

ATTACHMENT C
PARKING AGREEMENT

**Recording requested by
Redevelopment Agency of
the County of Santa Barbara
and when recorded, mail to:**

County of Santa Barbara
Redevelopment Agency
1105 Santa Barbara Street
4th Floor County Courthouse
Santa Barbara, CA 93101
Attn: Jeff Lindgren

NO FEE DOCUMENT PURSUANT TO
GOVERNMENT CODE SECTION 6103

AGENCY PARKING LOT AGREEMENT

THIS AGENCY PARKING LOT AGREEMENT (hereinafter “Agreement”) is entered into and effective on this ___ day of _____ 2009, by and between Ivy Paradise, LLC, a California limited liability company (“Developer”) and the Redevelopment Agency of the County of Santa Barbara, a public body corporate and politic (“Agency”) regarding the following legal properties:

Agency Parking Lot
Assessor Parcel numbers 075-111-014 & 075-111-006
Legal Description - Exhibit A

Project
Assessor Parcel number 075-112-016
Legal Description – Exhibit B

RECITALS

WHEREAS, the Agency is the owner of the real property known as Assessor Parcel numbers 075-111-014 & 075-111-006 located at 881 Embarcadero Del Mar, Isla Vista, CA 93117 and identified more particularly in the legal description attached hereto as Exhibit A (the “Agency Parking Lot”); and

WHEREAS, the Developer is the owner of the real property known as Assessor Parcel # 075-112-016, located at 909 Embarcadero Del Mar, Isla Vista, CA 93117 and identified more particularly in the legal description attached hereto as Exhibit B (the “Project”); and

WHEREAS, the difficulty of providing on-site parking has impeded the redevelopment of many under utilized properties in Isla Vista and has led to blight in the Isla Vista Redevelopment Project Area; and

WHEREAS, the conditions of approval for the Project require that: “The proposed project would not provide on-site parking for residents or commercial visitors. Rather, parking would be provided within nearby surface parking lot(s) to be acquired by the Isla Vista Redevelopment Agency. Fifteen parking spaces would be reserved for residents of the project site and seventeen commercial spaces allotted within one of the surface lots to be acquired by the RDA. The RDA is currently in negotiations to acquire several properties to be developed into surface parking lots for use by project residents and downtown Isla Vista commercial users.”; and

WHEREAS, development of the Agency Parking Lot has already been analyzed under the California Environmental Quality Act (“CEQA”) and there are no changes to the Agency Parking Lot, its use, circumstances under which it will be developed and utilized, or new information that would necessitate further environmental review under CEQA Guideline 15162.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the parties as herein expressed, Developer, and Agency agree as follows:

1. TERM. The Term of this Agreement shall commence at the time that a certificate of occupancy is issued for the Project and shall continue for a period of FIFTY (50) YEARS thereafter, subject to the termination provisions contained herein. Upon expiration of the initial Term, this Agreement may be extended for an additional TWENTY-FIVE (25) YEARS, upon mutual agreement of Agency and Developer.

2. RESIDENTIAL PARKING SPACES. Developer agrees to negotiate and enter into a lease agreement (“Lease Agreement”) with the Agency pursuant to which the Agency will make available for lease to the Developer on an annual basis, fifteen (15) parking spaces (“Residential Parking Spaces”) in the Agency Parking Lot to be used exclusively for residents of the Project. The annual leasing cost to Developer for the Residential Parking Spaces shall be based on the then-prevailing cost of annual parking passes in the Isla Vista area issued by the University of California at Santa Barbara (UCSB), or by the County, whichever is less. At least thirty days prior to the expiration of the term of each Lease Agreement that may be successively entered into, the Developer shall renew the lease for an additional period of at least one year. The original Lease Agreement shall be executed prior to or within 30 days of occupancy clearance for the surface parking lot owned by the Agency.

