

DEVELOPMENT AGREEMENT

by and between

THE CITY OF LOS ANGELES

and

CELEBRITY REALTY HOLDINGS, LLC

dated as of

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is executed this ____ day of _____, 2017 by and between the CITY OF LOS ANGELES, a municipal corporation ("City"), and Celebrity Realty Holdings, LLC (the "Developer"), pursuant to California Government Code Section 65864 et seq., and the implementing procedures of the City, with respect to the following:

RECITALS

WHEREAS, the City and the Developer recognize that the further development of the subject property, as defined below, will create significant opportunities for economic growth in the City, the Southern California region, and California generally;

WHEREAS, the Developer wishes to obtain reasonable assurances that the Project as defined below may be developed in accordance with the Project Approvals, as defined below, and the terms of this Agreement;

WHEREAS, the Developer will implement public benefits above and beyond the necessary mitigation for the Project including benefits and other consideration as noted in Sections 2.3.1;

WHEREAS, this Agreement is necessary to assure the Developer that the Project will not be reduced in density, intensity or use, or be subjected to new rules, regulations, ordinances or policies unless otherwise allowed by this Agreement;

WHEREAS, by entering into this Agreement, the City is encouraging the development of the Project as set forth in this Agreement in accordance with the goals and objectives of the City, while reserving to the City the legislative powers necessary to remain responsible and accountable to its residents;

WHEREAS, the Developer owns a 1.6-acre property in the City located at 800-820 Martin Luther King, Jr. Boulevard, 730-740 Martin Luther King, Jr. Boulevard, 705 West 40th Place, and 703-703¹/₂ West 40th Place (the "Property"). Developer intends to construct two new structures that would contain the new Downtown Los Angeles Honda Dealership at the Property. The Project would specifically consist of the East Structure, a five-story, six-level building consisting of two levels of showroom, office, service, storage uses, and above ground customer and vehicle parking; and, the West Structure, a five-story building with 105,075 square feet of dealership operations and vehicle storage. The Project will also include signage consistent with the Los Angeles Municipal Code sections which regulate signage; and

WHEREAS, for the foregoing reasons, the Parties desire to enter into a development agreement for the Project pursuant to the Development Agreement Act, as defined below, and the City's charter powers upon the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, and in consideration of the mutual promises and covenants herein contained and other valuable consideration the receipt and adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

1. DEFINITIONS

For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context of this Agreement otherwise requires, the following words and phrases shall be defined as set forth below:

1.1. **“Agreement”** means this Development Agreement.

1.2. **“Applicable Rules”** means the rules, regulations, fees, ordinances and official policies of the City in force as of the Effective Date of this Agreement governing the use and development of real property and which, among other matters, govern the permitted uses of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, parking requirements, setbacks, development standards, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction guidelines, standards and specifications applicable to the development of the Property. Notwithstanding the language of this Section or any other language in this Agreement, all specifications, standards and policies regarding the design and construction of buildings and development projects, if any, shall be those that are in effect at the time the project plans are being processed for approval and/or under construction.

1.3. **“Assignment Agreement”** means an agreement entered into by the Developer to transfer in whole or in part the rights and obligations of Developer under this Agreement to a third party transferee.

1.4. **“CEQA”** means the California Environmental Quality Act (Cal. Public Resources Code Sections 21000 et seq.) and the State CEQA Guidelines (Cal. Code of Regs., Title 14, Sections 15000 et seq.).

1.5. **“City”** means the City of Los Angeles, a charter city and municipal corporation.

1.6. **“City Agency”** means each and every agency, department, board, commission, authority, employee, and/or official acting under the authority of the City, including without limitation the City Council and the Planning Commission.

1.7. **“City Attorney”** means the legal counsel for the City.

1.8. **“City Council”** means the City Council of the City and the legislative body of the City pursuant to Section 65867 of the California Government Code (Development Agreement Act).

1.9. “Conditions of Approval” means the Conditions of Approval for the Project, including, but not limited to, any conditions associated with the Project Approvals, including, without limitation, those attached hereto as Exhibit “B,” Conditions of Approval.

1.10. “Days” means calendar days as opposed to working days.

1.11. “Developer” has the meaning as described in the opening paragraph of this Agreement.

1.12. “Development Agreement Act” means Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code.

1.13. “Discretionary Action” means an action which requires the exercise of judgment, deliberation or a decision on the part of the City and/or any City Agency, in the process of approving or disapproving a particular activity, as distinguished from Ministerial Permits and Approvals and any other activity which merely requires the City and/or any City Agency to determine whether there has been compliance with statutes, ordinances or regulations.

1.14. “Effective Date” has the meaning set forth in Section 7.1 below.

1.15. “General Plan” means the General Plan of the City.

1.16. “Ministerial Permits and Approvals” means the permits, approvals, plans, inspections, certificates, documents, licenses, and all other actions required to be taken by the City in order for Developer to implement, develop and construct the Project and the Mitigation Measures, including without limitation, building permits, foundation permits, public works permits, grading permits, stockpile permits, encroachment permits, and other similar permits and approvals which are required by the Los Angeles Municipal Code and Project plans and other actions required by the Project Approvals to implement the Project and the Mitigation Measures. Ministerial Permits and Approvals shall not include any Discretionary Actions.

1.17. “Mitigation Measures” means the mitigation measures described in the Mitigated Negative Declaration (“MND”) adopted on November 22, 2016.

1.18. “Parties” means collectively the Developer and the City.

1.19. “Party” means any one of the Developer or the City.

1.20. “Planning Commission” means the City Planning Commission and the planning agency of the City pursuant to Section 65867 of the California Government Code (Development Agreement Act).

1.21. “Planning Director” means the Planning Director for the City.

1.22. “Processing Fees” means all processing fees and charges required by the City or any City Agency including, but not limited to, fees for land use applications, project permits, building applications, building permits, grading permits, encroachment permits, tract or parcel

maps, lot line adjustments, air right lots, street vacations and certificates of occupancy which are necessary to accomplish the intent and purpose of this Agreement. Expressly exempted from Processing Fees are all linkage fees or exactions which may be imposed by the City on development projects pursuant to laws enacted after the Effective Date of this Agreement, except as specifically provided for in this Agreement. The amount of the Processing Fees to be applied in connection with the development of the Project shall be the amount which is in effect on a City-wide basis at the time an application for the City action is made, unless an alternative amount is established by the City in a subsequent agreement.

1.23. "Project" means construction of a new car dealership consisting of the East and West Structures. The East Structure consists of a five-story, six-level building with two levels of showroom, office, service, and storage uses, and above ground customer and vehicle parking. The West Structure is a five-story building with 105,075 square feet of car dealership operations and vehicle storage.

1.24. "Project Approvals" means those Discretionary Actions authorizing the Project which have been approved by the City on or before the Effective Date (irrespective of their respective effective dates) including, but not limited, to: (1) a General Plan Amendment to revise the land use designation in the South Los Angeles Community Plan from High Medium Residential to Community Commercial and remove Footnote No. 1 for the Property to allow Height District No. 2; (2) Zone and Height District Change from C2-1 and R3-1 to (T)(Q)C2-2 across the entire Property; (3) Building Line Removal; (4) Zoning Administrator's Determination to allow deviations from the Transitional Height requirements; (5) Site Plan Review; and (6) the Mitigated Negative Declaration (ENV-2016-1036-MND).

1.25. "Property" has the meaning in the recitals above and as fully described in the legal description attached as Exhibit "A".

1.26. "Property Owner" has the meaning as described in the opening paragraph of the Agreement.

1.27. "Reserved Powers" means the rights and authority excepted from this Agreement's restrictions on the City's police powers and which are instead reserved to the City. The Reserved Powers include the powers to enact regulations or take future Discretionary Actions after the Effective Date of this Agreement that may be in conflict with the Applicable Rules and Project Approvals, but: (1) are necessary to protect the public health and safety, and are generally applicable on a City-wide basis (except in the event of natural disasters as found by the City Council such as floods, earthquakes and similar acts of God); (2) are amendments to the Los Angeles Building or Fire Codes regarding the construction, engineering and design standards for private and public improvements and which are (a) necessary to the health and safety of the residents of the City, and (b) are generally applicable on a Citywide basis (except in the event of natural disasters as found by the Mayor or City Council such as floods, earthquakes, and similar acts of God); (3) are necessary to comply with state or federal laws and regulations (whether enacted previous or subsequent to the Effective Date of this Agreement) as provided in Section 3.2.3.3 or; (4) constitute Processing Fees and charges imposed or required by the City to cover its actual costs in processing applications, permit requests and approvals of the Project or in

monitoring compliance with permits issued or approvals granted for the performance of any conditions imposed on the Project, unless otherwise waived by the City.

1.28. “Term” means the period of time for which this Agreement shall be effective in accordance with Section 7.2 hereof.

1.29. “Transferee” means a third party that has entered into an Assignment Agreement with Developer.

2. RECITALS OF PREMISES, PURPOSE AND INTENT

2.1. State Enabling Statute. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

“The Legislature finds and declares that:

“(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development.”

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City: (1) accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties; and (2) to offset such restraints, seeks public benefits which go beyond those obtained by traditional City controls and conditions imposed on development project applications.

2.2. City Procedures and Actions.

2.2.1. City Planning Commission Action. The City Planning Commission held a duly noticed public hearing and recommended approval of this Agreement on July 28, 2016.

2.2.2. City Council Action. The City Council on _____, after conducting a duly-noticed public hearing, adopted Ordinance No. _____, to become effective on the thirty-first day after its adoption, found that its provisions are consistent with the City's General Plan and the Los Angeles Municipal Code, and authorized the execution of this Agreement.

2.3. Purpose of this Agreement.

2.3.1. Public Benefits. This Agreement provides assurances that the Public Benefits identified below will be achieved and developed in accordance with the Applicable Rules and Project Approvals and with the terms of this Agreement and subject to the City's Reserved Powers. Additionally, as consideration for this Agreement, Developer agrees to provide the following:

(a) LATTC - Scholarships: Prior to the issuance of any Building Permit for the Project, the Developer shall deposit \$100,000 into an escrow account which shall be dedicated to providing scholarships to residents of Council District 9 to attend Los Angeles Trade Technical College ("LATTC"). The Developer shall, in its sole and absolute discretion, select the individuals who the Developer provides the scholarship. The scholarships are intended to be for the benefit of current and/or future employees of the Honda of Downtown Los Angeles Dealership. The Developer shall provide documentation to the Department of City Planning evidencing the establishment and deposit of funds into this escrow account. If at the end of the Term of this Agreement, all of the funds have not been distributed for scholarships, the escrow account shall require that the remaining funds shall be deposited into the Council District 9 Public Benefits Trust Fund No. 48X.

(b) Business Improvement District: The Developer shall provide a financial contribution of \$50,000 towards the formation of a Business Improvement District ("BID") in Council District 9. The City Clerk shall be authorized to accept funding from the Developer as matching funds for the consultant study and deposit said funds in the BID Trust Fund 659 for the CD 9 BID. Prior to the issuance of a Building Permit for the Project, the Developer shall make the financial contribution to the BID and shall submit documentation evidencing payment was made, and the City Clerk shall submit a letter to the Department of City Planning, acknowledging the receipt of said funds.

