

## CONDITIONS OF APPROVAL

**Marketplace Redevelopment Planned Unit Development Project  
Final Development Plan for “Parcel “B” (FDP18-001A)  
Exhibit A. Conditions of Approval  
December 12, 2019**

**Preliminary Development Plan (PDP) Conditions of Approval dated August 5, 2008 attached as an exhibit to Ordinance No. 08-004 and the Marketplace Tentative Map Conditions of Approval adopted on October 22, 2015 (SUBDIV15-002) apply to FDP18-001A in addition to all conditions outlined below. In the event of any inconsistencies between any conditions, the conditions outlined below shall take precedence except that the Marketplace Tentative Map conditions shall take precedence over any conditions that relate to the public right-of-way improvements, and the Development Agreement adopted by Ordinance No. 15-010 on December 1, 2015 shall take precedence over all sets of conditions of approval**

### **I. COMPLIANCE WITH APPROVALS**

- A. A Final Development Plan for development of “Parcel B” located at 6200 Shellmound Street (APN: 49-1556-16) to construct a 120-foot tall, 9 story building that includes 15,800 square feet of ground floor rentable retail space, structured parking on four levels accommodating 500 parking spaces, and office/laboratory space totaling 150,000 rentable square feet on the top three levels.

No signs or any other uses are part of this approval. Any additional signs, uses or design modifications will require a separate application and approval.

- B. APPROVED PLANS. Final plans submitted for a building permit shall be reviewed by the Community Development Director to confirm that the plans substantially conform to the following drawings except as modified by these Conditions of Approval.: **[Planning]**
1. The site and architectural drawings entitled, “Emeryville Public Market Parcel B Revised Development Plan”, submitted by Hart|Howerton Sheets 1 to 52 dated December 3, 2019.

- C. INSTALLATION AND MAINTENANCE OF IMPROVEMENTS. All improvements shall be installed in accordance with these approvals. Once constructed or installed, all improvements shall be maintained as approved. Minor changes may be approved by the Community Development Director.
- D. COMPLIANCE WITH THE MUNICIPAL CODE AND GENERAL PLAN. No part of this approval shall be construed to be a violation of the Emeryville Municipal Code or the General Plan. Operations on this site shall be conducted in a manner that does not create a public or private nuisance or otherwise violate the Emeryville Municipal Code.
- E. FAILURE TO COMPLY WITH CONDITIONS OF APPROVAL. If Applicant constructs buildings or makes improvements in accordance with these approvals, but fails to comply with any of the conditions of approval or limitations set forth in these Conditions of Approval and does not cure any such failure within a reasonable time after notice from the City of Emeryville ("City"), then such failure shall be cause for nonissuance of a certificate of occupancy, revocation or modification of these approvals or any other remedies available to the City.
- F. APPLICATION TO SUCCESSORS IN INTEREST. These Conditions of Approval shall apply to any successor in interest in the property and Applicant shall be responsible for assuring that the successor in interest is informed of the terms and conditions of this zoning approval.

## **II. GENERAL CONDITIONS**

- A. 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 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]**

**B. PRIOR TO ISSUANCE OF A BUILDING PERMIT**

1. **Public Art Program.** Public Art shall be provided pursuant to Section 7.2 of that certain Development Agreement dated January 30, 2016, between City and AG-CCRP Public Market LP, a Delaware limited partnership, and AvalonBay Communities, Inc., a Maryland corporation ("Development Agreement"), which shall control the requirement of public art prior to the issuance of a building permit. Prior to the issuance of the building permit the City Council shall review and approve the public art proposed to be installed on exterior of the building. The valuation of the artwork on the west elevation is not required to be equal to the valuation of the art work on the east elevation. **[Economic Development]**
2. **Fees, Dedications and Exactions.** Conditions of Approval set forth herein include certain fees, dedication requirements, reservation requirements and other exactions, attached as Exhibit A. Pursuant to Government Code Section 66020(d)(1), this set of Conditions of Approval constitutes written notice of a statement of the amount of such fees and a description of the dedications, reservations and other exactions. Applicant is hereby further notified that the 90-day approval period in which these fees, dedications, reservations and other exactions may be protested, pursuant to Government Code Section 66020(a) will begin upon approval of the aforementioned project approvals by the City of Emeryville Planning Commission. If Applicant fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, Applicant will be legally barred from challenging such exactions. (See Attachment 1: Fee Charts)

Prior to the issuance of a building permit, the Building Official shall confirm that all applicable fees due at the issuance of a building permit have been paid, except as provided in Section 8.3 of the Development Agreement, which allows for fees to be paid prior to (i) final inspection or (ii) issuance of a certificate of occupancy, whichever occurs first. **[Building]**

3. **Cost Recovery Planning and Public Works Fees.** Prior to the issuance of a building permit, the Community Development Director shall confirm that

all cost recovery planning fees and Public Works Plan Check fees have been paid to date. **[Planning]**

C. PRIOR TO THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY

1. Fees, Dedications and Exactions. Prior to the issuance of a certificate of occupancy, the Building Official shall confirm that all applicable fees due at the issuance of a certificate of occupancy have been paid, except as provided in Section 8.3 of the Development Agreement. **[Building]**
2. Cost Recovery Planning and Public Works Fees. Prior to the issuance of a certificate of occupancy, the Community Development Director shall confirm that all cost recovery Planning fees and Public Works plan check fees have been paid in full. **[Planning]**
3. Building Sewer Lateral. Prior to the issuance of a certificate of occupancy, Applicant shall provide a valid Certificate of Compliance from East Bay Municipal Utility District (EBMUD) indicating that the building sewer lateral complies with the requirements of the EBMUD Regional PSL Ordinance.
4. Public Art Program. Prior to the issuance of a certificate of occupancy, Applicant shall notify the Community Development Department Public Art Projects Coordinator to verify Applicant's installation of the on-site public art as approved by the City Council or compliance with Section 7.2 of the Development Agreement.