The Executive Director of the Agency shall have sole and absolute discretion in the selection of the location of the Residential Parking Spaces within the Agency Parking Lot. The Agency may in its sole and absolute discretion relocate the Residential Parking Spaces to other parking lots owned or controlled by the Agency within the Isla Vista Redevelopment Project Area consistent with County Coastal Zoning Code requirements. All Parking Spaces shall conform to current County of Santa Barbara standards and requirements for parking spaces, including size and handicap accessibility.

3. WRITTEN AGREEMENT WITH USERS REQUIRED FOR RESIDENTIAL PARKING SPACES. Only existing residential tenants of the Project who have entered into a parking agreement with the Developer requiring them to abide by Agency rules and regulations

shall be allowed to use the Residential Parking Spaces. Such rules shall include but not be limited to rules authorizing the Agency to ticket and/or tow Project resident's vehicles parked in Residential Parking Spaces that are in violation of the Agency rules. In addition, Developer shall ensure that all such parking agreements with tenants of the Project include a requirement that each tenant maintain automobile insurance coverage sufficient to meet standard California State requirements, as those requirements may be amended from time to time. Developer shall provide to Agency or Agency's designee, copies of all executed parking agreements within 15 days of their execution. In no event shall Developer charge any tenant more than their proportionate share of Developer's leasing cost for any Residential Parking Space.

4. MAINTENANCE AND REPAIR. Agency shall, at its sole cost and expense, maintain the Agency Parking Lot in a usable and orderly condition throughout the term of this Agreement.

5. COMMERCIAL PARKING SPACES. In addition to the 15 Residential Parking Spaces reserved by this Agreement, at least seventeen metered parking spaces in the Agency Parking Lot will be generally available to the public, including customers, guests, and employees of commercial tenants of the Project ("Commercial Parking Spaces"). Commercial Parking Spaces will be available for use by the general public, and will not be differentiated from other metered spaces in the Agency Parking Lot in any way. Commercial tenants and their customers, guests, and employees will not be given priority for Commercial Parking Spaces over members of the general public. The Agency may in its sole and absolute discretion relocate the Commercial Parking Spaces to other parking lots owned or controlled by the Agency within the Isla Vista Redevelopment Project Area consistent with County Coastal Zoning Code requirements.

6. PROPERTY SUITABILITY. Developer acknowledges that, except as stated herein, Agency has made no representations or warranties about the condition of the Agency Parking Lot, or the suitability of same for the intended use by Developer.

7. AGREEMENT SUBORDINATE TO AGENCY FINANCING. This Agreement, and all rights conveyed hereunder shall be subordinate to any deed of trust, mortgage or other security agreement recorded against the Agency Parking Lot for the purpose of securing financing for the Agency.

8. NONDISCRIMINATION. Developer shall not discriminate or segregate in the development, construction, use, enjoyment, or occupancy, of any part of the Project or the Residential or Commercial Parking Spaces on the basis of race, color, ancestry, national origin, religion, sex, sexual preference or orientation, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related conditions (ARC) acquired or perceived, or any other arbitrary basis. Developer shall otherwise comply with all applicable local, state, and federal laws concerning discrimination in housing. Additionally, Developer shall comply with the County's antidiscrimination Ordinance as set forth in County Code Section 2-94 et seq.

9. NONINTERFERENCE. Developer agrees not to use, nor permit those under its control, including, but not limited to, its employees, tenants, invitees, agents to use any portion of

the Agency Parking Lot in any way which interferes with other Agency operations on the Agency Parking Lot or which causes unreasonable damage to the Agency Parking Lot. Such interference shall be deemed a material breach, and Developer shall terminate said interference immediately upon notice from Agency.

10. INDEMNIFICATION. Developer shall defend, indemnify, and save harmless Agency, its officers, agents, and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments, or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of Developer or its tenants, agents, employees, or other independent contractors directly responsible to Developer; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting solely from the negligence or willful misconduct of the Agency.

Developer shall notify Agency immediately in the event of any accident or injury arising out of or in connection with this Agreement.