2.3.2. Developer Objectives. In accordance with the legislative findings set forth in the Development Agreement Act, and with full recognition of the City's policy of judicious restraints on its police powers, the Developer wishes to obtain reasonable assurances that the Project may be developed in accordance with the Applicable Rules and Project Approvals and with the terms of this Agreement and subject to the City's Reserved Powers. In the absence of this Agreement, Developer would have no assurance that it can complete the Project for the uses and to the density and intensity of development set forth in this Agreement and the Project Approvals. This Agreement, therefore, is necessary to assure Developer that the Project will not be: (1) reduced or otherwise modified in density,

intensity or use from what is set forth in the Project Approvals; (2) subjected to new rules, regulations, ordinances or official policies or plans which are not adopted or approved pursuant to the City's Reserved Powers; or (3) subjected to delays for reasons other than Citywide health and safety enactments related to critical situations such as, but not limited to, the lack of water availability or sewer or landfill capacity.

2.3.3. Mutual Objectives. Development of the Project in accordance with this Development Agreement will provide for the orderly development of the Property in accordance with the objectives set forth in the General Plan. Moreover, a development agreement for the Project will eliminate uncertainty in planning for and securing orderly development of the Property, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within the City at the least economic cost to its citizens, and otherwise achieve the goals and purposes for which the Development Agreement Act was enacted. The Parties believe that such orderly development of the Project will provide Public Benefits, as described in Section 2.3.1, to the City through the imposition of development standards and requirements under this Agreement, including without limitation: increased tax revenues, installation of on-site and off-site improvements, creation and retention of jobs, and development of an aesthetically attractive Project. Additionally, although development of the Project in accordance with this Agreement will restrain the City's land use or other relevant police powers, this Agreement provides the City with sufficient reserved powers during the Term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to City, the Developer will receive assurance that the Project may be developed during the Term of this Agreement in accordance with the Applicable Rules, Project Approvals, and Reserved Powers, subject to the terms and conditions of this Agreement.

2.4. Applicability of the Agreement. This Agreement does not: (1) grant height, density or intensity in excess of that otherwise established in the Applicable Rules and Project Approvals; (2) eliminate future Discretionary Actions relating to the Project if applications requiring such Discretionary Action are initiated and submitted by the owner of the Property after the Effective Date of this Agreement; (3) guarantee that Developer will receive any profits from the Project; (4) prohibit the Project's participation in any benefit assessment district that is generally applicable to surrounding properties; (5) amend the City's General Plan; or (6) amend the City of Los Angeles Zoning Ordinance. This Agreement has a fixed Term. Furthermore, in any subsequent actions applicable to the Property, the City may apply such new rules, regulations and official policies as are contained in its Reserved Powers.

3. AGREEMENT AND ASSURANCES

3.1. Agreement and Assurance on the Part of Developer. In consideration for the City entering into this Agreement, and as an inducement for the City to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the promises, purposes, and intentions set forth in Section 2.3 of this Agreement, Developer hereby agrees as follows:

3.1.1. Project Development. Developer agrees that it will use commercially reasonable efforts, in accordance with its own business judgment and taking into account

market conditions and economic considerations, to undertake development of the Project in accordance with the terms and conditions of this Agreement, including the Applicable Rules and the Project Approvals. Nothing in this Agreement shall be construed to require the Developer to initiate, proceed with the construction of, or any other implementation of the Project, or any portion thereof, within any period of time or at all, or deemed to prohibit the Developer from seeking any necessary land use approvals for any different land use project on the Property. In addition, the Developer agrees to the following:

(a) **Dedication of Land for Public Purposes.** Provisions for the dedication of land for public purposes are set forth in the Project Approvals.

(b) **Description of Transportation Improvements.** The transportation improvements to be included within the scope of the Project are set forth in the Project Approvals.

(c) **Maximum Height of the Project.** The Project shall be built in accordance with the maximum heights analyzed in the Project's MND and the Project shall comply with and be limited as set forth in the Project Approvals.

(d) **Maximum Floor Area of the Project.** The maximum floor area of the Project shall be consistent with the maximum floor area analyzed in the Project's MND and the Project shall comply with, and be limited as set forth in the Project Approvals.

3.1.2. Timing of Development. The Parties acknowledge that Developer cannot at this time predict when or at what rate the Property would be developed. Such decisions depend upon numerous factors which are not all within the control of Developer, such as market orientation and demand, availability of financing, interest rates and competition. Developer may therefore construct the Project in either a single phase or multiple phases (lasting any duration of time) within the Term of this Agreement. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal. 3d 465 (1984), that the failure of the Parties therein to provide for the timing of development permitted a later adopted initiative restricting the timing of development and controlling the Parties' agreement, Developer and the City do hereby acknowledge that Developer has the right to develop the Project in an order and at a rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment. The City acknowledges that this right is consistent with the intent, purpose, and understanding of the Parties to this Agreement.

3.2. Agreement and Assurances on the Part of the City. In consideration for Developer entering into this Agreement, and as an inducement for Developer to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the promises, purposes, and intentions set forth in the preceding Section 3.1 of this Agreement, the City hereby agrees and assures the Developer that, subject to its Reserved Powers: (i) only the Applicable Rules and the terms and conditions of this Agreement shall be applied to the Project during the Term hereof; and (ii) the Applicable Rules and terms and conditions of this Agreement are vested contractual rights of the Developer to develop this Project during the Term of this

Agreement in furtherance of such agreement and assurances, and pursuant to the authority and provisions set forth in the Development Agreement Act and the ordinance adopted by the City Council on [_____], 2017 under Council File No. 16-0960. The City, in entering into this Agreement, hereby agrees and acknowledges as follows:

3.2.1. Entitlement to Develop. Developer has the vested right to develop the Project subject to the terms and conditions of this Agreement, the Applicable Rules, Project Approvals and the Reserved Powers. Developer's vested rights under this Agreement shall include, without limitation, the right to remodel, renovate, rehabilitate, rebuild or replace the Project or any portion thereof throughout the applicable Term for any reason, including, without limitation, in the event of damage, destruction or obsolescence of the Project or any portion thereof, subject to the Applicable Rules, Project Approvals and Reserved Powers. To the extent that all or any portion of the Project is remodeled, renovated, rehabilitated, rebuilt or replaced, Developer may locate that portion of the Project at any other location of the Property, subject to the requirements of the Project Approvals, the Applicable Rules, and the Reserved Powers.

3.2.2. Consistency in Applicable Rules. Based upon all information made available to the City up to or concurrently with the execution of this Agreement, the City finds and certifies that no Applicable Rules prohibit, prevent or encumber the full completion and occupancy of the Project in accordance with the uses, intensities, densities, designs and heights, permitted demolition, and other development entitlements incorporated and agreed to herein and in the Project Approvals.

3.2.3. Changes in Applicable Rules.

3.2.3.1. Non-application of Changes in Applicable Rules. Any change in, or addition to, the Applicable Rules, including, without limitation, any change in any applicable general plan, zoning or building regulation, adopted or becoming effective after the Effective Date of this Agreement, including, without limitation, any such change by means of ordinance including but not limited to adoption of a specific plan or overlay zone, City Charter amendment, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the City, the Mayor, City Council, Planning Commission, any City Agency, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict in any way with the Applicable Rules, Project Approvals, or this Agreement, shall not be applied to the Project unless such changes represent an exercise of the City's Reserved Powers, or are otherwise agreed to in this Agreement. Notwithstanding the foregoing, Developer may, in its sole discretion, give the City written notice of its election to have any subsequent change in the Applicable Rules applied to some portion or all of the Property as it may own, in which case such subsequent changes in the Applicable Rules shall be deemed to be contained within the Applicable Rules insofar as that portion of the Property is concerned. In the event of any conflict or inconsistency between this Agreement and the Applicable Rules, the provisions of this Agreement shall control.

3.2.3.2. Changes in Building and Fire Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes which may occur from time to time in the California Building Code and other uniform construction codes. In addition, development of the Project shall be subject to any changes occurring from time to time in the Los Angeles Municipal Code regarding the construction, engineering and design standards for both public and private improvements provided that these changes are (1) necessary to the health and safety of the residents of the City, and (2) are generally applicable on a Citywide basis (except in the event of natural disasters as found by the Mayor or City Council, such as floods, earthquakes and similar disasters).

3.2.3.3. Changes Mandated by Federal or State Law. This Agreement shall not preclude the application to the Project of changes in, or additions to, the Applicable Rules, including rules, regulations, ordinances and official policies, to the extent that such changes or additions are mandated to be applied to developments such as this Project by state or federal regulations, pursuant to the Reserved Powers. In the event state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

3.2.4. Subsequent Development Review. The City shall not require Developer to obtain any approvals or permits for the development of the Project in accordance with this Agreement other than those permits or approvals which are required by the Reserved Powers and/or the Project Approvals. Any subsequent Discretionary Action initiated by Developer which substantially changes the entitlements allowed under the Project Approvals, shall be subject to rules, regulations, ordinances and official policies of the City then in effect. A substantial change to the entitlements allowed under the Project Approvals that would require subsequent Discretionary Action(s) include: (a) a net increase in the amount of Project square footage, building heights and/or expansion of building footprints, and/or (b) a reduction in the number of automobile parking spaces identified in the Project Approvals (collectively referred to as "**Substantial Project Changes**"). The Parties agree that this Agreement does not modify, alter or change the City's obligations pursuant to CEQA and acknowledge that future Discretionary Actions may require additional environmental review pursuant to CEQA.

3.2.5. Administrative Changes and Modifications. The Project may demonstrate that refinements and changes are appropriate with respect to the details and performance of the Parties under this Agreement. The Parties desire to retain a certain degree of flexibility with respect to the details of the Project development and with respect to those items covered in general terms under this Agreement and Project Approvals. If and when the Parties find that Substantially Conforming Changes, as herein defined, are necessary or appropriate, they shall, unless otherwise required by law, effectuate such changes or adjustments through administrative modifications approved by the Parties. As used herein, **Substantially Conforming Changes** are changes, modifications or adjustments that are substantially consistent with the Project Approvals, and do not constitute Substantial Project Changes as defined in Section 3.2.4 of this Agreement. Such

Substantially Conforming Changes would not be considered Discretionary Actions, and would therefore not require a public hearing.

3.2.6. Effective Development Standards. The City agrees that it is bound to permit the uses, intensity of use, and density on this Property which are permitted by this Agreement and the Project Approvals, insofar as this Agreement and the Project Approvals so provide or as otherwise set forth in the Applicable Rules or the Reserved Powers. In the event of any inconsistency between this Agreement and the Applicable Rules, this Agreement shall control.

3.2.7. Interim Use. The City agrees that Developer may use the Property during the term of this Agreement for any use which is otherwise permitted by the applicable zoning regulations and the General Plan in effect at the time of the interim use and for a use which does not require a new or additional Discretionary Action from the City, except as expressly provided in this Development Agreement, or pursuant to any approvals, permits, other agreements between the City and Developer, or other entitlements previously granted and in effect as of the Effective Date. Developer shall seek the City's approval of any interim use requiring Discretionary Action. Developer may elect to improve the Property with the East Structure prior to commencing construction of the West Structure.

