days of confirming the Final Credit availability pursuant to this Section. The City’s obligation under this Section shall expire five (5) years after the Development Agreement is terminated. Consistent with Section 9-5.1916(c) of Article 19 of Chapter 5 of Title 9 of the EMC, the City shall not make and shall have no obligation to make reimbursement payments from any source other than the fund for Park Impact Fees and shall not provide any reimbursement in excess of the amount of fees deposited in the fund for Park Impact Fees. No interest of any sort shall accrue on the Final Credit.

19. Brownfields Funding. If requested in writing by AG-CCRP and at the sole cost and expense of AG-CCRP, the City shall promptly apply for and diligently pursue brownfields grant funding from DTSC and the Environmental Protection Agency (“EPA”) to cover the costs

and expenses incurred or to be incurred by AG-CCRP in connection with implementation of the SMP on the Existing Christie Park and/or the Excavation and Fill Work and implementation of the SMP on the Christie Park Expansion Area. Promptly upon City's receipt of such funding from DTSC or EPA, City shall assign and deliver to AG-CCRP (in immediately available funds) all such funds. The amount of such funds received by City and assigned and delivered by City to AG-CCRP, less five percent (5%) to cover AG-CCRP's costs and expenses, shall be referred to herein as the "**Brownfields Funding**". Nothing herein shall preclude City from pursuing any brownfields grant funding to cover the costs of investigating, remediating or otherwise addressing any previously unknown suspect soil conditions or subsurface features at Existing Christie Park, if any, as described in SMP Section 5.0 [Contingency Procedures].

20. No Liability of City. Neither the City nor any of its officers, agents, or employees (collectively, the "**City Parties**") shall be liable to AG-CCRP, its contractors, subcontractors, officers, agents, or employees, for any error or omission, injury or damage that may result to any person or property or any obligations or any obligation whatsoever, arising out of or in connection with any work to be performed or the failure to perform under this Agreement. Notwithstanding any contrary provision of this Agreement, City shall be responsible, at its sole cost and expense, for repairing, replacing and restoring any and all damage to or destruction of any improvements or any component thereof caused by City or any of the City Parties. City shall complete such repair, replacement and/or restoration within thirty (30) calendar days after City's receipt of AG-CCRP's notice of such damage or destruction, provided that if such repair reasonably cannot be completed within thirty (30) calendar days, such period shall be extended as reasonably necessary so long as City diligently completes such repairs.

21. Indemnification. This indemnification provision shall survive expiration or termination of this Agreement.

(a) Claims Related to Christie Park Improvements. AG-CCRP shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City and its respective officers and employees from and against any and all third party suits or actions at law or in equity, claims, liabilities, obligations, losses, damages, costs and expenses (including reasonable attorneys' fees), including, but not limited to, bodily injury, sickness, disease or death of any person or damage to real or personal property, tangible or intangible (collectively "**Claims**") arising directly from the performance or failure to complete the Christie Park Improvements as required under this Agreement or acts, omissions, negligence or willful misconduct of AG-CCRP or its contractors, subcontractors, agents or employees under this Agreement. AG-CCRP's indemnity obligations under this Section 21(a) shall not extend to Claims to the extent occasioned by the active negligence or willful misconduct of City or its or their officers, employees, agents, representatives, contractors or subcontractors. AG-CCRP's indemnity obligations shall apply regardless of whether any insurance policies, self-insurance or joint self-insurance maintained by City has been determined to be applicable to such Claims and regardless of whether or not City has prepared, supplied or approved of the Plans and Specifications for the Park Improvements.

(b) Claims Related to Environmental Conditions.

(i) Environmental Condition at Christie Park Expansion Area. AG-CCRP shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless City and its respective officers and employees from and against any and all Claims related to Hazardous Materials (as hereinafter defined) located on, in, or under the Christie Park Expansion Area including, without limitation, the costs of any investigation, any required or necessary repair, replacement, remediation, cleanup or detoxification, or preparation and implementation of any closure, monitoring or other required plans, except to the extent resulting from acts or omissions of, or exacerbated by, the City or its officers, employees or agents.