III. BUILDING AND CONSTRUCTION REQUIREMENTS

A. PRIOR TO ISSUANCE OF A BUILDING PERMIT

1. Plans. Prior to the issuance of a building permit, the Building Official shall verify that the title sheet for the building permit drawings contains the following: **[Building]**
  - a. Permit number.
  - b. Zoning district.
  - c. Lot area in square feet.
  - d. Total number of parking spaces with parking spaces numbered on plans in a consecutive manner and consistent with the parking summary on the title page.
  - e. Building heights with height of any appurtenances noted.
  - f. Detailed breakdown of floor areas.
  - g. Number of floors.

- h. Existing building information (if applicable).
    - i. Total Impervious Surface area in square feet (from "Impervious Surface and Stormwater Treatment Measures - Final Form" provided by the City of Emeryville Public Works Department).
    - j. Scorecard Summary from the most recent Bay-Friendly Landscaping Guidelines checklist, as developed by StopWaste.org. (with electronic version with notes on claimed points to be emailed to the Emeryville Public Works Department Environmental Programs Staff person.)
2. Compliance with Applicable Codes. Prior to the issuance of a building permit, the Building Official shall confirm that the building permit plans, specifications and other related information conform to the California Codes in effect at the time, and all other applicable local ordinances. Compliance with the California Codes and local ordinances shall include, but not be limited to, seismic and geotechnical requirements for Seismic Zone 4, and Title 24 energy conservation and disabled access requirements. **[Building]**
3. Utility Service. Prior to the issuance of a building permit, the Building Official shall confirm that the building permit plans, specifications and information include detailed plans for providing water, electrical, gas, telephone, and other like utilities services to the site, including a review of the existing services to the site and measures or improvements on-site that will be required to adequately serve the site, including the location and design of transformers (if above ground and if required) and all connections. All new and existing on-site electrical and communication lines shall be placed underground. All transformers shall be placed underground or inside the building. **[Building]**
4. Traffic and Parking Management Plan during Construction. Prior to issuance of a building permit for any portion of the project, Applicant shall submit a traffic and parking management plan for review and approval by the Public Works Director. The plan shall comply with any City restrictions and limitations on using certain local streets for construction traffic, proposed truck delivery and haul routes, parking arrangements for construction personnel that minimizes use of public on-street parking in the vicinity of the project, ingress and egress, noise, efforts to address street debris and dust control and proposed on-site staging and equipment/material storage areas. The plan shall include a construction worker shuttle program as a strategy to mitigate parking shortfalls. **[Public Works]**

5. Construction Sign. Prior to the issuance of a building permit, Applicant shall submit a construction sign for approval by the Community Development Director in accordance with the prototype provided. The sign shall be made of a permanent material with professional lettering. The sign shall be at least 3 feet by 4 feet with a minimum letter size of 3 inches. The sign shall include this information: the project name; name of the owner/developer; the name and phone number of a contact person, available at all times to address complaints and with the authority to control construction activity on the site; name and phone number of the contractor; and the approved hours of construction. The contact person should be the Noise Disturbance Coordinator listed below in Condition III.B.1.c. **[Public Works]**

The sign shall be posted at the time of placing temporary fencing and start of construction activity. At least one sign shall be placed along each public street frontage of the site in a location facing the street where the information can be easily read. Street frontages exceeding 300 feet in length shall have one sign per each 300-foot segment or fraction thereof. (See Attachment 2: Construction Sign Prototype) **[Planning]**

6. Fencing. Prior to the issuance of a building permit, Applicant shall install temporary construction fence around the perimeter of the area where construction will occur that provides for continued pedestrian traffic meeting the standards of the Americans with Disabilities Act as approved by the Public Works Director. **[Public Works]**
7. Approval of Regulatory Agencies. Prior to the issuance of a building permit, Applicant shall submit to the Building Official copies of all other permits necessary from the applicable regulatory agencies. **[Building]**
8. Approval of Hazardous Material Regulatory Agencies. Prior to issuance of a building or grading permit, Applicant shall confirm that the property has never been subject to an environmental regulatory action or order. For sites that are or have been the subject of a regulatory action or order, Applicant shall submit to the Community Development Director confirmation that the proposed use of the site is acceptable to the appropriate regulatory agency (e.g. San Francisco Bay Regional Water Quality Control Board, Alameda County Department of Health or the State of California Department of Toxic Substances Control) and that any conditions prior to such use have been met. For closed cases, agency closure letters describing conditions of closure or use restrictions (if any) may be used to satisfy this documentation requirement. For open cases, a site-specific agency determination may be necessary. If a Risk Management Plan, Site Cleanup Plan, Health and Safety Plan or similar

document is required for the work that is the subject of the permit, then Applicant shall have such plan approved by the regulatory agency; shall submit copies to the Community Development Director and Public Works Director; and shall comply with all provisions of such plan.