3.2.8. Moratoria or Interim Control Ordinances. In the event an ordinance, resolution, policy, or other measure is enacted, whether by action of the City, by initiative, or otherwise, which relates directly or indirectly to the Project or to the rate, amount, timing, sequencing, or phasing of the development or construction of the Project on all or any part of the Property, City agrees that such ordinance, resolution or other measure shall not apply to the Property or this Agreement, unless such changes: (1) are found by the City to be necessary to the public health and safety of the residents of the City; (2) are generally applicable on a Citywide basis except in the event of natural disasters as found by the Mayor or the City Council, such as floods, earthquakes and similar disasters; and (3) are necessary to comply with state or federal laws and regulations (whether enacted previous or subsequent to the Effective Date of this Agreement) as provided in Section 3.2.3.3.

3.2.9. Time Period of Project Approvals. The City acknowledges that the construction of the Project may be subject to unavoidable delays due to the factors outside the Developer's control. The City agrees that the duration of the Project Approvals shall automatically be extended for the Term of this Agreement.

3.2.10. Impact Fees. Impact Fees imposed by the City with respect to the Project shall only be those Impact Fees in force and effect as of the Effective Date, the amount of which are subject to ongoing annual decreases and increases that shall be calculated at the time of payment. This Agreement shall not limit any Impact Fees, linkage fees, exactions, assessments or fair share charges or other similar fees or charges imposed by other governmental entities and which the City is otherwise required to collect or assess pursuant to applicable law (e.g., School District Impact Fees pursuant to California Government Code Section 65995).

3.2.11. Processing Fees. Developer shall pay all Processing Fees for Ministerial Permits and Approvals in the amount in effect when such Ministerial Permit and Approvals are sought.

3.2.12. Time frames and Staffing for Processing and Review. The City agrees that expeditious processing of Ministerial Permits and Approvals and Discretionary Actions, if any, and any other approvals or actions required for the Project are critical to the implementation of the Project. In recognition of the importance of timely processing and review of Ministerial Permits and Approvals, the City agrees to work with Developer to establish time frames for processing and reviewing such Ministerial Permits and Approvals and to comply with time frames established in the Project Approvals. The City agrees to expedite all Ministerial Permits and Approvals and Discretionary Actions requested by Developer to the extent practicable, if any. Developer agrees to pay any applicable fee for expedited review and processing time.

3.2.13. Other Governmental Approvals. Developer may apply for such other permits and approvals as may be required for development of the Project in accordance with the provisions of this Agreement from other governmental or quasi-governmental agencies having jurisdiction over the Property. The City shall reasonably cooperate with Developer in its endeavors to obtain such permits and approvals. Each Party shall take all reasonable actions, and execute, with acknowledgment or affidavit, if required, any and all documents and writings that may be reasonably necessary or proper to achieve the purposes and objectives of this Agreement.

4. ANNUAL REVIEW

4.1. Annual Review. During the Term of this Agreement, the City shall review annually Developer's good faith compliance with this Agreement by Developer and/or any Transferee. This periodic review shall be limited in scope to good faith compliance with the provisions of this Agreement as provided in the Development Agreement Act and Developer, and/or any Transferee shall have the burden of demonstrating such good faith compliance relating solely to such Parties' portion of the Property and any development located thereon. The Annual Review shall be in the form of an Annual Report prepared and submitted by the Planning Director. The Report shall include: the number, type and square footage of and the status of the Project; the total number of parking spaces developed; and summary of performance of Developer's obligations.

4.2. Pre-Determination Procedure. Submission by Developer, and/or Transferee, of evidence of compliance with this Agreement, in a form which the Planning Director may reasonably establish, shall be made in writing and transmitted to the Planning Director not later than thirty (30) days prior to the yearly anniversary of the Effective Date. If the public has comments regarding compliance, such comments must be submitted to the Planning Director at least thirty (30) days prior to the yearly anniversary of the Effective Date. All such public comments and final staff reports shall, upon receipt by the City, be made available as soon as possible to Developer and/or any Transferees.

4.2.1. Special Review. The City may order a special review of compliance with this Agreement upon reasonable evidence of material non-compliance with the terms of this Agreement.

4.3. Planning Director's Determination. On or before the yearly anniversary of the Effective Date of the Agreement, the Planning Director shall make a determination regarding whether or not Developer has complied in good faith with the provisions and conditions of this Agreement. This determination shall be made in writing with reasonable specificity, and a copy of the determination shall be provided to Developer or Transferee in the manner prescribed in Section 7.11.

4.4. Appeal by Developer. In the event the Planning Director makes a finding and determination of non-compliance, Developer, and/or any Transferee as the case may be, shall be entitled to appeal that determination to the Planning Commission within twenty five (25) days from the Planning Director's decision. After a public hearing on the appeal, the Planning Commission within twenty five (25) days shall make written findings and determinations, on the basis of substantial evidence, whether or not Developer, and/or any Transferee as the case may be, has complied in good faith with the provisions and conditions of this Agreement. A finding and determination of compliance by the Planning Commission shall be final and effective. Nothing in this Agreement shall be construed as modifying or abrogating the Los Angeles City Charter.

4.5. Period to Cure Non-Compliance. If, as a result of this Annual Review procedure, it is found and determined by the Planning Director or the Planning Commission on appeal that Developer and/or any Transferee, as the case may be, has not complied in good faith with the provisions and conditions of this Agreement, the City, after denial of any appeal or, where no appeal is taken, after the expiration of the appeal period described in Section 4.4, shall submit to Developer, by registered or certified mail, return receipt requested, a written notice of non-compliance in the manner prescribed in Section 7.11, stating with specificity those obligations of Developer which have not been performed. Upon receipt of the notice of non-compliance, Developer and/or any Transferee, as the case may be, shall promptly commence to cure the identified items of non-compliance at the earliest reasonable time after receipt of the notice of non-compliance and shall complete the cure of such items of non-compliance not later than sixty (60) days after receipt of the notice of non-compliance, or such longer period as is reasonably necessary to remedy such items of non-compliance, by mutual consent of the City and Developer provided that Developer shall continuously and diligently pursue the remedy at all times until the item of non-compliance is cured.

4.6. Failure to Cure Non-Compliance Procedure. If the Planning Director finds and determines that Developer or a Transferee has not cured an item of non-compliance pursuant to this Section, and that the City intends to terminate or modify this Agreement or those transferred or assigned rights and obligations, as the case may be, the Planning Director shall make a report to the Planning Commission. The Planning Director shall then set a date for a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after such public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that: (i) Developer or its Transferee has not cured a default pursuant to this Section; and (ii) that the City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the finding and

determination shall be appealable to the City Council in accordance with Section 7.3 hereof. In the event of a finding and determination of compliance, there shall be no appeal by any person or entity. Nothing in this Section or this Agreement shall be construed as modifying or abrogating the Los Angeles City Charter.

4.7. Termination or Modification of Agreement. The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after a finding or determination of non-compliance by the City Council or, where no appeal is taken, after the expiration of the appeal periods described in Section 7.3. There shall be no modifications of this Agreement unless the City Council acts pursuant to Government Code Sections 65867.5 and 65868, irrespective of whether an appeal is taken as provided in Section 7.3.

4.8. Reimbursement of Costs. Developer shall reimburse the City for its actual costs, reasonably and necessarily incurred, to accomplish the required annual review.

4.9. City's Rights and Remedies Against Developer. The City's rights in Section 4 of this Agreement relating to compliance with this Agreement by Developer shall be limited to only those rights and obligations assumed by Developer under this Agreement and as expressly set forth in the applicable Assignment Agreement authorized by Section 7.7 of this Agreement.

5. DEFAULT PROVISIONS

5.1. Default by Developer.

5.1.1. Default. In the event Developer or a Transferee of any portion of the Property fails to perform its obligations under this Agreement applicable to its portion of the Property as specified in the applicable Assignment Agreement in a timely manner and in compliance pursuant to Section 4 of this Agreement, the City shall have all rights and remedies provided for in this Agreement, including, without limitation, modifying or terminating this Agreement, shall relate exclusively to the defaulting Party and such defaulting Party's portion of the Property, provided that the City has first complied with all applicable notice and opportunity to cure provisions in Section 5.1.2 and given notice as provided in Section 7.11 hereof, and provided further that Developer may appeal such declaration in the manner provided in, and subject to all terms and provisions of, Sections 4.4 and 4.5. In no event shall a default by a Developer or a Transferee of any portion of the Property constitute a default by any non-defaulting Developer or a Transferee with respect to such non-defaulting parties' obligations hereunder nor affect such non-defaulting parties' rights hereunder, or respective portion of the Property.

5.1.2. Notice of Default. The City through the Planning Director shall submit to Developer or Transferee, as applicable, by registered or certified mail, return receipt requested, a written notice of default in the manner prescribed in Section 7.11, identifying with specificity those obligations of Developer or Transferee, as applicable, which have not been performed. Upon receipt of the notice of default, Developer or Transferee shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of the default(s) not later than sixty (60) days after receipt of the notice of default, or a longer period as is reasonably

necessary to remedy the default(s), provided that Developer or Transferee, as applicable, shall continuously and diligently pursue the remedy at all times until the default(s) is cured. In the case of a dispute as to whether Developer has cured the default, the Parties shall submit the matter to dispute resolution pursuant to Section 7.5 of this Agreement.

5.1.3. Failure to Cure Default Procedures. If after the cure period has elapsed (Section 4.5), the Planning Director finds and determines that Developer, or its Transferees, successors, and/or assignees, as the case may be, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Planning Director shall make a report to the Planning Commission and then set a public hearing before the Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Developer, or its Transferees, successors, and/or assigns, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned right and obligations, as the case may be, the Developer and its Transferees, successors, and/or assigns, shall be entitled to appeal that finding and determination to the City Council in accordance with Section 7.3. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity. Nothing in this Section or this Agreement shall be construed as modifying or abrogating the Los Angeles City Charter.

5.1.4. Termination or Modification of Agreement. The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, relating solely to the defaulting Developer or Transferee and such defaulting party's portion of the Property after such final determination of the City Council or, where no appeal is taken after the expiration of the appeal periods described in Section 7.3 relating to the defaulting party's rights and obligations. There shall be no termination or modification of this Agreement unless the City Council acts pursuant to Section 7.3.

5.2. Default by the City.

5.2.1. Default. In the event the City defaults under the provisions of this Agreement, Developer and Transferee shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement provided that Developer or Transferee, as the case may be, has first complied with the procedures in Section 5.2.2. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses the City may otherwise have with respect to claims for monetary damages.

5.2.2. Notice of Default. Developer or Transferee, as the case may be, shall first submit to the City a written notice of default stating with specificity those obligations which have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than one hundred and twenty (120) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City shall

continuously and diligently pursue the remedy at all times until such default(s) is cured. In the case of a dispute as to whether the City has cured the default, the Parties shall submit the matter to dispute resolution pursuant to Section 7.5 of this Agreement.

5.3. No Monetary Damages. It is acknowledged by the Parties that the City would not have entered into this Agreement if it were liable in monetary damages under or with respect to this Agreement or the application thereof. The Parties agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages which would adequately compensate Developer for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify the exposure. Therefore, the Parties agree that each of the Parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that the Parties shall not be liable in monetary damages and the Parties covenant not to sue for or claim any monetary damages for the breach of any provision of this Agreement.

