

RESOLUTION NO. 19-\_\_\_

**A Resolution Of The City Council Of The City Of Emeryville Setting A Public Hearing To Consider An Appeal By Wareham Development And City Council Call For Review Of Resolution No. FDP18-001R, A Resolution of the Planning Commission Of The City Of Emeryville Approving a Final Development Plan (FDP) For APN 49-1556-16 (“Parcel B”) Of The Marketplace Redevelopment Project Planned Unit Development (PUD04-02) For An Eight-Story Building With Approximately 15,800 Square Feet Of Rentable Retail Space, 150,000 Square Feet Of Rentable Office/Lab Space, And 560 Parking Spaces And Rescinding Resolution No. FDP15-001 Previously Adopted By The Planning Commission On June 23, 2016**

**WHEREAS**, on January 15, 2008, via Resolution No. 08-09, as required by the California Environmental Quality Act (Public Resources Code § 21000, et seq. (“**CEQA**”), the City Council certified the Marketplace Redevelopment Project Environmental Impact Report (“**EIR**”) for the Marketplace Redevelopment Project Planned Unit Development (“**PUD**”) and then on July 15, 2008, the Council passed Resolution No. 08-126 applying the EIR to the PUD, adopting mitigation measures, and adopting a Statement of Overriding Consideration; and

**WHEREAS**, on August 5, 2008, the City Council adopted Ordinance No. 08-004, approving the Marketplace Redevelopment Project Planned Unit Development/ Preliminary Development Plan (PUD/PDP) (“**PUD/PDP Project**”); the PUD/PDP Project involved redevelopment of the existing Marketplace site (consisting of APN 49-1556-16) with a phased development consisting of 674 multi-family residential units, 180,000 square feet of retail, and 120,000 square feet of office; the PUD/PDP Project included the 15-acre Marketplace site to be substantially redeveloped by replacement of surface level parking, realignment of Shellmound Street directly in front of the Marketplace Tower and Public Market buildings, addition of two new street segments with on-street parking (62<sup>nd</sup> and 63<sup>rd</sup> Streets), and addition of nine new buildings within the site and an enlarged City park; and

**WHEREAS**, on June 23, 2016, following a duly held and properly noticed public hearing, the Planning Commission adopted Resolution No. FDP15-001, approving Final Development Plan 15-001 for Parcel B that included a four-story building with approximately 20,000 square feet of ground floor retail space and 300 parking spaces, and a stand-alone single story, 2,280 square foot commercial pavilion with a plaza between the garage building and the pavilion (“**FDP15-001 Project**”); and

**WHEREAS**, building permits B2017-0029 and B2017-0030 for the FDP15-001 Project (“**Building Permits**”) were issued on January 12, 2018; however, no work was done under these permits, and AG-CCRP Public Market LP (“**Applicant**”) submitted a letter withdrawing the building permits on October 10, 2018, and voluntarily relinquished their rights under the Building Permits and Resolution No. FDP15-001; and

**WHEREAS**, the Planning Commission held a duly and properly noticed public hearing on January 24, 2019, and adopted Resolution No. FDP18-001, approving a final development plan application for construction of a parking garage with ground floor retail

on Parcel B, 150,000 square feet of rentable office/laboratory space (“**Project**”) and rescinding Resolution No. FDP15-001; and

**WHEREAS**, in a letter dated February 8, 2019, Wareham Development (“**Appellant**”) timely appealed Resolution No. FDP18-001 to the City Council (“**Appeal I**”), which precluded Resolution No. FDP18-001 from taking effect; and

**WHEREAS**, on March 19, 2019, pursuant to Emeryville Municipal Code (“**EMC**”) section 9-7.1405(b)(3), the City Council reviewed Appeal I, and staff report with attachments, and remanded the appeal to the Planning Commission with instructions to consider the issues raised in the Appeal and to hold a new public hearing on the Project (Resolution No. 19-29) (“**Council Direction**”); and

**WHEREAS**, on April 25, 2019, at approximately 4:30 p.m., Appellant submitted a letter to the Planning Commission dated April 24, 2019, with several attachments, which included drawings on how the Project could be redesigned; and

**WHEREAS**, the Planning Commission held a duly and properly noticed public hearing on April 25, 2019, to solicit public comments to reconsider the Project pursuant to Council Direction, and heard testimony from both Applicant and Appellant; and

**WHEREAS**, the Planning Commission closed the public hearing held on April 25, 2019, but decided to continue the Planning Commission’s discussion of the Project to May 14, 2019, to allow the Planning Commission time to fully consider all evidence received on the Project, including the letter dated April 24, 2019, from Appellant; and

**WHEREAS**, on May 14, 2019, the Planning Commission reconvened to consider the Project, and reopened the public hearing to take into evidence the Emeryville Public Market – Parcel B Pedestrian Wind Study, prepared by RWDI, dated May 13, 2019, submitted by Applicant on May 13, 2019, and to allow further comment by the public, including Appellant, and thereafter the Planning Commission closed the public hearing; and

**WHEREAS**, following the Planning Commission’s review and consideration of the staff reports and attachments thereto, all public testimony, both written and oral, the Project as set forth in Resolution No. FDP18-001R, Council Direction, the relevant portions of the EIR, and the applicable provisions of the Emeryville Planning Regulations (“the **Record**”), on May 14, 2019, the Planning Commission adopted Resolution No. FDP 18-001R; and

**WHEREAS**, on May 21, 2019, at its regular meeting, pursuant to EMC § 9-7.1406, the City Council called for the review of Resolution No. FDP18-001R; and

**WHEREAS**, on May 29, 2019, Appellant filed a timely appeal of Resolution No. FDP18-001R pursuant to EMC § 9-7.101, 9-7.1012, and 9-7.1405 (“**Appeal II**”); and

**WHEREAS**, on October 1, 2019, pursuant to EMC § 9-7.1405(b), after reviewing Appeal II, FDP18-001R, the staff report that transmitted the Record, and its attachments, including the Record, staff presentation, and considering any additional public testimony and any written correspondence submitted after Appeal II has been filed, ("**City Council Record**"), the City Council considered whether to: (1) affirm Resolution FDP18-001R, and dismiss Appeal II, (2) set a date for a public hearing on Appeal II or the Project; or (3) remand the Project to the Planning Commission to reconsider the Project, with direction to the Planning Commission as to what issues the Planning Commission should consider and whether the Planning Commission should hold a new public hearing; now, therefore, be it


**RESOLVED**, that pursuant to EMC § 9-7.1405(b), the City Council of the City of Emeryville hereby sets November 5, 2019, a regular meeting of the City Council, as the date for a public hearing to consider Appeal II and the City Council's call for review of the Project.

**ADOPTED** by the City Council of the City of Emeryville at a regular meeting held Tuesday, October 1, 2019, by the following vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

\_\_\_\_\_  
MAYOR

ATTEST:  
  
\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
CITY ATTORNEY