(ii) Environmental Condition at Existing Christie Park. The City shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless AG-CCRP and its respective officers and employees from and against any and all Claims related to Hazardous Materials (as hereinafter defined) located on, in, or under the Existing Christie Park including, without limitation, the costs of any investigation, any required or necessary repair, replacement, remediation, cleanup or detoxification, or preparation and implementation of any closure, monitoring or other required plans to the extent that Claims arise from previously unknown suspect soil conditions or subsurface features, as described in SMP Section 5.0 [Contingency Procedures]. In the event that AG-CCRP brings a Claim for reimbursement against City under this Section 18(b)(ii), it shall not be included as a Creditable Cost for reimbursement under Section 18[Credits Against Park Impact Fees] of this Agreement. Notwithstanding the foregoing, nothing herein shall relieve AG-CCRP from liability for the creation or exacerbation of an Environmental Condition on the Existing Christie Park that occurs as a result of AG-CCRP's construction of the Christie Park Improvements.

(iii) Environmental Conditions Definitions.

"Hazardous Materials" or "Hazardous Substances" - shall mean (i) hazardous wastes, hazardous materials, hazardous substances, hazardous constituents, toxic substances or related materials, whether solids, liquids or gases, including, but not limited to, substances defined as "hazardous wastes," "hazardous materials," "hazardous substances," "toxic substances," "pollutants," "contaminants," "radioactive materials", "toxic pollutants", or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601 et seq.; the Toxic Substance Control Act ("TSCA"), 15 U.S.C. § 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901, et seq.; the Clean Water Act ("CWA"), 33 U.S.C. § 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f et seq.; the Clean Air Act ("CAA"), 42 U.S.C. § 7401 et seq.; the California Water Resources Control Board; any Regional Water Quality Control Board; the California Air Resources Board; Cal/Osha Standards Board Division of Occupational Safety and Health; the California Department of Food and Agriculture; the California Department of Health Services; and in any permits, licenses, approvals, plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar federal, state or local laws, regulations, rules or ordinance now or hereafter in effect relating to environmental matters; and (ii) any other substances, constituents or wastes subject to any applicable federal, state or local law, regulation or ordinance, including any environmental law, now or hereafter in effect, including but not limited to (A) petroleum, (B) refined petroleum products, (C) waste oil, (D)

waste aviation or motor vehicle fuel and their byproducts, (E) asbestos, (F) lead in water, paint or elsewhere, (G) radon, (H) Polychlorinated Biphenyls (PCB's), (I) ureaformaldehyde, (J) volatile organic compounds (VOC), (K) total petroleum hydrocarbons (TPH), (L) benzene derivative (BTEX), and (M) petroleum byproducts.

"Environmental Condition" shall mean any adverse condition relating to any Hazardous Materials.

22. Use and Maintenance of Christie Park Improvements. Prior to the City's issuance of the City Certificate of Acceptance for Christie Park Improvements, AG-CCRP agrees that the use of any and all of the Christie Park Improvements by AG-CCRP and its officers, agents, employees, contractors and subcontractors, or the public, shall be at the sole and exclusive risk of AG-CCRP. Upon City's issuance of the City Certificate of Acceptance for Christie Park Improvements, and except as otherwise set forth herein, AG-CCRP shall have no on-going obligation with respect to the ownership, use, maintenance or any other aspect of the Christie Park Improvements.

23. Insurance. Prior to commencing Christie Park Improvements, AG-CCRP shall obtain and maintain, or cause to be maintained, in full force at AG-CCRP's own expense, insurance as described below against claims which may arise out of or result from the performance of the Christie Park Improvements by AG-CCRP, its Contractor and Subcontractors of any tier, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All policies shall be written on an occurrence basis. All insurance shall be written by companies that are authorized to write business in the State of California and have, at all times, a Best's rating of "A- X" (A minus X) or better by AM Best & Company, and with coverage and policy limits as follows (unless otherwise specified herein):

(a) Commercial General Liability insurance written on Insurance Services Office ("ISO") Commercial General Liability Coverage "occurrence" form CG 00 01 or another Commercial General Liability "occurrence" form providing equivalent coverage and including Broad Form Comprehensive General Liability coverage, blanket contractual liability coverage, Independent Contractors coverage, coverage for bodily injury (including death), property damage (including loss of use thereof) and products and completed operations with limits of not less than \$2,000,000 per occurrence. Limits may be provided in a "layered" program utilizing primary, umbrella or excess liability policies and shall be maintained for at least 1 year following completion of the Christie Park Improvements.

