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#FWAC-TO1700004B

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:



2017056120

03/07/2017 08:30 AM

OFFICIAL RECORDS OF ALAMEDA COUNTY
STEVE MANNING
RECORDING FEE: 0.00

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



8 PGS

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

ASSIGNMENT AND ASSUMPTION OF PUBLIC MARKET APPROVALS

INDEX AS ASSIGNMENT

THIS ASSIGNMENT AND ASSUMPTION OF PUBLIC MARKET APPROVALS (this "Assignment"), dated as of Feb. 21, 2017 (the "Effective Date"), is made by and between CITY CENTER REALTY PARTNERS, LLC, a Delaware limited liability company ("Assignor"), AG-CCRP PUBLIC MARKET, LP, a Delaware limited partnership ("Assignee"), and the CITY OF EMERYVILLE, a California municipal corporation (the "City").

Recitals

A. Assignee is the fee simple owner of that certain real property more particularly described in Exhibit A in the City of Emeryville, County of Alameda, State of California (the "Property").

B. Commencing in 2014, Assignor, as "Applicant," and Assignee, as "Property Owner," together submitted applications to the City for development approvals in connection with the Property.

C. Given that Section 9-7.1005(f)(2) of Article 10 of Chapter 7 of Title 9 of the Emeryville Municipal Code provides, in part, that "[a]n application for the granting of a final development plan for a planned unit development may be made by any person having a legal ownership interest, or option to purchase, in the property to be included in the proposed final development plan," the identification of Assignor as the "Applicant" was erroneous.

D. On February 26, 2015, the Planning Commission approved a Final Development Plan by Resolution 14-001 for the renovation and enlargement of the existing City park along Christie Avenue ("**Christie Park Expansion FDP**").

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

Exhibit "A" ATTACHED
"B"

F. On July 23, 2015, the Planning Commission approved a Major Design Review by Resolution DR15-001 for a temporary mural scrim to be mounted on the grocery store building on Parcel C (“**Mural Scrim Design Review**”).

G. On October 22, 2015, the Planning Commission approved the Tentative Map by Resolution SUBDIV15-002, creating new parcels (Parcel A, B, C1 Commercial, C2 Residential, D, E, F, G and H), including realignment of Shellmound Street and creating 62nd Street, 63rd Street and Market Drive (“**Tentative Map**”) and a tree removal permit for 19 street trees along Shellmound Street (“**Tree Removal Permit**”).

H. On June 23, 2016, the Planning Commission approved the Final Development Plan by Resolution FDP15-001 for a retail and parking structure and standalone commercial building on Parcel B (“**Parcel B FDP**”). The Christie Park Expansion FDP, Parcel C FDP, Mural Scrim Design Review, Tentative Map, Tree Removal Permit and Parcel B FDP, collectively, are hereinafter referred to as the “**Approvals**.”

I. Each Approval includes a condition that obligates “Applicant, its assignees, and successors-in-interest” to, *inter alia*, “defend, hold harmless, and indemnify” the City and the Indemnified Parties (as defined in the Approvals) against certain claims, as more fully set forth on Exhibit B attached hereto (the “**Indemnification Provision**”).

J. Assignor desires to assign all of its rights, obligations and liabilities of the “Applicant” under the Approvals to Assignee. Assignee desires to accept the assignment and assume the rights, obligations and liabilities under the Approvals. The City desires to consent and agree to such assignment, all under the terms hereinafter set forth.

NOW, THEREFORE, with reference to the foregoing recitals, and in consideration of the mutual covenants and agreements set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Assignment and Assumption. Assignor hereby assigns, conveys and delegates to Assignee, and its successors and assigns, all of Assignor’s rights, obligations and liabilities with respect to the Property under the Approvals whether arising before or after the Effective Date (collectively “**Rights and Obligations**”). The Assignee, for itself and its successors and assigns, hereby accepts such assignment and assumes such Rights and Obligations without qualification. The foregoing assignment of Rights and Obligations includes, without limitation, all of Assignor’s obligations and liabilities under the Indemnification Provision of each Approval.

2. Assignor Release. Assignee hereby fully releases Assignor from all Rights and Obligations. Both Assignor and Assignee acknowledge that this Assignment 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. Further, the City agrees that by virtue of this Assignment, Assignor will have no liability to the City or the Indemnified Parties under any Approval, including the Indemnification Provision of any Approval. In furtherance thereof, the City hereby releases and discharges Assignor from all Rights and Obligations. The City agrees to look solely to Assignee for any claim against the “Applicant” under any Approval.

Accordingly, the parties hereto agree that all references in each Approval to "Applicant, its assignees, and successors-in-interest" shall refer only to Assignee, its assignees, and successors-in-interest.

3. Miscellaneous.

3.1 Interpretation; Governing Law; Venue. This Assignment shall be construed according to its fair meaning and as prepared by all parties hereto. This Assignment shall be construed in accordance with and governed by the laws of the State of California. Any legal actions under this Assignment shall be brought only in the Superior Court of the County of Alameda, State of California.