Agency shall defend, indemnify, and save harmless Developer, its officers, agents, and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments, or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of Agency or its tenants, agents, employees, or other independent contractors directly responsible to Agency; except those claims, demands, damages, costs, expenses (including attorney's fees), judgments or liabilities resulting solely from the negligence or willful misconduct of the Developer.

11. INSURANCE. Without limiting Developer's indemnification of the Agency, Developer shall procure the following required insurance coverages at its sole cost and expense. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A: VII, and (2) are admitted insurance companies in the State of California. All other insurers require the prior approval of the Agency. Such insurance coverage shall be maintained during the term of this Agreement. Failure to comply with the insurance requirements shall place Developer in default. Upon request by the Agency, Developer shall provide a certified copy of any insurance policy to the Agency within ten (10) working days.

A. Workers' Compensation Insurance: Statutory Workers' Compensation and Employers Liability Insurance shall cover all Developer's staff while performing any work incidental to the performance of this Agreement. The policy shall provide that no cancellation, or expiration or reduction of coverage shall be effective or occur until at least thirty (30) days after receipt of such notice by the Agency. In the event Developer is self-insured, it shall furnish a copy of Certificate of Consent to Self-Insure issued by the Department of Industrial Relations for the State of California. This provision does not apply if Developer has no employees as defined in Labor Code Section 3350 et seq. during the entire period of this Agreement and Developer submits a written statement to the Agency stating that fact.

B. General and Automobile Liability Insurance: The general liability insurance shall include bodily injury, property damage and personal injury liability coverage, shall afford coverage for all premises, operations, products and completed operations of Developer and shall include contractual liability coverage sufficiently broad so as to include the insurable liability assumed by Developer in the indemnity and hold harmless provisions of the Indemnification

Section of this Agreement between Agency and Developer. The automobile liability insurance shall cover all owned, non-owned and hired motor vehicles that are operated on behalf of Developer pursuant to Developer's activities hereunder. Developer shall require all subcontractors to be included under its policies or furnish separate certificates and endorsements to meet the standards of these provisions by each subcontractor. Agency, its officers, agents, and employees shall be Additional Insured status on any policy. A cross liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each shall be included in the policies. A copy of the endorsement evidencing that the policy has been changed to reflect the Additional Insured status must be attached to the certificate of insurance. The limit of liability of said policy or policies for general and automobile liability insurance shall not be less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any deductible or Self-Insured Retention {SIR} over \$10,000 requires approval by the Agency.

Said policy or policies shall include severability of interest or cross liability clause or equivalent wording. Said policy or policies shall contain a provision of the following form:

"Such insurance as is afforded by this policy shall be primary and if the Agency has other valid and collectible insurance, that other insurance shall be excess and non-contributory."

If the policy providing liability coverage is on a 'claims-made' form, Developer is required to maintain such coverage for a minimum of three years following completion of the performance or attempted performance of the provisions of this Agreement. Said policy or policies shall provide that the Agency shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.

The above insurance requirements are subject to periodic review by the Agency. The County's Risk Program Administrator is authorized to change the above insurance requirements, with the concurrence of County Counsel, to include additional types of insurance coverage or higher coverage limits, provided that such change is reasonable based on changed risk of loss or in light of past claims against the Agency or inflation. This option may be exercised during any amendment of this Agreement that results in an increase in the nature of County's risk and such change of provisions will be in effect for the term of the amended Agreement. Such change pertaining to types of insurance coverage or higher coverage limits must be made by written amendment to this Agreement. Developer agrees to execute any such amendment within thirty (30) days of acceptance of the amendment or modification.

C. Personal Property Insurance: Developer shall maintain full replacement cost property insurance for its personal property, including but not limited to equipment, supplies and tenant improvements in the Agency Parking Lot, throughout the term hereof.