- B. DURING CONSTRUCTION. Violations of the following conditions and any other applicable conditions may result in a stop work notice being issued or any other measures that the City deems necessary.
1. Construction Noise.
    - a. *Hours.* Unless the City Council grants a waiver allowing different construction hours pursuant to Section 5-13.06 of the Emeryville Municipal Code, construction hours shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday, except that pile driving and similarly loud equipment, including but not limited to jack hammering, grading, compacting, dump trucks, generators, and chain saws shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Friday. In an urgent situation, the City Manager, Community Development Director, or Public Works Director may approve weekend or night work pursuant to Section 5-13.05(e) of the Emeryville Municipal Code.
    - b. *Equipment.* All heavy construction equipment used on the project shall be maintained in good operating condition, with all internal combustion, engine-driven equipment equipped with intake and exhaust mufflers that are in good condition and as deemed to be practically feasible. All non-impact tools shall meet a maximum noise level of no more than 85 dB when measured at a distance of 50 feet. All stationary noise-generating equipment shall be located as far away as possible from neighboring property lines especially residential uses.
    - c. *Noise Disturbance Coordinator.* Applicant shall designate a "Noise Disturbance Coordinator" who shall be responsible for responding to any complaints about construction noise. The Noise Disturbance Coordinator shall determine the cause of the noise complaint and shall require that reasonable measures warranted to correct the problem be implemented. Applicant shall conspicuously post a telephone number for the Noise Disturbance Coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule. The Noise Disturbance Coordinator shall be the contact person listed on the construction sign required by Condition III.A.5 above.

2. Traffic Measures. Applicant, through its contractor, shall implement comprehensive traffic control measures as set forth in the approved Traffic and Parking Management Plan, including scheduling of major truck trips and deliveries to avoid peak hours (normally 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.). Applicant's Contractor shall obtain an Encroachment Permit for the maintenance of traffic vehicular, bicycle and pedestrian flow along the project frontage and elsewhere as warranted. The Encroachment Permit submittal shall include plans for the protection of the public along the project frontage including the installation of overhead protection for pedestrians.
3. Street Debris. Mud, dirt and construction debris shall not be permitted in the public right-of-way. Failure to adequately sweep the streets may result in the City undertaking the effort at Applicant's cost.
4. Dust Control Measures. Dust control measures to minimize air quality impacts shall be implemented including:
  - a. Cover stockpiles of debris, soil, sand or other materials that can be blown by the wind.
  - b. Cover all trucks hauling soil, sand, and other loose materials.
  - c. Pave, apply non-potable water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at site.
  - d. Limit traffic speeds on unpaved roads to 5 mph.
  - e. Install, maintain and replace sandbags or other erosion control measures to prevent silt runoff to public roadways.
  - f. Minimize removal and replant vegetation in disturbed areas as quickly as possible.
  - g. No grading between October 1<sup>st</sup> and April 15<sup>th</sup> unless the Public Works Director has approved an erosion and sedimentation control plan.
5. Archeological Resources. If archeological resources are encountered during construction, then Applicant shall immediately: cease all construction activity in the vicinity; notify the Community Development



Director; have the significance of the items determined by a qualified archeologist or cultural consultant at Applicant's expense; and take any further appropriate measures under the California Environmental Quality Act and other applicable laws with the Community Development Director's approval. If human remains are encountered, state law requires that the County Coroner be called immediately. All work must immediately be halted in the vicinity of the discovery until the Coroner's approval to continue has been received.

#### IV. PUBLIC IMPROVEMENTS

##### A. PRIOR TO ISSUANCE OF A BUILDING PERMIT

1. Public Improvements. Applicant shall be responsible for the following Public Improvements described herein and as shown on the approved plans, to conform to City of Emeryville Standards, the City of Emeryville Urban Forestry Ordinance, the Americans with Disabilities Act and implementing regulations, California accessibility regulations, and Marketplace Tentative Map SUBDIV15-002:

- a. "Stop Ahead" Signage. Signage shall be installed on northbound Shellmound Street approximately 150 feet south of the northern parcel B driveway alerting drivers of the all-way stop-controlled intersection

Prior to the issuance of a Building Permit, the Public Works Director shall confirm that detailed improvement plans and specifications have been prepared for said public improvements. **[Public Works]**

2. Site Grading and Storm Drainage. Prior to the issuance of a building permit, the Public Works Director shall confirm grading plans for Parcel B have been prepared such that stormwater runoff will drain to the new storm drain on Shellmound Street to be constructed as part of the Shellmound Street realignment as depicted on the approved Marketplace Tentative Map SUBDIV 15-002. **[Public Works]**
3. Sanitary Sewer. Applicant shall be responsible to conform to the requirements of the City's Wastewater Collection System Ordinance and to the East Bay Municipal Utility Districts (EBMUD) Private Sewer Lateral Ordinance. Any existing sanitary sewer lateral serving the property that is not to be reused shall be abandoned up to the connection to the City sanitary sewer main as directed by the Public Works Director. Any existing sanitary sewer lateral serving the property that is to be reused or any new private sanitary sewer lateral to be installed shall pass a

verification test witnessed by the City of Emeryville and EBMUD inspectors prior to occupancy. If an existing sewer lateral cannot pass a verification test then it will need to be replaced. All work performed on sanitary sewer laterals shall require a Sanitary Sewer Lateral Permit and said work is not covered under the Building Permit. **[Public Works]**