3.2 Authority. Each individual executing this Assignment on behalf of the respective entity represents and warrants that he/she is duly authorized to execute and deliver this Assignment on behalf of such entity, and that this Assignment is binding upon such entity in accordance with its terms.

3.3 Further Assurances. Assignor, Assignee and the City each agree to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably request to consummate, evidence, confirm or more fully implement the agreements of the parties as contained herein.

3.4 Execution in Counterparts. This Assignment may be executed in several counterparts, and all originals so executed shall constitute one agreement between the parties hereto.

3.5 Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the respective successors, assigns, personal representatives, heirs and legatees of Assignor, Assignee and the City.

3.6 Recordation. The parties authorize this Assignment to be recorded in the Official Records of Alameda County, California, upon the Effective Date.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first set forth above.

[Signature pages to follow]

CITY:

CITY OF EMERYVILLE,
a California municipal corporation

By: Carolyn Lehr
Name: CAROLYN LEHR
Its: CITY MANAGER
Date: 2-21-17
"Effective Date"

Approved As To Form

Michael L. Linn
City Attorney's Office

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)

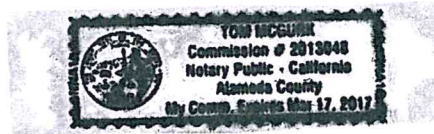
County of Alameda)

On February 21, 2017, 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.

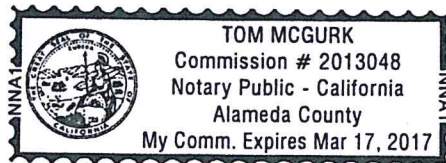
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature]



(Seal)



ASSIGNEE:

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

By: [Signature]
Name: STEVEN G. WHITE
Its: VICE PRESIDENT
Date: 2/28/17

Approved As To Form
[Signature]
Chelsea Maclean

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 Los Angeles)

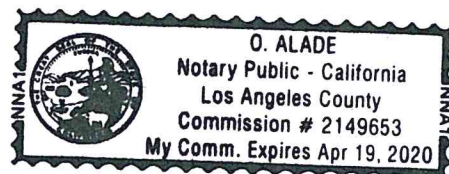
On February 28, 20 17 before me, O. Alade,
personally appeared Steven G. White who proved to me on the basis of
satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their
authorized 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 [Signature]

(Seal)



ASSIGNOR:

CITY CENTER REALTY PARTNERS, LLC,
a Delaware limited liability company

By: [Signature]
Name: Mark Stefan
Its: President
Date: 2-24-17

Approved As To Form

[Signature]
Chelsea Maclean

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 February 24, 2017 before me, Gary Hirsch, Notary Public, personally appeared Mark Stefan 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)

Comm # 2181406

Exhibit A

Real property situated in the City of Emeryville, County of Alameda, State of California, described as follows:

Being Parcels C1, C2, and E as shown on that certain Final Tract Map 8327, filed for record on August 23, 2016 in Book 341 of Maps at Pages 94 - 98, inclusive, Alameda County Records;

Being also Parcels B, F, G, and H as shown on that certain Final Tract Map 8334, filed for record on February 9, 2017 in Book 345 of Maps at Pages 94 - 98, inclusive, Alameda County Records;

Being also any and all rights-of-ways dedicated on the above referenced Final Tract Maps defined as Market Drive, 62nd Street, 63rd Street, portions of Shellmound Street and portions of Christie Avenue.

Exhibit B

Indemnification Provision

INDEMNIFICATION. Applicant, its assignees, and successors-in-interest shall defend, hold harmless, and indemnify the City of Emeryville, the Bay Cities Joint Powers Insurance Authority and their respective officials, officers, agents and employees (the Indemnified Parties) against all claims, demands, and judgments or other forms of legal and or equitable relief, which may or shall result from: 1) any legal challenge or referendum filed and prosecuted to overturn, set-aside, stay or otherwise rescind any or all final project or zoning approvals, analysis under the California Environmental Quality Act or granting of any permit issued in accordance with the Project; or 2) Applicant's design, construction and/or maintenance of the public improvements set forth in the final building plans. Applicant shall pay for all direct and indirect costs associated with any action herein. Direct and indirect costs as used herein shall mean but not be limited to attorney's fees, expert witness fees, and court costs including, without limitation, City Attorney time and overhead costs and other City Staff overhead costs and normal day-to-day business expenses incurred by the City including, but not limited to, any and all costs which may be incurred by the City in conducting an election as a result of a referendum filed to challenge the project approvals. The Indemnified Parties shall promptly notify the Applicant, its assignees, and successors-in-interest of any claim, demand, or legal actions that may create a claim for indemnification under this section and shall fully cooperate with Applicant, its assignees and successors-in-interest. **[City Attorney]**