6. MORTGAGEE RIGHTS

6.1. Encumbrances on the Property. The Parties hereto agree that this Agreement shall not prevent or limit the Developer from encumbering the Property or any estate or interest therein, portion thereof, or any improvement thereon, in any manner whatsoever by one or more mortgages, deeds of trust, sale and leaseback, or other form of secured financing ("Mortgage") with respect to the construction, development, use or operation of the Project and parts thereof. The Planning Department acknowledges that the lender(s) providing such Mortgages may require certain Agreement interpretations and modifications, and agrees, upon request, from time to time, to meet with the Developer and representatives of such lender(s) to negotiate in good faith any such request for interpretation or modification. The Planning Department will not unreasonably withhold, delay or condition its consent to any such requested interpretation or modification, provided such interpretation or modification is consistent with the intent and purposes of this Agreement.

6.2. Mortgagee Protection. To the extent legally permissible, this Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by the holder of a Mortgage (a "Mortgagee"), pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease or sublease termination or otherwise, shall be subject to all of the terms and conditions of this Agreement except that any such Mortgagee, including its affiliate, who takes title to the Property or any portion thereof shall be entitled to the benefits arising under this Agreement.

6.3. Mortgagee Not Obligated. Notwithstanding the provisions of this Section 6, Mortgagee will not have any obligation or duty pursuant to the terms set forth in this Agreement to perform the obligations of the Developer or other affirmative covenants of the Developer hereunder, or to guarantee such performance, except that the Mortgagee and its successor shall have no vested right to develop the Project without fully complying with the terms of this

Agreement and executing and delivering to the City, in a form and with terms reasonably acceptable to the City, an assumption agreement of Developer's obligations hereunder.

6.4. Request for Notice to Mortgage. The Mortgagee of any Mortgage or deed of trust encumbering the Property, or any part or interest thereof, who has submitted a request in writing to the City in the manner specified herein for giving notices shall be entitled to receive written notification from the City of any notice of non-compliance by Developer in the performance of Developer's obligations under this Agreement.

6.5. Mortgagee's Time to Cure. If the City timely receives a written request from a Mortgagee requesting a copy of any notice of non-compliance given to Developer under the terms of this Agreement, the City shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of non-compliance to Developer. The Mortgagee shall have the right, but not the obligation, to cure the non-compliance for a period of sixty (60) days after the Mortgagee receives written notice of non-compliance, or any longer period as is reasonably necessary, not to exceed 120 days, to remedy such items of non-compliance, by mutual consent of the City and the Mortgagee provided that Mortgagee shall continuously and diligently pursue the remedy at all times until the item of non-compliance is cured.

6.6. Disaffirmation. If this Agreement is terminated as to any portion of the Property by reason of: (i) any default, or (ii) as a result of a bankruptcy proceeding, or if this Agreement is disaffirmed by a receiver, liquidator, or trustee for the Developer or its property, the City, if requested by any Mortgagee, shall negotiate in good faith with such Mortgagee for a new development agreement for the Project as to such portion of the Property with the most senior Mortgagee requesting such new agreement. This Agreement does not require any Mortgagee or the City to enter into a new development agreement pursuant to this Section.

7. GENERAL PROVISIONS

7.1. Effective Date. This Agreement shall be effective, and the obligations of the Parties hereunder shall be effective on _____, 2016, which is the date that Ordinance No. _____ took effect.

7.2. Term. The Term of this Agreement shall commence on the Effective Date and shall extend for a period of five (5) years after the Effective Date, unless said Term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties hereto. Following the expiration of this Term, this Agreement shall terminate and be of no further force and effect; provided, however, that this termination shall not affect any right or duty arising from entitlements or approvals, including the Project Approvals on the Property, approved concurrently with, or subsequent to, the Effective Date of this Agreement. The Term of this Agreement shall automatically be extended for the period of time of any actual delay resulting from any enactments pursuant to the Reserved Powers or moratoria, or from legal actions or appeals which enjoin performance under this Agreement or act to stay performance under this Agreement (other than bankruptcy or similar procedures), or from any actions pursuant to Section 7.5 (Dispute Resolution), or from any litigation related to the Project or Project Approvals, this Agreement or the Property.

7.3. Appeals to City Council. Where an appeal by Developer or its Transferees, as the case may be, to the City Council from a finding and/or determination of the Planning Commission is created by this Agreement, such appeal shall be taken, if at all, within fourteen (14) days after the mailing of such finding and/or determination to Developer, or its successors, transferees, and/or assignees, as the case may be. The City Council shall act upon the finding and/or determination of the Planning Commission within eighty (80) days after such mailing, or within such additional period as may be agreed upon by the Developer or its Transferees, as the case may be, and the City Council. The failure of the City Council to act shall not be deemed to be a denial or approval of the appeal, which shall remain pending until final City Council action.

7.4. Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, whenever a period of time, including a reasonable period of time, is designated within which either Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which such Party is actually prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of causes beyond the reasonable control of the Party to be excused, including: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; litigation and administrative proceedings against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs (such as the Annual Review)); any approval required by the City (not including any period of time normally expected for the processing of such approvals in the ordinary course of affairs); restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; the exercise of the City's Reserved Powers; or similar bases for excused performance which are not within the reasonable control of the party to be excused (financial inability excepted). This Section shall not be applicable to any proceedings with respect to bankruptcy or receivership initiated by or on behalf of Developer or, if not dismissed within ninety (90) days, by any third parties against Developer. If written notice of such delay is given to either party within thirty (30) days of the commencement of such delay, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

7.5. Dispute Resolution.

7.5.1. Dispute Resolution Proceedings. The Parties may agree to dispute resolution proceedings to fairly and expeditiously resolve disputes or questions of interpretation under this Agreement. These dispute resolution proceedings may include: (a) procedures developed by the City for expeditious interpretation of questions arising under development agreements; or (b) any other manner of dispute resolution which is mutually agreed upon by the Parties.

7.5.2. Arbitration. Any dispute between the Parties that is to be resolved by arbitration shall be settled and decided by arbitration conducted by an arbitrator who must be a former judge of the Los Angeles County Superior Court or Appellate Justice of the Second District Court of Appeals or the California Supreme Court. This arbitrator shall be selected by mutual agreement of the Parties.

7.5.2.1. Arbitration Procedures. Upon appointment of the arbitrator, the matter shall be set for arbitration at a time not less than thirty (30) nor more than ninety (90) days from the effective date of the appointment of the arbitrator. The arbitration shall be conducted under the procedures set forth in Code of Civil Procedure Section 638, et seq., or under such other procedures as are agreeable to both Parties, except that provisions of the California Code of Civil Procedure pertaining to discovery and the provisions of the California Evidence Code shall be applicable to such proceeding.

7.5.3. Extension of Term. The Term of this Agreement as set forth in Section 7.2 shall automatically be extended for the period of time in which the Parties are engaged in dispute resolution to the degree that such extension of the Term is reasonably required because activities which would have been completed prior to the expiration of the Term are delayed beyond the scheduled expiration of the Term as the result of such dispute resolution.

7.5.4. Legal Action. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation, or enforce by specific performance the obligations and rights of the Parties hereto. Notwithstanding the above, the City's right to seek specific performance shall be specifically limited to compelling Developer to complete, demolish or make safe any particular improvement(s) on public lands which is required as a Mitigation Measure or Condition of Approval. Developer shall have no liability (other than the potential termination of this Agreement) if the contemplated development fails to occur.

7.5.5. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, and the venue for any legal actions brought by any party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions.

7.6. Amendments. This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868, and any Transferee of the Property or any portion thereof. Any amendment to this Agreement which relates to the Term, permitted uses, substantial increase in the density or intensity of use, and is not considered a Substantially Conforming Change (as defined in Section 3.2.5 of this Agreement), shall require notice and public hearing before the Parties may execute an amendment thereto. The City hereby agrees to grant priority processing status to any Developer initiated request(s) to amend this Agreement. The City will use all reasonable and good faith efforts to schedule any noticed public hearings required to amend this Agreement before the Planning Commission and/or City Council as soon as practicable. Developer, or a Transferee as applicable, shall reimburse the City for its actual costs, reasonably and necessarily incurred, to review any amendments requested by Developer or a Transferee, including the cost of any public hearings.

7.7. Assignment. Developer shall have the right to sell, assign or transfer fee, leasehold or other interests in the Property, without the consent or approval of City so long as Developer

does not assign this Agreement or its obligation hereunder except in compliance with this Section. The rights and obligations of Developer under this Agreement, may not be transferred or assigned, in whole or in part, by Developer to a Transferee without the prior consent of the City, which consent shall not be unreasonably withheld, subject to the conditions set forth below in Sections 7.7.1.1 and 7.7.1.2. Upon such assignment the assignor shall be released from the obligations so assigned. Notwithstanding the foregoing, the assignment of the Agreement to an affiliate of Developer shall be permitted and not require the prior consent of the City (a "Permitted Assignment"). Developer shall provide notice of such Permitted Assignment to the City within thirty (30) days of the assignment.

7.7.1. Conditions of Assignment. No such assignment shall be valid until and unless the following occur:

7.7.1.1. Written Notice of Assignment Required. Developer, or any successor transferor, must give prior written notice (or in the case of a Permitted Assignment, subsequent notice as provided in Section 7.7 above) to the City of its intention to assign or transfer any of its interests, rights or obligations under this Agreement and a complete disclosure of the identity of the assignee or Transferee, including copies of the Articles of Incorporation in the case of corporations and the names of individual partners in the case of partnerships. Any failure by Developer or any successor transferor to provide the notice shall be curable in accordance with the provisions in Section 5.1.

7.7.1.2. Automatic Assumption of Obligations. Unless otherwise stated elsewhere in this Agreement to the contrary, a Transferee of Property or any portion thereof expressly and unconditionally assumes all of the rights and obligations of this Agreement transferred or assigned by Developer and which are expressly set forth in the applicable Assignment Agreement.

7.7.2. Liability Upon Assignment. Each Transferee of any portion of the Property shall be solely and only liable for performance of such Transferee's obligations applicable to its portion of the Property under this Agreement as specified in the applicable Assignment Agreement. Upon the assignment or transfer of any portion of the Property together with any obligations assignable under this Agreement, the Transferee shall become solely and only liable for the performance of those assigned or transferred obligations so assumed and shall have the rights and obligations of a "Developer" under this Agreement; which such rights and obligations shall be set forth specifically in the Assignment Agreement, executed by the transferring Developer, and the Transferee, as of the date of such transfer, assignment or conveyance of the applicable portion of the Property. The failure of a Transferee of any portion of the Property to perform such Developer's obligations set forth in the applicable Assignment Agreement may result, at the City's option, in a declaration that this Agreement has been breached and the City may, but shall not be obligated to, exercise its rights and remedies under this Agreement solely as it relates to the defaulting Transferee's portion of the Property as provided for in Section 5.1 hereof, subject to such defaulting Transferee's right to notice and opportunity to cure the default in accordance with provisions of Section 5.1 hereof. Any partial termination of

this Agreement as it relates to that Transferee's holding is severable from the entire Agreement, and shall not affect the remaining entirety of the Agreement.

7.7.3. Release of Developer. With respect to a transfer and assignment of all or a portion of Developer's interest in the Property and the related rights and obligations hereunder, upon the effective date of any such transfer and assignment, as evidenced by the execution of an Assignment Agreement pursuant to this Section 7.7.3 between Developer and the Transferee and delivery of such Assignment Agreement to the City, Developer shall automatically be released from any further obligations to the City under this Agreement with respect to the Property so transferred.