4. Underground Utility Lines. All new and existing on-site electrical and communication lines shall be placed underground.
5. Trash, Recycling and Composting Collection Plan. All storage and collection for trash, recycling and composting shall be consistent with Sheets A2.20 and A2.21. Prior to the issuance of a building permit, the building permit plans shall show adequate space and containers for all three disposal types, (i.e., trash, recyclables and compostables) for "back of the house" employee use and for customer/public use. **[Public Works]**
6. Encroachment Permits. Prior to the issuance of a building permit, the applicant shall obtain an Encroachment Permit for the protection of all hardware, landscape, C3 and other improvements in the public right of way. Applicant shall submit and maintain a cash security or bond in an amount equal to replacement cost for all existing improvements within the public right of way, to the centerline of roadway, along the project frontage. Encroachment Permits for traffic control and other operations within the right of way shall be obtained prior to start of such work.

**B. PRIOR TO BEGINNING CONSTRUCTION IN THE PUBLIC RIGHT OF WAY**

1. Encroachment Permit. Prior to beginning any construction in the public right of way, Applicant shall apply for and receive an encroachment permit for all work and improvements within the City's right of way or City easements. As required by the Public Works Director, Applicant shall post the required security and provide evidence of liability insurance as part of the encroachment permit process. Applicant shall pay for all Public Works Inspection fees associated with work within the City's right of way **[Public Works]**

**C. PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY**

1. Completion of Public Improvements. Except as provided in Tentative Map (SUBDIV15-002) Condition III.A.6.b.i.a allowing for temporary asphalt concrete curb and sidewalk, and temporary storm drainage inlets along the Shellmound Street frontage, prior to issuance of a certificate of occupancy, the Public Works Director shall confirm that all off-site and

on-site public improvements are completed in accordance with the final building permit and improvement plans or that other arrangements acceptable to the Public Works Director have been made for ensuring that the work is completed, such as an irrevocable standby letter of credit.

**[Public Works]**

2. Cross-walk Assessment Studies. Prior to the issuance of temporary certificate of occupancy and as deemed appropriate by the Public Works Director, the applicant shall have entered into an improvement agreement between the City of Emeryville and AG-CCRP Public Market, LLP and posted any required bonds, to ensure faithful performance of Condition of Approval VI.C.2.
3. Damage to Public Facilities. Applicant shall be deemed responsible for any damage to public improvements that occurs during construction and that is caused by construction and shall repair such damage at its expense and to the satisfaction of the Public Works Director, including but not limited to sidewalk repair, street slurry seal or street reconstruction.

All repairs to the public right of way shall be completed to the satisfaction of the Public Works Director prior to issuance of a Temporary Certificate of Occupancy (TCO). **[Public Works]**

D. ONGOING

1. Maintenance of Street Trees, Stormwater C3 plantings, and other vegetation in the Public Right of Way: Applicant, its successors and assigns, shall maintain all landscaping improvements in the public areas fronting the property, in a healthy, growing condition at all times according to Bay Friendly Landscaping Practices as described by StopWaste.org's Bay Friendly Landscaping program. The landscaped areas shall be irrigated by an automatic system designed to reduce water usage. Applicant shall replace all landscaping that dies with the exact living species, or substitutes approved by the Public Works Director after obtaining an encroachment permit from the City. Landscaping work shall comply with the provisions of Chapter 10 of Title 7 of the Emeryville Municipal Code. **[Public Works]**
2. Compliance with Trash, Recycling and Composting Plan: Applicant and its successors and assigns shall implement the approved Trash, Recycling and Composting plan and report its activities and achievements to the Public Works Director annually. **[Public Works]**
3. Trash Collection. It will be the responsibility of the Building/Leasing

Manager-to ensure that all trash bins are pre-staged inside the building and not in the public-right-of-way. Building Management will coordinate with the trash hauler regarding the pick-up, anticipated time to assist the trash hauler to move the trash bins from the staging area to the truck at that time and then immediately return the trash bins into the building after trash pick-up is complete. **[Public Works]**