12. COMPLIANCE WITH THE LAW. Developer shall comply with all applicable laws, rules, and regulations affecting the Project and Agency Parking Lot now or hereafter in effect. If any or all of the Residential or Commercial Parking Spaces are no longer available for any reason, including termination of this Agreement, the Developer will be required to find other available parking spaces or reduce or cease operation and use of the Project at an intensity approved by the County in order to bring the Project into conformance with the Coastal Zoning Ordinance parking requirements, and Agency shall cooperate with Developer in identifying alternative parking spaces that comply with the requirements of the County's Coastal Zoning Ordinance. The Developer agrees to waive any right to contest enforcement of the County's Coastal Zoning Ordinance in this manner should this circumstance arise. In no circumstance shall the Agency be obligated by this Agreement to interfere with such enforcement action. The

Parties acknowledge that the County may invoke any remedy provided for in the Coastal Zoning Ordinance to enforce such violation against the Developer.

13. ENVIRONMENTAL IMPAIRMENT. Developer shall ensure that its tenants and their guests, employees and invitees comply with all applicable laws, regulations, rules, and orders regarding use of the Agency Parking Lot regardless of when they become or became effective, including without limitation those relating to construction, grading, signing, health, safety, noise, environmental protection, waste disposal, water and air quality, and shall furnish satisfactory evidence of compliance upon request of Agency.

Should any discharge, leakage, spillage, emission, or pollution of any type occur upon or from the Agency Parking Lot due to Developer's use, Developer shall clean all property affected to the satisfaction of Agency and any governmental body having jurisdiction therefore. Developer shall indemnify, hold harmless, and defend Agency from and against all liability, claim, cost, and expense (including without limitation any fines, penalties, judgments, litigation costs, attorney's fees, consulting, engineering and construction costs) incurred by Agency as a result of Developer's breach of this Section, or as a result of any such discharge, leakage, spillage, emission or pollution due to Developer's use and occupancy, regardless of whether such liability, cost or expense arises during or after the term of this Agreement, and regardless of negligence, active or passive, of Agency.

14. TOXICS. Developer shall not manufacture or generate or store hazardous wastes on the Agency Parking Lot. Developer shall be fully responsible for any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance that are manufactured, generated, used, placed, disposed, stored, or transported by Developer, its agents, employees, or designees on the Agency Parking Lot during the term of this Agreement and shall comply with and be bound by all applicable provisions of such federal, state, or local law, regulation, or ordinance dealing with such wastes, substances, or materials. Developer shall notify Agency and the appropriate governmental emergency response agency(ies) immediately in the event of any release or threatened release of any such wastes, substances or materials.

15. TAXES AND ASSESSMENTS, POSSESSORY INTEREST. Developer shall pay and discharge any and all property taxes and/or assessments, including special assessments and possessory interest taxes, if any, which, due to Developer's operations, may be levied upon the Agency Parking Lot during the term of this Agreement.

Developer acknowledges and agrees that this Agreement may create a possessory interest subject to property taxation and that Developer may be required to pay any tax levied on such interest.

16. NOTICES. Any notice to be given to the parties shall be in writing and shall be served, either personally or by mail, to the following:

Agency: Redevelopment Agency of
County of Santa Barbara
105 E. Anapamu Street Room 105
Santa Barbara, CA 93101
Attn: Executive Director

Developer: Paradise Ivy, LLC
P.O. Box 4836
Santa Barbara, CA 93140

or to the parties at such other place as may be designated in writing. Such notices shall be served by depositing them addressed as set out above, postage prepaid, in the U.S. mail, reliable overnight courier, or by personal delivery. The date of mailing, or in the event of personal delivery, the date of delivery shall constitute the date of service.

17. DEFAULT. Except as otherwise required herein, should Developer at any time be in material default hereunder with respect to any covenant contained herein, Agency shall give notice to Developer specifying the particulars of the default and Developer shall promptly commence remedial action to cure the default. Should such default continue uncured for a period of thirty (30) calendar days from such notice, this Agreement shall terminate at the option of Agency; unless the cure of such default shall reasonably take more than thirty (30) calendar days in which case Developer shall proceed with all due speed to cure the default and shall have a reasonable time to effectuate its cure.