7.7.4. Release of Property Transferee. A Transferee shall not be liable for any obligations to the City under this Agreement relating to any portion of the Property and the related rights and obligations hereunder other than that portion transferred to such Transferee, and no default by a Developer or any other Transferee under this Agreement with respect to such other portions of the Property and the related rights and obligations hereunder shall be deemed a default by such Transferee with respect to the portion of the Property transferred to such Transferee.

7.8. Covenants. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property for the benefit thereof, subject to any Assignment Agreement (if applicable) and the burdens and benefits hereof shall bind and inure to the benefit of the Parties hereto and all successors and assigns of the Parties, including any Transferee of Developer.

7.9. Cooperation and Implementation.

7.9.1. Processing. Upon satisfactory completion by Developer of all required preliminary actions and payment of appropriate Processing Fees, including the fee for processing this Agreement, the Planning Department shall commence and process all required steps necessary for the implementation of this Agreement and development of the Property in accordance with state law and the terms of this Agreement. Developer shall, in a timely manner, provide the Planning Department with all documents, plans, fees and other information necessary for the Planning Department to carry out its processing obligations pursuant to this Agreement.

7.9.2. Other Governmental Permits. Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of, services to the Project. The City shall cooperate with Developer in its endeavors to obtain such permits and approvals. Any fees, assessments, or other amounts payable by the City thereunder shall be borne by Developer or Transferee, as the case may be, except where Developer or Transferee, as the case may be, has notified the City in writing, prior to the City entering into an agreement, that it does not desire for the City to execute an agreement.

7.9.3. Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to affirmatively cooperate in defending said action. Developer and the City agree to cooperate in any legal action seeking specific performance, declaratory relief or injunctive relief, to set court dates at the earliest practicable date(s) and not to cause delay in the prosecution/defense of the action, provided such cooperation shall not require any Party to waive any rights.

7.9.4. Relationship of the Parties. It is understood and agreed by the Parties hereto that the contractual relationship created between the Parties hereunder is that Developer is an independent contractor and not an agent of the City. Further, the City and Developer hereby renounce the existence of any form of agency, joint venture or partnership between them and agree that nothing herein or in any document executed in connection herewith shall be construed as making the City and Developer agents of one another or as joint venturers or partners.

7.9.5. Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer. During the Term of this Agreement, clarifications to this Agreement and the Applicable Rules may be appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the terms of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarification through operating memoranda approved in writing by City and Developer, which, after execution, shall be attached hereto and become part of this Agreement, and the same may be further clarified from time to time as necessary with future written approval by City and the Developer. Operating memoranda are not intended to and cannot constitute an amendment to this Agreement or allow a subsequent Discretionary Action to the Project, but are mere ministerial clarifications; therefore, public notices and hearings shall not be required. The City Attorney shall be authorized, upon consultation with, and approval of, the Developer, to determine whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such character to constitute an amendment hereof which requires compliance with the provisions of Section 7.6 above. The authority to enter into such operating memoranda is hereby delegated to the City Planning Director (or his or her designee) who is hereby authorized to execute any operating memoranda hereunder without further City action.

7.9.6. Certificate of Performance. Upon the completion of the Project, or upon performance of this Agreement or its earlier revocation and termination, the City shall provide the Developer, upon the Developer's request, with a statement ("Certificate of Performance") evidencing said completion or revocation and the release of the Developer from further obligations hereunder, except for any ongoing obligations hereunder. The Certificate of Performance shall be signed by the appropriate agents of the Developer and the City and shall be recorded in the official records of Los Angeles County, California. Such Certificate of Performance is not a notice of completion as referred to in California Civil Code Section 8182.

7.10. Indemnification.

7.10.1. Obligation to Defend, Indemnify, and Hold Harmless. The Developer hereby agrees to defend, indemnify, and hold harmless the City and its agents, officers, and employees, from any claim, action, or proceeding ("Proceeding") against the City or its agents, officers, or employees (a) to set aside, void, or annul, all or any part of this Agreement or any Project Approval, or (b) for any damages, personal injury or death that may arise, directly or indirectly, from the Developer or the Developer's contractors, subcontractors, agents or employees operations in connection with the construction of the Project, whether operations be by the Developer or any of the Developer's contractors, subcontractors, by anyone or more persons directly or indirectly employed by, or acting as agent for the Developer or any of the Developer's contractors or subcontractors. In the event that the City, upon being served with a lawsuit or other legal process to set aside, void or annul all or part of any Project Approval, fails to promptly notify the Developer in writing of the Proceeding, or fails to cooperate fully in the defense of the Proceeding, the Developer shall thereafter be relieved of the obligations imposed in this Section 7.10. However, if the Developer has actual written notice of the Proceeding, it shall not be relieved of the obligations imposed hereunder, notwithstanding the failure of the City to provide prompt written notice of the Proceeding. The City shall be considered to have failed to give prompt written notification of a Proceeding if the City, after being served with a lawsuit or other legal process challenging the Approvals, unreasonably delays in providing written notice thereof to the Developer. As used herein, "unreasonably delay" shall mean any delay that materially adversely impacts Developer's ability to defend the Proceeding. The obligations imposed in this Section 7.10 shall apply notwithstanding any allegation or determination in the Proceedings that the City acted contrary to applicable laws. Nothing in this Section shall be construed to mean that the Developer shall hold the City harmless and/or defend it from any claims arising from, or alleged to arise from, its intentional misconduct or gross negligence in the performance of this Agreement.

7.10.2. Defending the Project Approvals. The Developer shall have the right, but not the obligation, to timely retain legal counsel to defend against any proceeding to set aside, void, or annul, all or any part of any Project Approval, including without limitation a lawsuit to challenge a Project Approval or this Agreement based on an alleged violation of CEQA. The City shall have the right, if it so chooses, to defend the Proceeding utilizing in-house legal staff, or to retain outside legal counsel. Whether the City utilizes in-house legal staff, or outside legal counsel, the Developer shall be liable for all legal costs, fees and expenses reasonably incurred by the City in defending a challenge to the Project Approvals. Provided that the Developer is not in breach of the terms of this Section, the City shall not enter into any settlement of the Proceeding that involves the modification of any Project Approval or otherwise results in the Developer incurring liabilities or other obligations, without the consent of the Developer.

7.10.3. Breach of Obligations. Actions constituting a breach of the obligations imposed in this Section 7.10 shall include, but not be limited to: (a) the failure to promptly pay the City for any attorneys' fees or other legal costs for which the City is liable pursuant to a judgment or settlement agreement in the Proceeding seeking to set aside, void or annul all or part of any Project Approval; or (b) the breach of any other obligation imposed in

this Section 7.10, in each case after written notice from the City and a reasonable period of time in which to cure the breach, not to exceed thirty-days. In the event that the Developer breaches the obligations imposed in this Section 7.10, the City shall have no obligation to defend against the Proceedings, and by not defending against the Proceedings, the City shall not be considered to have waived any rights in this Section 7.10.

7.10.4. Waiver of Right to Challenge. The Developer hereby waives the right to challenge the validity of the obligations imposed in this Section 7.10.

7.10.5. Survival. The obligations imposed in this Section 7.10 shall survive any judicial decision invalidating the Project Approvals.

7.11. Notices. Any notice or communication required hereunder between the City or Developer must be in writing, and shall be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days' written notice to the other party hereto, designate any other address in substitution of the address, or any additional address, to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the City:

City of Los Angeles
Attention: Director of Planning
200 North Spring Street
Los Angeles, California 90012

with copies to

Los Angeles City Attorney's Office
Real Property/Environment Division
7th Floor, City Hall East
200 North Main Street
Los Angeles, California 90012

If to Developer:

Celebrity Realty Holdings, LLC
Attention: Josef Shuster
1540 South Figueroa Street
Los Angeles, California 90015

with copies to

Mayer Brown
350 S. Grand Avenue, 25th Floor
Los Angeles, CA 90071
Attn: Edgar Khalatian

7.12. Recordation. As provided in Government Code Section 65868.5, this Agreement shall be recorded with the Register-Recorder of the County of Los Angeles within ten (10) days following its execution by all Parties. Developer shall provide the City Clerk with the fees for such recording prior to or at the time of such recording should the City Clerk effectuate recordation.

7.13. Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title, interest in or to any portion of the Property, is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any

reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

7.14. Successors and Assignees. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties, any subsequent owner of all or any portion of the Property and their respective Transferees, successors and assignees.

7.15. Severability. If any provisions, conditions, or covenants of this Agreement, or the application thereof to any circumstances of either Party, shall be held invalid or unenforceable, the remainder of this Agreement or the application of such provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

7.16. Time of the Essence. Time is of the essence for each provision of this Agreement of which time is an element.

7.17. Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought and refers expressly to this Section. No waiver of any right or remedy with respect to any occurrence or event shall be deemed a waiver of any right or remedy with respect to any other occurrence or event.

7.18. No Third Party Beneficiaries. The only Parties to this Agreement are the City and Developer and their successors-in-interest. There are no third party beneficiaries, and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

7.19. Discretion to Encumber. The Parties hereto agree that this Agreement shall not prevent or limit the Developer, or a Transferee of the Developer, in any manner, at Developer's, or such Transferee of the Developer's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to the Property or its improvements. Such permitted security instruments and related interests shall be referred to as "Security Financing Interests."

7.20. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the Parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein and no testimony or evidence of any such representations, understandings, or covenants shall be admissible in any proceedings of any kind or nature to interpret or determine the provisions or conditions of this Agreement.

7.21. Legal Advice; Neutral Interpretation; Headings, Table of Contents, and Index. Each Party acknowledges that it has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in

question. The headings, table of contents, and index used in this Agreement are for the convenience of reference only and shall not be used in construing this Agreement.

7.22. Duplicate Originals. This Agreement is executed in duplicate originals, each of which is deemed to be an original, but all of which together shall constitute one instrument. This Agreement, not counting the Cover Page, Table of Contents or Index, consists of 27 pages and 2 Exhibits which constitute the entire understanding and agreement of the Parties.

(signatures on following page)

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

CITY OF LOS ANGELES, a municipal
corporation of the State of California

By: _____
Mr. Eric Garcetti, Mayor

DATE:

APPROVED AS TO FORM:
City Attorney

By: _____
Laura Cadogan Hurd, Deputy City
Attorney

DATE:

ATTEST:

By: _____
Deputy

DATE:

CELEBRITY REALTY HOLDINGS, LLC

By: _____

Title: _____

APPROVED AS TO FORM:

Mayer Brown

By: _____
Edgar Khalatian

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

4/20/17

Honda DTLA Parcels List & Descriptions from CDR Survey, stamped 3/25/17 by R Russell



ADDRESSES:

PARCEL 1: 800-820 W. MARTIN LUTHER KING JR BLVD.
4011 S. HOOVER ST.
LOS ANGELES, CA 90037

PARCEL 2: 730 W. MARTIN LUTHER KING JR BLVD.
LOS ANGELES, CA 90037

PARCEL 3: 703 W. 40TH ST.
LOS ANGELES, CA 90037

PARCEL 4: 706 W. 40TH ST.
LOS ANGELES, CA 90037

PARCEL 5: 740 W. MARTIN LUTHER KING JR BLVD.
LOS ANGELES, CA 90037

ASSESSOR'S PARCEL NUMBERS:

PARCEL 1: 5019-001-034

PARCEL 2: 5019-025-023 & 024

PARCEL 3: 5019-025-911

PARCEL 4: 5019-025-912

PARCEL 5: 5019-025-026

LEGAL DESCRIPTION (as compared to Title Reports sent by P. Beck)

Real property in the City of Los Angeles, County of Los Angeles, State of California, described as follows:

PARCEL 1: (APN: 5019-001-034)

LOTS 134, 135, 136, 137, AND 138 OF EXPOSITION PARK SQUARE, IN THE CITY OF LOS ANGELES, AS PER MAP RECORDED IN BOOK 20, PAGES 74 AND 75 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THE NORTH 10.02 FEET OF THE SAID LOTS TAKEN FOR THE WIDENING OF SANTA BARBARA AVENUE AS SHOWN ON MAP OF TRACT NO. 2411, RECORDED IN BOOK 26, PAGE 77 OF MAPS.