## V. PUBLIC SAFETY REQUIREMENTS

### A. PRIOR TO ISSUANCE OF A BUILDING PERMIT

1. Fire Department Standards. Prior to the issuance of a building permit, the Fire Department shall confirm that the final building plans include all fire and emergency safety measures as required by the Department, including access requirements, premises identification, key boxes, hydrants, fire protection systems and equipment and exiting and emergency illumination. Fire hydrants shall be provided so all the exterior walls are within 400 feet of a fire hydrant as required by California Fire Code (CFC) 507.5; and fire flow for the site shall comply with the CFC appendix B. **[Fire]**
2. The Emergency vehicle access roads shall be clearly marked with signage or red curbs with the wording: FIRE LANE NO STOPPING CVC22500.1. **[Fire]**
3. The building permit plans shall be designed to the current edition of NFPA 13. The building permit plans shall include a fire alarm/sprinkler monitoring system as required by the building code and the current edition of NFPA 72. **[Fire]**
4. The project shall comply with the California Building and Fire Codes as adopted by the City of Emeryville. **[Fire]**
5. A fire command Center, a smoke control system and an Emergency Responder Radio Communication System is required according to 2016 CFC Chapter 5 Section 508, 2016 CFC Chapter 9 Section 909 and 2016 CFC Chapter 5 Section 510 respectively. **[Fire]**
6. Compliance with CFC Chapter 33 and City of Emeryville Safety during construction shall be observed. **[Fire]**
7. Site Security Management Plan. Prior to the issuance of a building permit, Applicant shall submit a Site Security Management Plan for approval by the Police Department, which conforms to the lightning standards and

guidelines outlined in IESNA's "Guideline for Security Lighting for People, Property, and Public Spaces" 2003 prepared by the IESNA Security Lighting Committee. In addition, a surveillance camera plan or other equivalent security measure acceptable to the Police Chief. This plan shall be designed to the satisfaction of the Police Chief. **[Police]**

**B. PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY**

1. Fire Department Standards. Prior to the issuance of a certificate of occupancy, the Fire Department shall confirm compliance with the applicable Fire Department standards. **[Fire]**
2. Site Security Management Plan. Prior to the issuance of a certificate of occupancy, the Police Department shall confirm compliance with the approved a Site Security Management Plan including the approved surveillance plan. **[Police]**

**C. ONGOING**

1. Compliance with Site Security Management Plan. Applicant shall comply with the approved Site Security Management Plan during operations including the approved surveillance plan. **[Police]**
2. Compliance with Fire Department Standards. Applicant shall comply with the Fire Department Standards during operations. **[Fire]**

**VI. PARKING AND TRANSPORTATION**

**A. PRIOR TO ISSUANCE OF A BUILDING PERMIT**

1. Parking. Prior to the issuance of a building permit, the Community Development Director shall confirm that the final building plans for the project incorporate: **[Planning]**
  - a. A minimum of 500 vehicular parking spaces
  - b. A minimum of 65 bicycle parking spaces as set forth below:
    - i. 50 long term employee bicycle parking spaces in an enclosed, limited-access area.
    - iii. 15 short term bicycle parking spaces

2. Parking Availability Signage: The project shall include electronic signage indicating availability of parking spaces. The building permit plans shall include the locations and types of such signs.  
**[Planning]**
3. Parking Design. The parking levels shall be designed such that automobiles and direct light from interior fixtures shall not be visible from any public right-of-way. In addition, all lighting shall be designed to confine direct rays to the premises. No light fixture shall emit any direct light above a horizontal plane through the fixture. No spillover beyond the property line shall be permitted, except onto public thoroughfares; provided, however, that no such light shall cause a hazard to motorists.  
**[Planning]**
4. Public Art Structural Design. The public art elements of the building shall be finalized and included as part of the building permit application. Specifically, the public art elements shall be designed as necessary to provide appropriate screening of the parking levels, as required by Condition of Approval VI.A.3 above, and to be structurally compatible with the building. **[Planning and Building]**

B. PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY

1. Emery Go-Round. Applicant shall fully participate in the Emeryville Transportation Management Association (the TMA), a private, nonprofit agency responsible for administering the Emery-Go-Round, a transportation service system serving Emeryville and the members participating in the TMA. Prior to the issuance of certificate of occupancy, Applicant shall provide evidence to the Community Development Director that it has executed a Membership Agreement as required in accordance with the policies, rules and regulations of the TMA. **[Planning]**
2. Parking Availability Signage. Prior to issuance of a certificate of occupancy, the Community Development Director shall confirm that all signage described in Condition of Approval VI.A.2 above has been installed.
3. Bicycle Parking: All bicycle spaces shall be made available free of charge to the tenants of the building. The operator of the building shall not charge for bicycle parking.

C. ONGOING

1. Emery Go-Round. Applicant, its successors and assigns, shall remain a member of the TMA so long as the TMA or its successor or assignee is in fact operating the Emery-Go-Round. Applicant and future property owners shall make good faith efforts to provide a brief description or tag line about the Emery-Go-Round and other forms of alternative transportation in its marketing and advertising efforts.
2. Crosswalk Assessment and Traffic Operations: The Applicant, its successors and assigns shall be responsible to provide the City with funding on a cost recovery basis to perform assessments of the uncontrolled pedestrian crossings and traffic operations on Shellmound Street from 63<sup>rd</sup> Street to Shellmound Way. The assessments shall address bicycle and pedestrian safety and impacts to intersection operations along the Shellmound Street Corridor. The assessments shall be performed at six months and at 18 months following the issuance of the certificate of occupancy of Parcel B.

If the assessments confirm that a traffic signal is warranted at the northern and/or southern driveways to Parcel B, then the applicant, its successors and assigns shall be responsible to design and install said traffic signals. In addition, if the assessment recommends that pedestrian signals, pedestrian flashing beacons, or other treatments be installed for pedestrian safety at the uncontrolled pedestrian crossings, then the Applicant, its successors and assigns shall be responsible to design and install said treatments.