18. REMEDIES. In the event of a default or breach, either party may exercise any right or remedy at law or in equity which such party may have by reason of such default or breach including but not limited to the following:

A. The nondefaulting party may waive the default or breach in accordance with Section 22, WAIVER, herein below.

B. The nondefaulting party may maintain this Agreement in full force and effect and recover whatever monetary loss(es) may have resulted from such default or breach.

C. Where Developer is the nondefaulting party, Developer may terminate the Agreement and surrender use of the Agency Parking Lot.

D. Where Agency is the nondefaulting party, Agency may terminate this Agreement and Developer shall vacate within thirty (30) days of written notice from Agency.

19. TERMINATION BY DEVELOPER. This Agreement can only be terminated by Developer if all of the following conditions are satisfied:

A. The Developer has obtained either ownership of or the right to use, on a permanent basis and on reasonable terms, the same number of residential and commercial parking spaces as are being provided under this Agreement (“Replacement Spaces”);

B. The County's Director of Planning & Development has found that the Replacement Spaces provide adequate replacement of the Residential and Commercial Parking Spaces being provided herein;

C. Developer has either obtained a written determination from the County's Director of Planning and Development that the relocation of parking for the Project to the location of the Replacement Spaces does not require a change, revision or amendment, as applicable to the conditions of approval for the Project (Case Number 05DVP-00000-00027, 07CUP-00000-00036) or has obtained the required change, amendment or revision of the conditions of approval for the Project;

D. Any required coastal development permit has been obtained and the statute of limitations to challenge such approval has run; and

E. Developer has provided to the Agency written notice of termination of this agreement has been provided to the other party at least sixty (60) days prior to the termination date.

22. MUTUAL TERMINATION. The Agency and Developer may mutually terminate this Agreement. Such termination must be in writing and shall be recorded against those properties referenced in paragraph 1 of this Agreement.

23. WAIVER. It is understood and agreed that any waiver, express or implied of any term of this Agreement shall not be a waiver of any subsequent breach of a like kind or of any other provision of this Agreement.

24. AMENDMENTS. This Agreement may only be amended by written consent of the parties and such changes shall be binding upon the heirs or successors of the parties. Amendments to the Agreement that do not alter the purpose of the Agreement may be approved and executed by the Directors.

25. CONDEMNATION. In the event the Agency Parking Lot or any part thereof is taken by condemnation, eminent domain, or any such proceeding that precludes access to or use of the Agency Parking Lot, Agency shall have the exclusive right to control the defense of any such action in condemnation or eminent domain and to defend any such action and settle the same in Agency's absolute discretion. Developer agrees that Agency shall have the right, but not the obligation, to defend or settle any such action of condemnation or eminent domain affecting any of DEVELOPER'S operations at the Agency Parking Lot.

Developer shall not be entitled to any portion of any judgment in eminent domain for the Agency Parking Lot.

In the event possession of the Property or partial possession of the Agency Parking Lot is obtained by a public agency or other agency empowered to take by eminent domain, in a manner which precludes Developer's intended use, this Agreement shall terminate as of the effective date of possession.

In the event of a partial taking, this Agreement may continue at Agency's option.

26. CAPTIONS. The title or headings 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 hereof.

27. SEVERABILITY. If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

28. ENTIRE AGREEMENT. The parties to this Agreement intend that their negotiations, conversations and statements made prior to execution of this Agreement are fully integrated and expressed herein, and no such negotiations, conversations, and statements shall be deemed to create rights or obligations other than those stated herein.

29. CONSTRUCTION. The parties have negotiated the terms of this Agreement. They have consulted an attorney as deemed necessary. The terms of this Agreement reflect this negotiation and the intentions of both parties. These terms shall be interpreted with regard to each party equally.

30. SUCCESSORS AND ASSIGNS. This Agreement shall bind and inure to the benefit of the parties hereto, their respective personal representatives, heirs, successors in interest, and assigns.