(b) Comprehensive auto liability for all owned, hired and non-owned vehicles brought onto City premises with combined single limits of not less than \$1,000,000 per occurrence.

(c) Worker's Compensation insurance as required by the State of California.

(d) Employer's liability insurance on all employees, for occupational accidents or disease, with limits of not less than \$1,000,000 per occurrence.

(e) Contractor's pollution liability insurance in the amount of \$1,000,000 per occurrence.

(f) Equipment and Personal Property insurance adequate to cover the value of all tools and equipment, including rentals, used in performing the Christie Park Improvements.

In each policy of insurance described above, AG-CCRP shall name or, cause City to be named, Additional Insureds under the policies required in clauses 23 (a), (b), (d) and (e) above. All policies shall provide for (i) at least thirty (30) days written notice to City prior to cancellation, and (ii) at least ten (10) days written notice to City for cancellation due to non-payment of applicable premiums. All policies of insurance shall contain full Waivers of Subrogation in favor of City. AG-CCRP or their Contractors' insurance coverage shall be primary insurance with respect to any other insurance or self-insurance programs maintained by City and such other insurance or self-insurance programs shall be excess and non-contributory. Prior to the commencement of any Christie Park Improvements, AG-CCRP shall deliver to City a certificate of insurance evidencing the coverage provided by each policy and provide replacement certificates fifteen (15) days prior to the expiration of any required coverage.

24. Title to Christie Park Improvements. Title to and ownership of the Christie Park Improvements accepted by the City shall vest absolutely in the City.

25. Final Drawings. Upon completion of the Christie Park Improvements and prior to final acceptance thereof, AG-CCRP shall provide the City with one set of "as built" drawings in the format specified by the City Engineer. The drawings shall be certified by AG-CCRP as being "as-built" and shall reflect the job actually constructed including any changes.

26. Attorneys' Fees. In the event that any action is brought by any party hereto as against another party hereto for the enforcement or declaration of any right or remedy in or under this Agreement or for the breach of any covenant or condition of this Agreement, each party shall bear their own fees, expenses and costs, including attorneys' fees.

27. Compliance with Law. AG-CCRP shall, at AG-CCRP's expense, obtain all necessary permits and licenses for the Christie Park Improvements hereunder, give all necessary notices and pay all fees and taxes required by law. In the performance of this Agreement, AG-CCRP shall comply with all applicable laws, ordinances, and regulations.

28. Assignment. This Agreement may may be assigned by CCRP consistent with Sections 14 [Transfers;Assignments] of the Development Agreement. Upon assignment, CCRP shall be released from all obligations under this Agreement.

29. Governing Law. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of California.

30. Notices. All notices shall be in writing and delivered in person, by facsimile (provided notice is also delivered using one of the other permitted methods of delivery), by nationally recognized overnight courier service (such as FedEx) or sent by registered mail, postage prepaid to the following addresses:

City:

City of Emeryville
1333 Park Avenue
Emeryville, California 94608
Attention: City Manager
Facsimile: (510) 596-3724

with a copy to:

City of Emeryville
1333 Park Avenue
Emeryville, California 94608
Attention: City Attorney
Facsimile: (510) 596-3724

And with a copy to:

City of Emeryville
1333 Park Avenue
Emeryville, California 94608
Attention: City Engineer
Facsimile: (510) 596-3724

AG-CCRP:

AG-CCRP Public Market, L.P.
c/o City Center Realty Partners
170 Grant Avenue, 6th Floor
San Francisco, California 94108
Attention: Mark Stefan
Telephone: (415) 395-2908

Holland & Knight
50 California St., Suite 2800
San Francisco, CA 94111
Attention: Tamsen Plume/Chelsea Maclean
Telephone: (415) 743-6900

31. Authority. The parties represent that the individuals executing this Agreement have the authority to do so.

32. Further Assurances; Amendments. City and AG-CCRP agree to mutually consider reasonable requests for amendments to this Agreement that may be made by any of them, or by lending institutions or bond counsel or financial consultants to City or AG-CCRP, provided such requests are consistent with this Agreement and would not materially alter the basic business terms hereof. No amendment hereto shall be effective unless in writing and signed by the parties hereto.