3. Valet Parking. Any use of the public right of way for valet parking shall be subject to all applicable City approvals including, but not limited to, a review by the Bicycle/ Pedestrian Advisory Committee and the Transportation Committee.

VII. DESIGN CONDITIONS AND SITE STANDARDS

A. PRIOR TO ISSUANCE OF A BUILDING PERMIT

1. Elevations/Colors/Materials/Site Plan. Prior to the issuance of a building permit, Applicant shall submit a color scheme, samples and details of all exterior elevations and building materials of sufficient size to the Community Development Director for review and approval. Materials to be submitted shall include, but not be limited to, all perimeter gates and fences, window treatments, storefront windows and doors, awnings, outdoor furniture, paving and lighting fixtures. **[Planning]**

2. Art Panels: Any of the "art" panels proposed on the eastern and western façades of the building as allowed by Section 7.2 of the Development Agreement which does not use public art fees for design and installation shall be reviewed and approved by the Planning Commission.
3. Landscaping Plans. Landscaping in the public right of way shall conform with the applicable conditions of approval of the Tentative Map (SUBDIV15-002). Landscaping on private property shall conform to Title 9 Section 4.602 "Water Efficient and Bay Friendly Landscaping" of the Emeryville Municipal Code, including guidelines from StopWaste.org, the Alameda Countywide Clean Water Program C3 Stormwater Technical Guidance, and EBMUD requirements for reclaimed water.

The plans shall include species, number of plantings, size of plantings and specifications for the irrigation system. Minimum plant sizes are flats or 1-gallon containers for ground cover, 5-gallon containers for shrubs and 24-inch box containers for trees. Street trees shall be of a species approved by the Public Works Director and shall be spaced as depicted on the approved Tentative Map and as approved by the Public Works Director. All planting areas and tree wells shall include a 3 inch layer of bark mulch per the requirements of Bay Friendly Landscaping. Street trees may require tree grates as directed by the Public Works Director

The applicant shall install structural soil under sidewalk / hardscape areas, to provide adequate rootable soil volume areas for healthy street trees. The amount of rootable soil volume to be provided per tree shall depend on the ultimate height of the tree at maturity as follows:

- 600 cubic feet per small tree, (up to 25 feet tall)
- 900 cubic feet per medium-sized tree (25 feet to 50 feet tall)
- 1200 cubic feet per large-sized tree (greater than 50 feet tall)

Rootable soil volume for each tree shall be calculated by including both the structural soil beneath the hardscape areas and Bay Friendly approved horticultural soil within the planting areas . The landscape plans shall clearly show all locations of Rootable Soil including dimensions for structural soil and Bay Friendly Horticultural Soil to account for the above referenced requirements for Rootable soil volume.

The applicant shall perform horticultural soil and drainage tests in the public right of way areas that will receive tree plantings for review and approval by the City Arborist. Tree planting areas shall include drainage as necessary for all street trees and could entail extensive excavation for



sumps and subdrain systems. All existing native soil to be considered as rootable soil in planter areas shall be tested for chemical contaminants and horticultural suitability. Prior to importing any soil material to be used as rootable soil, the Applicant shall provide chemical and horticultural test results to the City for approval. Soil shall be amended as necessary with Bay Friendly compost per City standards in place of other soil amendments. **[Public Works]**

4. Recycled Water. Applicant shall submit a letter from the recycled water provider (East Bay Municipal Utility District) stating requirements for recycled water plumbing, at time of submittal of project plans for building permit plan check comments and said EBMUD requirements shall be incorporated into the plans prior to issuance of building permit. If Applicant is not complying with the requirements of the recycled water provider, Applicant shall provide a written explanation of its actions. **[Planning]**
5. Trash, Recycling and Composting Facilities. At time of submittal of project plans for building permit plan check comments, the Applicant shall include a Trash, Recycling and Composting Plan for review and comment by the City. Prior to the issuance of a building permit, the Community Development Director and Public Works Director shall confirm that all comments received by the City and all improvements necessary for the Trash, Recycling and Composting Plan are incorporated into the project plans.
  - a. **Maintenance and Service:** Trash, recycling and composting storage areas shall include adequate space for the maintenance and servicing of containers for all materials that are provided by local hauling companies. Sewer drains, fire sprinklers, enclosures, and roofing (if outdoors) shall be provided as per city standards.
  - b. **Adequate Space for Trash, Recyclables and Compostables:** The amount of space provided for the collection and storage of recyclable materials shall be at least as large as the amount of space provided for the collection and storage of trash materials and shall reflect the estimated volumes of trash and recyclable and compostable materials to be generated providing for the separate and dedicated containers for those materials with the goal of 25% or less of the total materials generated going to a landfill. An appropriately sized and designed area for wastes banned from regular trash containers such as electronics, fluorescent lamps and batteries shall be designated. Residential properties will also