31. FILE. This Agreement shall be kept on file in the Redevelopment Agency of the County of Santa Barbara in Permit File No.1 and shall be recorded with the County of Santa Barbara Clerk Recorder's Office.

32. CERTIFICATION OF SIGNATORY. The signatories of this Agreement and each of them represent and warrant that they are authorized to execute this Agreement and that no additional signatures are required to bind Agency and Developer to its terms and conditions or to carry out duties contemplated herein.

IN WITNESS WHEREOF, this Agency Parking Lot Agreement has been executed as of the day and year first above written.

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AGENCY
SIGNATURE PAGE
TO
AGENCY PARKING LOT AGREEMENT
881 Embarcadero del Mar

AGENCY:

COUNTY OF SANTA BARBARA
REDEVELOPMENT AGENCY
a public body, corporate and politic

Dated: _____, 2009

By: _____
Joseph Centeno
Chairman of Board of Directors

ATTEST:
Michael F. Brown

By: _____
Agency Secretary

APPROVED AS TO LEGAL FORM:
DENNIS A. MARSHALL
AGENCY COUNSEL

By: _____
Deputy Agency Counsel

APPROVED AS TO FORM:
BOB GEIS
AGENCY TREASURER

APPROVED AS TO FORM:
RAY AROMATORIO, ARM, AIC
RISK PROGRAM ADMINISTRATOR

By: _____

By: _____
Mark Paul
Senior Financial Analyst

Expenditure Accounting Information
Fund: _____ Dept: _____
Line Item _____ Program _____

DEVELOPER
SIGNATURE PAGE
TO
AGENCY PARKING LOT AGREEMENT
881 Embarcadero Del Mar

DEVELOPER:

PARADISE IVY, LLC
a California limited liability company

Dated: _____

By: _____
: Tim Werner
Its

and

Dated: _____

By: _____
Its: Richard Gilman

EXHIBIT A
TO
AGENCY PARKING LOT AGREEMENT
881 Embarcadero Del Mar

Legal Description of the Agency Parking Lot

PARCEL ONE

The Easterly 135.00 feet, between parallel lines, of Lot 3 in Block "J" of Ocean Terrace Tract, in the County of Santa Barbara, State of California, according to the map thereof, recorded in Book 15, Pages 101, 102 and 103 of Maps, in the Office of the County Recorder of said County.

APN# 75-111-14 (ARB 9 6-K-11)

PARCEL TWO

That portion of Lot 4 in Block "J" of the Ocean Terrace Tract in the County of Santa Barbara, State of California, according to the map thereof, recorded in Book 15, Pages 101 and 102 of Maps, in the Office of the County Recorder of said County, described as follows:

Beginning at the Southeasterly corner of said Lot 4; thence Northerly along the Easterly line of said Lot and Westerly line of Embarcadero Del Mar, 50 feet; thence at right angles westerly 120 feet, thence at right angles Southerly 50 feet to the Southerly line of said Lot 4; thence Easterly along said Southerly line 120 feet to the point of beginning.

APN# 75-111-06 (ARB 4B 6-K-11)

EXHIBIT B
TO
AGENCY PARKING LOT AGREEMENT
909 Embarcadero del Mar

Legal Description of the Project

PARCEL ONE:

PARCEL "C" IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SAID PARCEL IS SHOWN AS DESIGNATED ON PARCEL MAP NO. 10651 FILED IN BOOK 2, PAGE 69 OF PARCEL MAPS, IN THE OFFICIAL RECORDS OF SAID COUNTY.

PARCEL TWO:

THE EASTERLY 10 FEET OF LOT 2, BLOCK "J" IN THE OCEAN TERRACE TRACT IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 15, PAGES 101, 102, AND 103 OF MAPS, RECORDS OF SAID COUNTY, AND THAT PORTION OF THE NORTHERLY 30 FEET OF SAID LOT 2 LYING EASTERLY OF THE NORTHERLY PROLONGATION OF THE WESTERLY LINE OF PARCEL ONE ABOVE DESCRIBED.

END OF LEGAL DESCRIPTION