33. Counterparts. This Agreement may be executed in counterparts, and, when all counterpart documents are executed, the counterparts shall constitute a single binding instrument.

34. Interpretation. This Agreement is the product of negotiations between the parties, and it shall not be construed as if it had been prepared by one of the parties, but rather as if all parties have prepared the same. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement.

CITY:

CITY OF EMERYVILLE,
a California municipal corporation

By: _____

Name: _____

Its: _____

Date: _____

"Effective Date"

APPROVED AS TO FORM:

By: _____

City Attorney

AG-CCRP:

AG-CCRP PUBLIC MARKET, LP,
a Delaware limited partnership

By: _____

Name: _____

Its: _____

Date: _____

APPROVED AS TO FORM:

By: _____

AG-CCRP Attorney

ACKNOWLEDGMENT

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

State of California)
)
County of)

On _____, 20__ before me, _____,
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.

Signature _____

(Seal)

ACKNOWLEDGMENT

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

State of California)
)
County of)

On _____, 20____ before me, _____,
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.

Signature _____

(Seal)

EXHIBIT A

EXISTING CHRISTIE PARK



CITY OF EMERYVILLE

INCORPORATED 1898
2200 POWELL 12TH FLOOR
EMERYVILLE, CALIFORNIA 94608

TELEPHONE (415) 654-6161

Vanco
PO Box 272, Sta. A
Walnut Creek, CA 94596

Re: Assessor's Parcel No. 049-1493-001

ORDER NO. 101326

The land referred to in this report is situated in the state of California, County of ALAMEDA, and is described as follows:

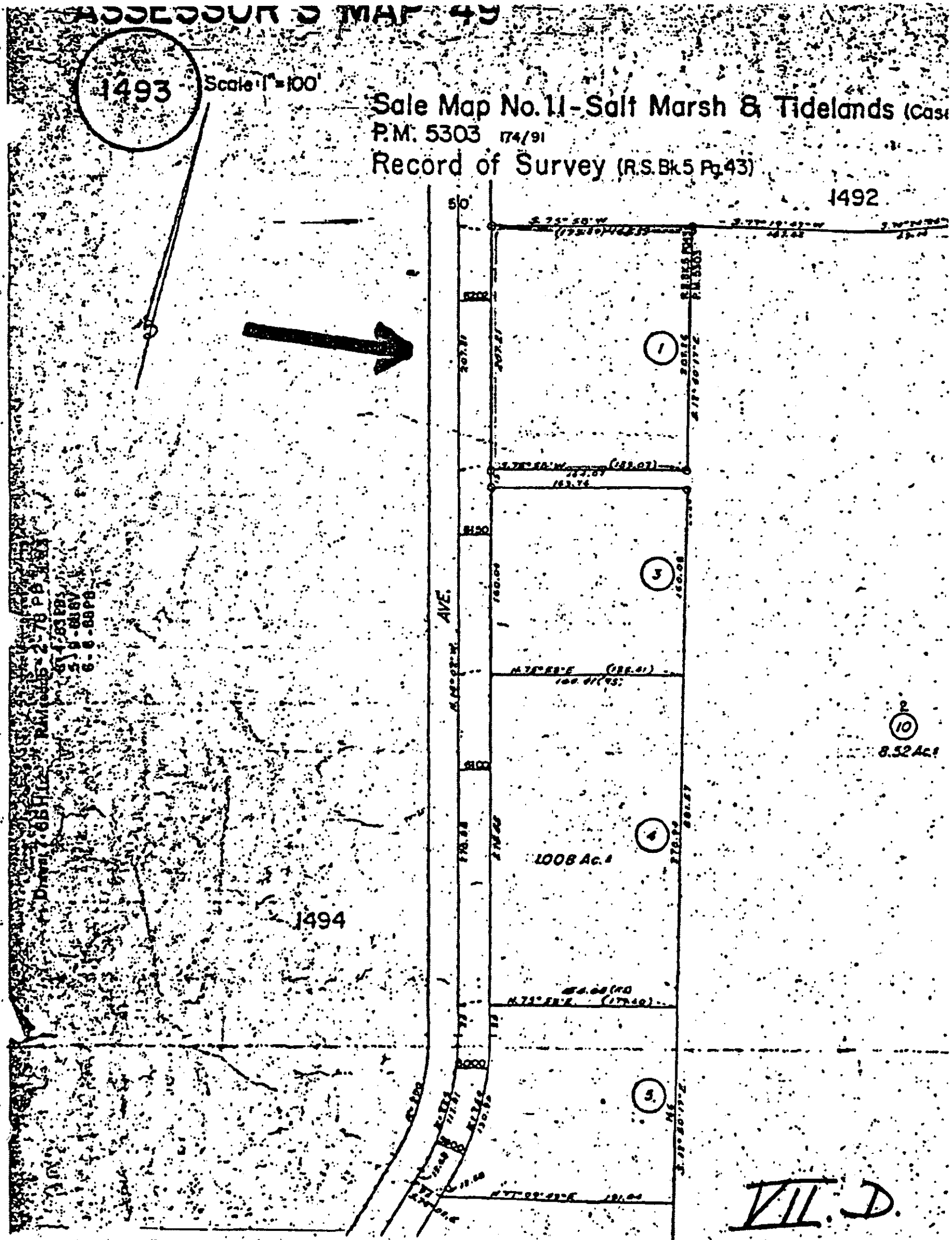
CITY OF EMERYVILLE

PORTION OF SECTION 16, TOWNSHIP 1 SOUTH, RANGE 4 WEST, MOUNT DIABLO BASE AND MERIDIAN, AS SHOWN ON "MAP NO. 4 OF SALT MARSH AND TIDE LANDS SITUATED IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA". DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WESTERN LINE OF THE MAIN LINE RIGHT OF WAY, 100 FEET WIDE, OF THE SOUTHERN PACIFIC RAILROAD COMPANY, FORMERLY NORTHERN RAILROAD, WITH A LINE DRAWN PARALLEL WITH AND DISTANT SOUTHERLY 50 FEET, MEASURED AT RIGHT ANGLES, FROM THE NORTHERN LINE OF THE LAND DESCRIBED IN THE DEED TO THE PARAFFINE COMPANIES, INC., DATED JULY 10, 1944, RECORDED JULY 11, 1944, IN BOOK 4533 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, PAGE 434; THENCE ALONG SAID WESTERN LINE, SOUTH 14° 21' 18" EAST (SAID BEARINGS TAKEN FOR THE PURPOSE OF MAKING THIS DESCRIPTION) 457.18 FEET; THENCE SOUTH 71° 46' 22" WEST 215.22 FEET; THENCE SOUTH 70° 24' 25" WEST 59.14 FEET; THENCE SOUTH 77° 19' 43" WEST 157.82 FEET TO THE ACTUAL POINT OF BEGINNING OF THE FOLLOWING DESCRIBED PARCEL OF LAND: RUNNING THENCE SOUTH 12° 50' 17" EAST 207.26 FEET; THENCE SOUTH 75° 58' WEST 189.07 FEET TO THE CENTERLINE OF SHELLMOUND STREET, AS SAID STREET IS SHOWN ON THE MAP OF "RECORD OF SURVEY FOR VAN BOKKELEN-COLE CO., IN THE CITY OF EMERYVILLE, ALAMEDA COUNTY, CALIF.", FILED NOVEMBER 4, 1964, IN LICENSED SURVEY BOOK 5, PAGE 43, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY; THENCE ALONG THE LAST NAMED LINE, NORTH 14° 02' WEST 207.21 FEET TO A LINE DRAWN SOUTH 75° 58' WEST FROM THE POINT OF BEGINNING; AND THENCE NORTH 75° 08' EAST 193.39 FEET TO THE ACTUAL POINT OF BEGINNING.

ASSESSOR'S PARCEL NO. 049-1493-001

VII.D.
EXHIBIT A



Clarity Copy Can be found at: Chicago fira
2150 Lind Glenn Dr #100
Concord, CA 94528

EXHIBIT B

CHRISTIE PARK EXPANSION AREA

EXHIBIT C

**CITY CERTIFICATE OF ACCEPTANCE
FOR CHRISTIE PARK IMPROVEMENTS**

This is to certify that the City of Emeryville hereby accepts the Christie Park Improvements on the Existing Christie Park and Christie Park Expansion Area

CITY OF EMERYVILLE

By: _____

Name: _____

Its: _____

Dated: _____, 201__