- provide area for bulky item collection such as mattresses, furniture, tires and white goods.
- c. **Convenience and Accessibility:** The recycling area shall be at least as accessible and convenient for tenants and collection vehicles as the trash collection and storage area. If chutes are planned then separate, properly labeled (as per City Standards) and dedicated chutes must be provided for each and every collected stream of materials - not just for trash (non-recyclable and non-compostable materials.) The trash and recycling room(s) or areas shall be located on an exterior wall of the building (if indoors) with adequately-sized door or gate access to the street through the wall so as to minimize distance for the collection vehicle personnel and eliminate temporary outdoor storage of containers on collection days. If the storage area is located outside then it must be easily accessible by the collection vehicles. If the day-to-day-use trash and recycling area(s) cannot be located adjacent to the street, then service-day locations easily accessible by the collection vehicle staff, must be provided in an area on-site as per city standards in enclosures completely screened and covered from off-site view by a solid fence or masonry wall at least six feet high and in harmony with the architecture of the building(s). **[Planning and Public Works]**
6. **Height.** A height of up to 120 feet (not including parapets and rooftop elements) shall be permitted. **[Planning]**
7. **Development Sign.** The project is allowed one development sign indicating developer, architect, contractor, etc. during construction that shall not exceed twelve square feet. Other development/marketing signs may be approved administratively by the Community Development Director provided that they are removed prior to issuance of a final certificate of occupancy. **[Planning]**
8. **Exterior Lighting.** Prior to issuance of a building permit, Applicant shall provide sufficient information for the Community Development Director to confirm that exterior lighting for the project complies with the following standards and criteria: **[Planning]**
- a. Parking area illumination shall conform to the requirements of Section 9-4.406(k) of the Emeryville Municipal Code.
- b. Light fixtures attached to buildings shall be designed as an integral part of the building facades to highlight building forms and architectural details.

9. Noise. Prior to the issuance of a building permit, the Building Official shall confirm that the project is designed in order to limit noise exposure to those levels set forth in the Emeryville Municipal Code and General Plan. **[Building]**
10. Garage Openings. The open parking on the north and south elevations shall be screened with an aesthetically pleasing treatment that is compatible with that of the east and west elevations. **[Planning]**
11. Terrace/Roof Deck. Final design of the terrace/roof deck open space at the sixth level shall be heavily landscaped to reduce wind and improve usability and shall incorporate porous materials or structures (e.g., vegetation, hedges, screens, latticework, perforated or expanded metal) which offer superior wind shelter compared to solid surfaces. Outdoor furnishings, such as tables, shall either be either weighted or attached to the deck. The terrace/roof deck is not required to be open to the general public. **[Planning]**

**B. PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY**

1. Sign Permit. Applicant shall apply for a sign permit for any proposed signs not included in this approval, in accordance with the Sign Regulations at Article 16 of Chapter 5 of Title 9 of the Emeryville Municipal Code. **[Planning]**
2. Master Sign Program. Prior to the issuance of a temporary certificate of occupancy, the Applicant shall apply for a master sign program in accordance with the Section 9-5.1613 of the Emeryville Municipal Code. The master sign program shall be reviewed and approved by the Planning Commission prior to implementation. Applicant shall submit to the Community Development Director an overall tenant sign handbook, detailing sign requirements, restrictions, dimensions, colors, materials, approval procedures, prohibited signs, a protocol for temporary signs and other specifications for the long-term operations of the sign program. When a specific sign design is submitted to the Planning Department for approval, the sign application shall indicate how the sign is consistent with the approved master sign program. The Master Sign Program shall also include Way-finding elements along the path of travel to and from the pedestrian bridge. The way finding signage shall be installed prior to the issuance of certificate of occupancy of the residential component of the building. **[Planning]**
3. Completion of Landscaping.

- a. Prior to issuance of a certificate of occupancy, the project landscape architect shall confirm to the Community Development Director that all on-site landscaping is completed and in accordance with the final building permit and improvement plans, including off-site and public improvements, or that other acceptable arrangements acceptable have been made for ensuring that the work is completed, such as an irrevocable standby letter of credit to cover all costs of the unfinished work plus 25 percent. **[Planning]**
  - b. Prior to issuance of a certificate of occupancy, the project landscape architect shall confirm to the Public Works Director that all off-site landscaping as required by the Tentative Map (SUBDIV15-002) is completed and in accordance with the final building permit and improvement plans, including off-site and public improvements, or that other acceptable arrangements acceptable have been made for ensuring that the work is completed, such as an irrevocable standby letter of credit to cover all costs of the unfinished work plus 25 percent. **[Public Works]**
4. Equipment/Storage. Prior to issuance of a certificate of occupancy, the Community Development Director shall confirm that: **[Planning]**
- a. All mechanical equipment, including electrical and gas meters, heating/air conditioning or ventilation units, radio/TV antennas or satellite dishes shall be appropriately screened from off-site view, and electrical transformers shall be either placed underground or appropriately screened.
  - b. All trash enclosures shall be completely roofed and screened from off-site view by a solid fence or masonry wall at least six feet high and in harmony with the architecture of the building(s). Alternatively, the trash facilities may be placed within the building.
  - c. All visible vents, gutters, down spouts, flashings, and the like shall match the color of adjacent surfaces, or shall be incorporated into the overall exterior color and materials scheme for the building.