ALSO EXCEPTING ALL OIL, PETROLEUM, NATURAL GAS, MINERAL RIGHTS AND OTHER HYDROCARBON SUBSTANCES LYING BELOW A DEPTH OF 500 VERTICAL FEET FROM THE SURFACE OF SAID LAND, FOR THE PURPOSE OF EXPLORING FOR, EXTRACTING, MINING, BORING, REMOVING, OR MARKETING SAID SUBSTANCES, HOWEVER, WITHOUT ANY RIGHT OF ENTRY UPON THE SURFACE OF SAID LAND, AS RESERVED BY GULF OIL CORPORATION, A PENNSYLVANIA CORPORATION BY DEED RECORDED MARCH 30, 1979, AS INSTRUMENT NO. 79-348129, OFFICIAL RECORDS.

PARCEL 2: (APNS: 5019-025-023 AND 5019-025-024)

THOSE PORTIONS OF LOT 4 OF TRACT NO. 2411, AND LOT 23 OF FIGUEROA SQUARE, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 26, PAGE 77 ET SEQ., AND BOOK 6, PAGE 154 RESPECTIVELY, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER, WHICH ARE BOUNDED ON THE EAST BY THE WESTERLY LINE, AND ITS NORTHERLY PROLONGATION, OF THE EASTERLY 60 FEET OF SAID LOT 23, ON THE NORTH BY THE NORTHERLY LINE OF SAID LOT 4, ON THE SOUTH BY THE SOUTHERLY LINE OF SAID LOT 23, AND THE NORTHERLY LINE OF 40TH PLACE, AS DESCRIBED IN DECREE OF CONDEMNATION ENTERED IN CASE NO. 162777 OF SUPERIOR COURT, AND ON THE WEST BY THE WESTERLY LINE OF THE LAND THIRD DESCRIBED IN DEED TO HUNTINGTON LAND AND IMPROVEMENT COMPANY, RECORDED IN BOOK 1025, PAGE 298, OFFICIAL RECORDS, OF SAID COUNTY.

PARCEL 3: (APN: 5019-025-911)

THE EASTERLY 60 FEET OF LOT 23 OF FIGUEROA SQUARE, IN THE CITY OF LOS ANGELES, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 6, PAGE 154 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL 4: (APN: 5019-025-912)

THAT PORTION OF LOT 4 OF TRACT 2411, IN THE CITY OF LOS ANGELES, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 26, PAGE 77 THROUGH 79, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY

RECORDER OF SAID COUNTY, LYING BETWEEN THE EAST AND WEST LINES RESPECTIVELY OF THE EAST 60 FEET OF LOT 23 OF FIGUEROA SQUARE, AS PER MAP RECORDED IN BOOK 6, PAGES 154 OF SAID MAP RECORDS, PROLONGED NORTHERLY TO SANTA BARBARA AVENUE.

EXCEPTING THEREFROM ALL OIL, GAS MINERAL SUBSTANCE, TOGETHER WITH THE RIGHT TO EXPLORE FOR AND EXTRACT SUCH SUBSTANCE, PROVIDED THAT THE SURFACE OPENING OF ANY WELL, HOLE, SHAFT OR OTHER MEANS OF EXPLORING FOR REACHING OR EXTRACTING SUCH SUBSTANCES SHALL NOT BE LOCATED WITHIN THE HOOVER REDEVELOPMENT PROJECT AREA AND SHALL NOT PENETRATE ANY PART OR PORTION OF SAID PROJECT AREA WITHIN 500 FEET OF THE SURFACE THEREOF, AS PER DEED RECORDED JULY 21, 1989 AS INSTRUMENT NO. 89-1168210 OF OFFICIAL RECORDS, RECORDS OF LOS ANGELES COUNTY.

PARCEL 5: (APN: 5019-025-06)

THAT PORTION OF LOT 4, OF TRACT NO. 2411, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 26, PAGES 77 TO 79 INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF SAID LOT; THENCE SOUTH 89° 31' 15" WEST ALONG THE NORTHERLY LINE OF SAID LOT 357.57 FEET TO AN ANGLE POINT THEREON; THENCE CONTINUING ALONG SAID NORTHERLY LINE, SOUTH 86° 34' 30" WEST 94.01 FEET THE TRUE POINT OF BEGINNING; SOUTH 0° 07' EAST 130.5 FEET MORE OR LESS, TO THE NORTHERLY LINE OF FORTIETH PLACE, PROLONGED WESTERLY, AS SAID FORTIETH PLACE, IS SHOWN ON MAP OF FIGUEROA SQUARE, RECORDED IN BOOK 6, PAGE 154 OF MAPS; THENCE WESTERLY ALONG SAID PROLONGATION OF THE NORTHERLY LINE OF FORTIETH PLACE, TO THE EASTERLY LINE OF HOOVER STREET; THENCE NORTHERLY ON SAID EASTERLY LINE TO HOOVER STREET AND EASTERLY ON THE SOUTHERLY LINE OF SANTA BARBARA AVENUE, TO THE TRUE POINT OF BEGINNING.

EXHIBIT "B"

CONDITIONS OF APPROVAL

CONDITIONS FOR EFFECTUATING (T) TENTATIVE CLASSIFICATION REMOVAL

Pursuant to Section 12.32-G of the Municipal Code, the (T) Tentative Classification shall be removed by posting of guarantees through the B-permit process of the City Engineer to secure the following without expense to the City of Los Angeles, with copies of any approval or guarantees provided to the Department of City Planning for attachment to the subject planning case file.

Dedications and Improvements. Prior to the issuance of any building permits, the following public improvements and dedications for streets and other rights of way adjoining the subject property shall be guaranteed to the satisfaction of the Bureau of Engineering, Department of Transportation, Fire Department (and other responsible City, regional and federal government agencies, as may be necessary):

Responsibilities/Guarantees.

1. As part of early consultation, plan review, and/or project permit review, the applicant/developer shall contact the responsible agencies to ensure that any necessary dedications and improvements are specifically acknowledged by the applicant/developer.
2. **Bureau of Engineering.** Prior to issuance of sign offs for final site plan approval and/or project permits by the Department of City Planning, the applicant/developer shall provide written verification to the Department of City Planning from the responsible agency acknowledging the agency's consultation with the applicant/developer. The required dedications and improvements may necessitate redesign of the project. Any changes to project design required by a public agency shall be documented in writing and submitted for review by the Department of City Planning.

a. Street Dedications.

1. Martin Luther King, Jr. Boulevard South Side, West of Hoover Street (Avenue I) – None.
2. Martin Luther King, Jr. Boulevard South Side, East of Hoover Street (Avenue I) – A 5-foot wide strip of land along the property frontage adjoining Lot 4, Arb 7 of Tract 2411 to complete a 50-foot half right-of-way in accordance with Avenue I of Mobility Plan 2035.
3. Hoover Street (Avenue II) – A 3-foot wide strip of land along the east and west side of the property frontage to complete a 43-foot wide half right-of-way and 86-foot wide total right-of-way in accordance with Avenue II of Mobility Plan 2035 including 20-foot radius property line returns at the southeast/southwest corners with Martin Luther King Jr. Boulevard and 40th Place.
4. 40th Place (Local Street) – None.
5. Alley (South of Martin Luther King, Jr. Boulevard) – A 2-foot wide strip of land along the property frontage to complete a 10-foot wide half alley in accordance to Alley standards.

b. Street Improvements.

1. Martin Luther King, Jr. Boulevard South Side, West of Hoover Street – Construct a new 15-foot concrete sidewalk, integral concrete curb and 2-foot gutter along the property frontage. Close all unused driveways with standard curb height, 2-foot gutter and 15-foot concrete sidewalk and upgrade all driveways to comply with ADA requirements.
 2. Martin Luther King, Jr. Boulevard South Side, East of Hoover Street – Construct a new 15-foot concrete sidewalk, integral concrete curb and 2-foot gutter along the property frontage. Close all unused driveways with standard curb height, 2-foot gutter and 15-foot concrete sidewalk and upgrade all driveways to comply with ADA requirements.
 3. Hoover Street – Construct additional concrete sidewalk in the dedicated area and repair all broken, off-grade or bad order existing concrete sidewalk, curb and gutter. Close all unused driveways with standard curb height, gutter and sidewalk and/or upgrade all driveways to comply with ADA requirements. Upgrade access ramps at the intersections with Martin Luther King, Jr. Boulevard and 40th Place to comply with ADA requirements.
 4. 40th Place – Construct new concrete sidewalk, integral concrete curb and 2-foot gutter along the property frontage. Close all unused driveways with curb, gutter and sidewalk and upgrade all driveways to comply with ADA requirements.
 5. Alley – Construct additional asphalt pavement in the dedicated area to provide a 10-foot half alley and repair the 2-foot longitudinal concrete gutter. Upgrade the alley intersection with Hoover Street to City Standards.
 6. Install tree wells with root barriers and plant street trees satisfactory to the City Engineer and the Urban Forestry Division of the Bureau of Street Services. The applicant should contact the Urban Forestry Division for further information (213) 847-3077.
 7. Street lighting may be required satisfactory to the Bureau of Street Lighting (213) 847-1551.
 8. Department of Transportation may have additional requirements for dedication and improvements.
- c. Roof drainage and surface run-off from the property shall be collected and treated at the site and drained to the streets through drain pipes constructed under the sidewalk through curb drains or connections to the catch basins.
- d. Sewer lines exist in Hoover Street, 40th Place and in the Alley. Extension of the 6-inch house connections laterals to the new property line may be required. All Sewerage Facilities Charges and Bonded Sewer Fees are to be paid prior to obtaining a building permit.
- e. Submit a parking area and driveway plan to the Central District Office of the Bureau of Engineering and the Department of Transportation for review and approval.

3. **Street Lighting.**

- a. Prior to recordation of the final map or issuance of the Certificate of Occupancy (C of O), street lighting improvement plans shall be submitted for review and the owner shall provide a good faith effort via a ballot process for the formation or annexation of the property within the boundary of the development into a Street Lighting Maintenance Assessment District.
- b. Construct new street lights: one (1) on Hoover Street and two (2) on 40th Place. If street widening per BOE improvement conditions, relocate and upgrade street lights; thirteen (13) on Martin Luther King, Jr. Boulevard and two (2) on Hoover Street.

4. **Urban Forestry – Street Trees.** The developer shall plant street trees and remove any existing trees within dedicated streets or proposed dedicated streets as required by the Urban Forestry Division of the Bureau of Street Services. All street tree plantings shall be brought up to current standards. The actual number and location of new trees shall be determined at the time of tree planting. The contractor shall notify the Urban Forestry Division at 213-847-3077 five working days prior to constructing the side walk for marking of the tree locations and species.

Note: Removal of parkway trees or Protected Trees requires the Board of Public Works' approval. Contact Urban Forestry Division at 213-847-3077 for tree removal permit information

5. **Department of Transportation.** Suitable arrangements shall be made with the Department of Transportation to assure that a parking area and driveway plan be submitted to the Citywide Planning Coordination Section of the Department of Transportation for approval prior to submittal of building permit plans for plan check by the Department of Building and Safety. Transportation approvals are conducted at 201 N. Figueroa Street Suite 400, Station 3. For an appointment, call (213) 482-7024.
6. **Fire Department.** Prior to the issuance of building permit, a plot plan shall be submitted to the Fire Department for approval.

(Q) QUALIFIED CONDITIONS OF APPROVAL

Pursuant to Section 12.32-G of the Municipal Code, the following limitations are hereby imposed upon the use of the subject property, subject to the "Q" Qualified classification:

1. **Site Development.** Except as modified herein, the project shall be in substantial conformance with the plans and materials stamped "Exhibit A" and dated July 13, 2016, and attached to the subject case file. No change to the plans will be made without prior review by the Department of City Planning, and written approval by the Director of Planning, with each change being identified and justified in writing. Minor deviations may be allowed in order to comply with provisions of the Municipal Code, the subject conditions, and the intent of the subject permit authorization.
2. **Height.** The East Structure shall be limited to a maximum height of 68 feet above grade level. The West Structure shall be limited to a maximum height of 54 feet above grade level. Each building shall be permitted an additional 11 feet to account for elevator shafts, solar panels, and equipment, in substantial conformance with Exhibit A.
3. **Floor Area Ratio (FAR).** The East Structure shall be developed in substantial conformance with Exhibit A, and not exceed an FAR of 3.58 to 1, or 152,477 square feet. The West Structure shall be developed in substantial conformance with Exhibit A, and not exceed an FAR of 3.83 to 1, or 105,075 square feet.
4. **Setbacks.** The setbacks of the proposed structures shall be in conformance with LAMC Section 12.14-C of the LAMC, and shall be in substantial conformance with the site plans stamped "Exhibit A" and dated July 13, 2016.
5. **Automobile Parking.** Automobile parking shall be provided consistent with LAMC Section 12.21-A,4.
6. **Above-Grade Parking.** Above-grade parking levels shall have an external screen integrated into the architecture and be designed to improve the building's appearance and minimize light pollution while meeting code requirements for ventilation.
7. **Bicycle Parking.** Bicycle parking shall be provided consistent with LAMC Sections 12.21-A,4 and 12.21-A,16. All bicycle parking shall have delineated access separate and apart from vehicular activity to promote a safe path of travel.
8. **Development Agreement.** Prior to the issuance of a building permit for this project, the Department of Building and Safety shall confirm that the public benefits, as identified in Case No. CPC-2016-1034-DA, have been satisfied.
9. **On-Site Wall Signs.** On-site wall signs shall be provided in compliance with the Municipal Code and to the satisfaction of the Department of Building and Safety. No variance from the LAMC Section 14.4 (Sign Regulations) has been required or granted herein.
10. **Digital Displays, as defined by LAMC Section 14.4.2.**
 - a. Digital displays with off-site commercial messages shall be prohibited.
 - b. The project shall be permitted up to three on-site digital displays. None may face residential uses or zones.

- c. The operation of the digital display portion of any on-site sign shall be limited to the hours of 6:00 a.m. and 11:00 p.m., daily.
- d. Digital displays with changing messages shall observe a minimum duration of eight seconds for each message. The message shall remain static between transitions.
- e. All digital displays shall be equipped with a sensor or other device that automatically adjusts the brightness of the display according to changes in ambient lighting to comply with a brightness limitation of 0.3 foot-candles above ambient lighting. A test by a Los Angeles City Licensed Testing Agency shall be conducted to verify light intensity not greater than 0.3 foot-candles above ambient lighting and a 300 candela per square meter limit in the nighttime after sunset measuring at the property line of the nearest residential property prior to final inspection approval.

CONDITIONS OF APPROVAL

Entitlement Conditions

1. **Use.** Authorized herein are two, five-story structures containing automobile dealership, vehicle service facility, and vehicle storage uses, including the 152,477 square-foot East Structure and 105,075 square-foot West Structure.
2. **Electric Vehicle Parking.** The project shall include at least 20 percent of the total code-required parking spaces capable of supporting future electric vehicle supply equipment (EVSE). Plans shall indicate the proposed type and location(s) of EVSE and also include raceway method(s), wiring schematics and electrical calculations to verify that the electrical system has sufficient capacity to simultaneously charge all electric vehicles at all designated EV charging locations at their full rated amperage. Plan design shall be based upon Level 2 or greater EVSE at its maximum operating ampacity. Of the twenty percent EV Ready parking, five percent of the total code required parking spaces shall be further provided with EV chargers to immediately accommodate electric vehicles within the parking areas. When the application of either the required 20 percent or five percent results in a fractional space, round up to the next whole number. A label stating "EVCAPABLE" shall be posted in a conspicuous place at the service panel or subpanel and next to the raceway termination point. None of the required EV Ready parking shall apply to parking spaces used for dealership vehicle storage.
3. **Solar Panels.** Solar panels shall be installed on the project's rooftop space to be connected to the building's electrical system, in substantial conformance with the plans stamped "Exhibit A" and dated July 13, 2016.
4. **Landscaping.** All open areas not used for buildings, driveways, parking areas, or walkways shall be attractively landscaped and maintained in accordance with a landscape plan and an automatic irrigation plan, prepared by a licensed Landscape Architect and to the satisfaction of the decision maker.
 - a. Vines grown on the masonry surface of the buildings shall be of a non-deciduous species.
5. **Lighting.** Outdoor lighting shall be designed and installed with shielding, such that the light source cannot be seen from adjacent residential properties, the public right-of-way, nor from above.
6. **Mechanical Equipment.** All mechanical equipment on the roof shall be fully screened from view of any abutting properties and the public right-of-way.
7. **Art Mural.** The project shall be permitted up to two art murals, one fronting 40th Place on the East Structure and one fronting the alley on the West Structure. Any art mural installed on the building façade shall be in compliance with all applicable City regulations, pursuant to Section 22.119 of the Los Angeles Administrative Code and including approval from the Department of Cultural Affairs.
8. **Pedestrian Path of Travel.** The ground level parking area of the East Structure shall have a path of travel demarcated for pedestrians for wayfinding purposes and to promote safety, in

substantial conformance with the circulation plan stamped "Exhibit A" and dated July 13, 2016.

9. **Graffiti.** All graffiti on the site shall be removed or painted over to match the color of the surface to which it is applied within 24 hours of its occurrence.
10. **Trash/Storage.** All trash collection and storage areas shall be located on-site and not visible from the public right-of-way.
 - a. Trash receptacles shall be stored in a fully enclosed building or structure, constructed with a solid roof, at all times.
 - b. Trash/recycling containers shall be locked when not in use.
11. **Hours of Operation.**
 - a. The vehicle servicing use shall only operate between the hours of 6:00 a.m. and 11:00 p.m., daily.
 - b. All other uses shall only operate between the hours of 7:00 a.m. and 11:00 p.m., daily.
 - c. Deliveries and trash/recycling pick-up and emptying are permitted to occur only between the hours of 7:00 a.m. and 8:00 p.m., Monday through Friday, and 10:00 a.m. to 4:00 p.m., Saturdays and Sundays.

Environmental Conditions

12. Air Quality.

- a. All off-road construction equipment greater than 50 horsepower (hp) shall meet US EPA Tier 4 emission standards, where available, to reduce NOx, PM10 and PM2.5 emissions at the proposed project site. In addition, all construction equipment shall be outfitted with Best Available Control Technology devices certified by CARB. On site equipment generators shall use either plug-in electric or solar technology. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 3 diesel emissions control strategy for a similarly sized engine as defined by CARB regulations.
- b. Require the use of 2010 and newer diesel haul trucks (e.g., material delivery trucks) and if the Lead Agency determines that 2010 model year or newer diesel trucks cannot be obtained, the Lead Agency shall require trucks that meet U.S. EPA 2007 model year NOx emissions requirements.
- c. At the time of mobilization of each applicable unit of equipment, a copy of each unit's certified tier specification, BACT documentation, and CARB or SCAQMD operating permit shall be provided.
- d. Encourage construction contractors to apply for SCAQMD "SOON" funds. Incentives could be provided for those construction contractors who apply for SCAQMD "SOON" funds. The "SOON" program provides funds to accelerate cleanup of off-road diesel vehicles, such as heavy duty construction equipment. More information on this program can be found at: <http://www.aqmd.gov/home/programs/business/business-detail?title=offroad-diesel-engines&parent=vehicle-engine-upgrades>.

13. **Air Pollution (Auto Repair Garage).** All auto repair work shall be conducted within enclosed buildings that have been designed with appropriate pollution controls and ventilation systems.

14. Expose Sensitive Receptors to Pollutants (Auto Repair Garage/Auto Servicing Levels). No window or door opening on the 3rd and 4th Floors of the East Structure shall be permitted along the sides of the buildings facing residential.

15. Habitat Modification (Nesting Native Birds, Non-Hillside or Urban Areas).

- a. Proposed project activities (including disturbances to native and nonnative vegetation, structures, and substrates) should take place outside of the breeding season for birds which generally runs from March 1 to August 31 (and as early as February 1 for raptors) to avoid take (including disturbances which would cause abandonment of active nests containing eggs and/or young). Take means to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill (California Fish and Wildlife Code Section 86).
- b. If proposed project activities cannot feasibly avoid the breeding season, no earlier than 30 days prior to the disturbance of suitable nesting habitat, the Applicant shall:
 - i. Arrange for weekly bird surveys to detect any protected native birds in the habitat to be removed and any other such habitat within properties adjacent to the proposed project site, as access to adjacent areas allows. The survey shall be conducted by a Qualified Biologist with experience in conducting breeding bird surveys. The surveys shall continue on a weekly basis with the last survey being conducted no more than three days prior to the initiation of clearance/construction work.
 - ii. If a protected native bird is found, the Applicant shall delay all clearance/construction disturbance activities within 300 feet of suitable nesting habitat for the observed protected bird species until August 31.
 - iii. Alternatively, the Qualified Biologist could continue the survey in order to locate any nests. If an active nest is located, clearing and construction (within 300 feet of the nest or as determined by a qualified biological monitor) shall be postponed until the nest is vacated and juveniles have fledged, and when there is no evidence of a second attempt at nesting. The buffer zone from the nest shall be established in the field with flagging and stakes. Construction personnel shall be instructed on the sensitivity of the area.
 - iv. If the Qualified Biologist determines that a narrower buffer between the construction activities and the observed active nests is warranted, the Qualified Biologist may submit a written explanation as to why (e.g., species-specific information; ambient conditions and bird's habituation to them; terrain, vegetation, and birds' lines of sight between the construction activities and the nest and foraging areas) to the City and, upon request, the CDFW. Based on the submitted information, the City, acting as the Lead Agency (and CDFW, if CDFW requests) shall comply with the buffer zone recommended in the Qualified Biologist report.
 - v. The Applicant shall record the results of the recommended protective measures described previously to document compliance with applicable State and federal laws pertaining to the protection of native birds. Such record shall be submitted and received into the case file for the associated discretionary action permitting the proposed project.