C. ONGOING

1. Landscaping. All landscaping improvements shall be maintained in a healthy, growing condition at all times. The landscaped areas shall be

irrigated by an automatic sprinkler system designed to reduce water usage. Applicant shall replace all landscaping that dies with the exact living species, or substitutes approved by the Community Development Director. Landscapes within the public right of way shall be maintained according to the principles of Bay Friendly Landscaping per guidelines by StopWaste.org

2. No Outside Storage. There shall be no outside storage of any type in parking areas. Those areas shall be kept free of obstruction and available for their designated use at all times. Boats, trailers, camper tops, inoperable vehicles and the like shall not be parked or stored on the parking areas.
3. Maintenance and Graffiti Removal. The site and improvements shall be well maintained and kept free of litter, debris, weeds and graffiti. Any graffiti shall be removed within 72 hours of discovery in a manner which retains the existing color and texture of the original wall or fence as most practically feasible.
4. Noise. The project shall operate in order to limit noise exposure to those levels set forth in the Emeryville Municipal Code and General Plan.
5. Exterior Lighting. Exterior lighting shall provide adequate illumination for on-site security and display purposes for the building, parking lots and pedestrian accessways while limiting off-site spillover of light through shielding. No light shall create a hazard for auto drivers.
6. Trash, Recycling and Composting Plan. Applicant and its successors and assigns shall implement the approved Trash, Recycling and Composting Plan and report its activities and achievements to the Public Works Director annually. [**Public Works**]
7. Real Estate Signs in Public Right-of-Way. Off-site signs located on the public sidewalk and directing the public to "open house" events for the viewing of lots, premises, dwellings or structures that are for sale, lease, or rent, shall be regulated by the applicable provisions of Chapter 34 of Title 5.

## **VIII. STORMWATER**

### **A. GENERAL.**

1. Design, Construction, Operation, and Maintenance. The project shall be designed, constructed, operated, and maintained in conformance with the

attached "Stormwater Pollution Prevention and Source Control Measures" ("Stormwater Measures") and the City's "Stormwater Guidelines for Green Dense Redevelopment" ("Stormwater Guidelines"). (Attachments 3 and 4).

2. Cost Recovery. The Applicant shall pay cost recovery fees related to the verification of permanent stormwater treatment drainage facilities planned and implemented on the site. Fees will be charged for plan check and engineering analysis of stormwater treatment system, inspection during construction of stormwater treatment facilities, and inspection before the issuance of the certificate of occupancy to verify that the stormwater treatment systems are properly functioning. Applicant shall also permit City representatives to perform inspection of said treatment facilities to enter the property during and after construction to perform said duties. **[Public Works]**

**B. PRIOR TO ISSUANCE OF A BUILDING PERMIT.**

1. Compliance with Stormwater Measures. At time of submittal of project plans for building permit plan check comments, the Applicant shall provide a separate C3 Stormwater Permit Packet and application to the Public Works Department for review and comment. Said Stormwater Permit shall be approved by the City prior to the issuance of a building permit. The project shall comply with the attached Stormwater Measures, in particular with the provision C.3 requirements (or new development section) of the City's NPDES Stormwater Permit and with plans and calculations showing how the project meets the numeric hydraulic sizing requirements as described in Section A of the attached Stormwater Measures. **[Public Works]**
2. Site Grading and Storm Drainage. Prior to the issuance of a building permit, the Public Works Director shall confirm that the building permit plans, specifications and information include detailed site drainage, grading plans and hydraulic calculations in conformance with the City's stormwater runoff requirements and specifications. All runoff from the site shall be intercepted at the project boundary, and shall be collected, treated and conducted via an approved drainage system through the project site to an approved public storm drain facility. Roof drainage from the structure shall be collected, treated and conducted to an approved drainage facility. No concentrated drainage of surface flow across sidewalks shall be permitted. Grading and drainage plans shall conform to Section A of the attached Stormwater Measures. **[Public Works]**

3. Site Plan. The site plan shall conform to Section B of the attached Stormwater Measures. **[Public Works]**
- C. DURING CONSTRUCTION. Applicant and contractor shall comply with Section C of the attached Stormwater Measures. **[Public Works]**
- D. PRIOR TO THE ISSUANCE OF CERTIFICATE OF OCCUPANCY
1. Operations and Maintenance Agreement. Prior to the issuance of a certificate of occupancy, Applicant shall enter into a Stormwater Treatment Measures Operation and Maintenance Agreement with the City of Emeryville to ensure the faithful performance of the design, construction, operation, and maintenance of the stormwater treatment systems. **[City Attorney/Public Works]**
  2. Commitment to the Stormwater Pollution Prevention Practices. Prior to the issuance of a certificate of occupancy, Applicant shall submit evidence of commitment to the stormwater pollution prevention practices, as detailed in Section D of the attached Stormwater Measures. **[Public Works]**
  3. Completion of Construction of Stormwater Treatment Systems. Prior to issuance of a certificate of occupancy, the Public Works Director shall confirm that the stormwater treatment systems are properly installed and functioning. **[Public Works]**
- E. ONGOING. The owner/operator of the facility shall permit, in perpetuity, city representatives to enter the property during and after construction in order to perform periodic inspection of stormwater treatment facilities.

Attachments:

1. Fee Chart
2. Construction Sign Prototype
3. Stormwater Pollution Prevention and Source Control Measures
4. Stormwater Permit Requirements and Application Form