16. Tree Removal (Non Protected Trees).

- a. Prior to the issuance of any permit, a plot plan shall be prepared indicating the location, size, type and general condition of all existing trees on the site and within the adjacent public right(s)-of-way.

- b. All significant (8-inch or greater trunk diameter, or cumulative trunk diameter if multitrunked, as measured 54 inches above the ground) nonprotected trees on the site proposed for removal shall be replaced at a 1:1 ratio with a minimum 24-inch box tree. Net new trees, located within the parkway of the adjacent public right(s)-of-way, may be counted toward replacement tree requirements.
- c. Removal or planting of any tree in the public right-of-way requires approval of the Board of Public Works. All trees in the public right-of-way shall conform to the current standards of the Department of Public Works, Urban Forestry Division, Bureau of Street Services.

17. Tree Removal (Public Right-of-Way).

- a. Removal of trees in the public right-of-way requires approval by the Board of Public Works.
- b. The required Tree Report shall include the location, size, type, and condition of all existing trees in the adjacent public right-of-way and shall be submitted for review and approval by the Urban Forestry Division of the Bureau of Street Services, Department of Public Works (213-847-3077).
- c. The plan shall contain measures recommended by the tree expert for the preservation of as many trees as possible. Measures such as replacement by a minimum of 24-inch box trees in the parkway and on the site, on a 1:1 basis, shall be required for the unavoidable loss of significant (8-inch or greater trunk diameter, or cumulative trunk diameter if multi-trunked, as measured 54 inches above the ground) trees in the public right-of-way.
- d. All trees in the public right-of-way shall be provided per the current Urban Forestry Division standards and include King Palm, Golden Goddess Bamboo, and Bottlebrush Tree species.

- 18. Geology and Soils.** Prior to the issuance of building permits, the Applicant shall submit a design level geotechnical report, prepared by a registered civil engineer or certified engineering geologist, to the Department of Building and Safety for review and approval. The geotechnical report shall assess potential consequences of estimation of settlement, lateral movement, or reduction in foundation soil-bearing capacity, and discuss measures that may include building design consideration. Building design considerations shall include but are not limited to ground stabilization, selection of appropriate foundation type and depths, selection of appropriate structural systems to accommodate anticipated displacements, or any combination of these measures. The proposed project shall comply with the conditions contained within the Department of Building and Safety's Geology and Soils Report Approval Letter for the proposed project, and as it may be subsequently amended or modified.

19. Greenhouse Gas Emissions.

- a. Low- and non-VOC containing paints, sealants, adhesives, solvents, asphalt primer, and architectural coatings (where used), or pre-fabricated architectural panels shall be used in the construction of the project.
- b. Any new construction shall include 20 percent of parking spaces set aside for EV-ready parking.

20. Increased Noise Levels (Demolition, Grading, and Construction Activities).

- a. The proposed project shall comply with the City Noise Ordinance No. 144,331 and 161,574, and any subsequent ordinances, which prohibit the emission or creation of noise beyond certain levels at adjacent uses unless technically infeasible.

- b. Demolition and construction activities shall, to the extent feasible, be scheduled so as to avoid operating several pieces of equipment simultaneously, which causes high noise and vibration levels.
- c. The proposed project contractor shall use power construction equipment with state-of-the-art noise shielding and muffling devices, to the extent feasible.
- d. Sound curtains or an equivalent sound attenuating device capable of achieving a 10 dB reduction shall be placed along the northern, southern, and western property boundary prior to commencement of construction. The sound curtain or equivalent sound attenuating device shall be engineered and erected according to applicable codes.

21. Increased Noise Levels (Parking Structure Ramps).

- a. Concrete, not metal, shall be used for construction of parking ramps.
- b. The interior ramps shall be textured to prevent tire squeal at turning areas.
- c. Parking lots located adjacent to residential buildings shall have a solid decorative wall adjacent to the residential.

22. Increased Noise Levels (Auto Repair Garage). No openings on the 3rd and 4th Floors of the East Structure shall be permitted on any building façade which abuts a residential use or zone.

23. Public Services (Fire). The following recommendations of the Fire Department relative to fire safety shall be incorporated into the building plans, which includes the submittal of a plot plan for approval by the Fire Department prior to the approval of a building permit. The plot plan shall include the following minimum design features: fire lanes, where required, shall be a minimum of 20 feet in width; all structures must be within 300 feet of an approved fire hydrant, and entrances to any dwelling unit or guest room shall be no more than 150 feet in distance in horizontal travel from the edge of the roadway of an improved street or approved fire lane.

24. Public Services (Police – Demolition/Construction Sites). Temporary construction fencing shall be placed along the periphery of the active construction areas to screen as much of the construction activity from view at the local street level and to keep unpermitted persons from entering the construction area.

25. Public Services (Police). The plans shall incorporate the *Design Guidelines* (defined in the following sentence) relative to security, semi-public and private spaces, which may include, but not be limited to, access control to building, secured parking facilities, walls/fences with key systems, well-illuminated public and semi-public space designed with a minimum of dead space to eliminate areas of concealment, location of toilet facilities or building entrances in high-foot traffic areas, and provision of security guard patrol throughout the project site if needed. Please refer to *Design Out Crime Guidelines: Crime Prevention Through Environmental Design*, published by the Los Angeles Police Department. Contact the Community Relations Division, located at 100 West 1st Street, #250, Los Angeles, CA 90012; (213) 486-6000. These measures shall be approved by the Police Department prior to the issuance of building permits.

26. Public Services (Schools Affected by Haul Route).

- a. LADBS shall assign specific haul route hours of operation based upon Manual Arts High School and/or Martin Luther King Jr. Elementary hours of operation.
- b. Haul route scheduling shall be sequenced to minimize conflicts with pedestrians, school buses and cars at the arrival and dismissal times of the school day. Haul route trucks

shall not be routed past the school during periods when school is in session especially when students are arriving or departing from the campus.

27. Transportation (Haul Route). The developer shall install traffic signs in accordance with the LAMC around the site to ensure pedestrian and vehicle safety.

28. Transportation/Traffic.

- a. Applicant shall plan construction and construction staging as to maintain pedestrian access on adjacent sidewalks throughout all construction phases. This requires the applicant to maintain adequate and safe pedestrian protection, including physical separation (including utilization of barriers such as K-Rails or scaffolding, etc.) from work space and vehicular traffic and overhead protection, due to sidewalk closure or blockage, at all times.
- b. Temporary pedestrian facilities should be adjacent to the proposed project site and provide safe, accessible routes that replicate as nearly as practical the most desirable characteristics of the existing facility.
- c. Covered walkways shall be provided where pedestrians are exposed to potential injury from falling objects.
- d. Applicant shall keep sidewalk open during construction until only when it is absolutely required to close or block sidewalk for construction staging. Sidewalk shall be reopened as soon as reasonably feasible taking construction and construction staging into account.

Administrative Conditions of Approval

29. Approval, Verification and Submittals. Copies of any approvals, guarantees or verification of consultations, review or approval, plans, etc., as may be required by the subject conditions, shall be provided to the Department of City Planning for placement in the subject file.

30. Code Compliance. Area, height and use regulations of the zone classification of the subject property shall be complied with, except where herein conditions are more restrictive.

31. Covenant. Prior to the issuance of any permits relative to this matter, an agreement concerning all the information contained in these conditions shall be recorded in the County Recorder's Office. The agreement shall run with the land and shall be binding on any subsequent property owners, heirs or assign. The agreement must be submitted to the Department of City Planning for approval before being recorded. After recordation, a copy bearing the Recorder's number and date shall be provided to the Department of City Planning for attachment to the file.

32. Definition. Any agencies, public officials or legislation referenced in these conditions shall mean those agencies, public officials, legislation or their successors, designees or amendment to any legislation.

33. Enforcement. Compliance with these conditions and the intent of these conditions shall be to the satisfaction of the Department of City Planning and any designated agency, or the agency's successor and in accordance with any stated laws or regulations, or any amendments thereto.

34. **Building Plans.** Page 1 of the grants and all the conditions of approval shall be printed on the building plans submitted to the Department of City Planning and the Department of Building and Safety.
35. **Corrective Conditions.** The authorized use shall be conducted at all time with due regards to the character of the surrounding district, and the right is reserved to the City Planning Commission, or the Director pursuant to Section 12.27.1 of the Municipal Code to impose additional corrective conditions, if in the Commission's or Director's opinion such conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.
36. **Expediting Processing Section.** Prior to the clearance of any conditions, the applicant shall show that all fees have been paid to the Department of City Planning Expedited Processing Section.
37. **Indemnification and Reimbursement of Litigation Costs.**

Applicant shall do all of the following:

- a. Defend, indemnify and hold harmless the City from any and all actions against the City relating to or arising out of, in whole or in part, the City's processing and approval of this entitlement, including but not limited to, an action to attack, challenge, set aside, void or otherwise modify or annul the approval of the entitlement, the environmental review of the entitlement, or the approval of subsequent permit decisions or to claim personal property damage, including from inverse condemnation or any other constitutional claim.
- b. Reimburse the City for any and all costs incurred in defense of an action related to or arising out of, in whole or in part, the City's processing and approval of the entitlement, including but not limited to payment of all court costs and attorney's fees, costs of any judgments or awards against the City (including an award of attorney's fees), damages and/or settlement costs.
- c. Submit an initial deposit for the City's litigation costs to the City within 10 days' notice of the City tendering defense to the Applicant and requesting a deposit. The initial deposit shall be in an amount set by the City Attorney's Office, in its sole discretion, based on the nature and scope of action, but in no event shall the initial deposit be less than \$25,000. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (b).
- d. Submit supplemental deposits upon notice by the City. Supplemental deposits may be required in an increased amount from the initial deposit if found necessary by the City to protect the City's interests. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement (b).
- e. If the City determines it necessary to protect the City's interests, execute an indemnity and reimbursement agreement with the City under terms consistent with the requirements of this condition.

The City shall notify the applicant within a reasonable period of time of its receipt of any action and the City shall cooperate in the defense. If the City fails to notify the applicant of any claim, action or proceeding in a reasonable time, or if the City fails to reasonably cooperate in the defense, the applicant shall not thereafter be responsible to defend, indemnify or hold harmless the City.

The City shall have the sole right to choose its counsel, including the City Attorney's office or outside counsel. At its sole discretion, the City may participate at its own expense in the defense of any action, but such participation shall not relieve the applicant of any obligation imposed by this condition. In the event the Applicant fails to comply with this condition, in whole or in part, the City may withdraw its defense of the action, void its approval of the entitlement, or take any other action. The City retains the right to make all decisions with respect to its representations in any legal proceeding, including its inherent right to abandon or settle litigation.

For purposes of this condition, the following definitions apply:

"City" shall be defined to include the City, its agents, officers, boards, commission, committees, employees and volunteers.

"Action" shall be defined to include suits, proceedings (including those held under alternative dispute resolution procedures), claims or lawsuits. Actions includes actions, as defined herein, alleging failure to comply with any federal, state or local law.

Nothing in the definitions included in this paragraph are intended to limit the rights of the City or the obligations of the Applicant otherwise created by this condition.