

CONDITIONS OF APPROVAL

As modified by the City Planning Commission on December 21, 2017 and February 22, 2018

Pursuant to Section 14.5.6 B and 16.05 of the Los Angeles Municipal Code, the following conditions are hereby imposed upon the use of the subject property:

A. Development Conditions:

1. **Site Development.** Except as modified herein, the project shall be in substantial conformance with the architectural plans, renderings, and materials submitted by the Applicant, stamped "Exhibit A," dated October 5, 2017 and attached to the subject case file.
2. **Transfer of Floor Area Rights.**
 - a. **Floor Area.** The Development shall not exceed a maximum Floor Area Ratio (FAR) of 11.4:1 and a total floor area of 260,589 square feet. The Transfer Payment and Public Benefit Payment shall be pro-rated to the amount of TFAR being acquired in the event the maximum amount of TFAR is not required. The base lot area used to calculate the base floor area shall be 22,935 square feet with a 6:1 FAR. Changes to the Project that result in a five percent change in floor area, or more, shall require new entitlements.
 - b. **TFAR Transfer Payment.** The Project is subject to and shall pay a TFAR Transfer Payment in conformance with Section 14.5.6 through 14.5.12 of the Code. Such payment shall be based on the actual amount of floor area transferred to the Project site.
 - i. The total amount of floor area authorized to be transferred from the Los Angeles Convention Center by this action shall not exceed 122,979 square feet. The total floor area of the Project Site (Receiver Site) shall not exceed 260,589 square feet.
 - ii. The Applicant shall provide a TFAR Transfer Payment consistent with LAMC Section 14.5.10 in the amount of \$5 per square foot, or \$614,895, for the transfer of 122,979 square feet from the Los Angeles Convention Center located at 1201 South Figueroa Street (Donor Site) to the Project Site (Receiver Site).
 - c. **Public Benefit Payment.** The Project is subject to and shall pay a Public Benefit Payment in conformance with Section 14.5.6 through 14.5.12 of the Code.
 - i. The Applicant shall provide a Public Benefit Payment consistent with LAMC Section 14.5.9 in the amount of \$2,609,488.00 provided that at least 50 percent (or \$1,304,744.00) of the Public Benefit Payment consist of cash payment by the Applicant to the Public Benefit Trust Fund. Direct provision payments shall be paid directly to the recipients and not to the City of Los Angeles. Proof shall be provided in the form of a cleared check or bank statement and a letter signed by the Executive Director of each organization. Consistent with the TFAR Ordinance, the Project shall provide 50 percent (or \$1,304,744.00) of the Public Benefit Payment by directly providing the following public benefits:
 1. Off-Site Improvements. A total payment of \$270,447.82 (20.72%) to be utilized for off-site improvements as follows:

- a. The construction of off-site improvements adjacent to the property in Blackstone Court (alley) as described in Exhibit A landscape plans in the amount of \$55,692.00. Improvements shall include geometric scored concrete paving with three linear bands of turf block pavers, a green screen wall, planting and irrigation, and lighting. The parapet planter shall not be considered an off-site improvement. The applicant shall demonstrate that the proposed geometric scored concrete paving and turf block pavers are beyond the standard cost of alley improvements required by the Bureau of Engineering. If it is determined that alley improvements are required by the Bureau of Engineering, the Applicant shall provide a revised Public Benefits Cost Summary excluding the standard cost of the required public right-of-way improvements.
 - b. A payment in the amount of \$214,755.00 to fund an Urban Mural Sign Project for the conceptualization, preparing, painting, and maintenance of an estimated 38,000 square-foot mural on a building wall, facing east towards Pershing Square Park, located at 312 West 5th Street.
2. A payment to the Los Angeles Streetcar, Inc. in the amount of \$318,456.31 (24.41%). The funds shall be utilized for engineering, design, and operations of the Downtown Los Angeles Streetcar.
 3. A payment to Chrysalis in the amount of \$30,405.38 (2.33%). The funds shall be utilized towards job training and new jobs for homeless and recently homeless persons hired by Chrysalis specific to its contract with the Historic Downtown Business Improvement District.
 4. A payment to Deep Green Housing and Community Development in the amount of \$478,484.61 (36.67%). The funds shall be utilized to provide physical and space improvements for the conversion of an existing building for an affordable housing project, for the new construction of an affordable housing project, or for improvements or construction costs associated with the establishment of homeless outreach services within the boundaries of the TFAR area.
 5. A payment to the Los Angeles Neighborhood Initiative (LANI) in the amount of \$206,949.88 (15.86%). The funds shall be utilized to fund projects that support Bringing Back Broadway initiatives, such as streetscape and pedestrian improvements, including façade lighting.
- ii. At the time of issuance of the Certificate of Occupancy for the project, the Applicant shall provide an update to the file from each recipient of direct provisions detailing how the money has been spent thus far.
 - iii. The Applicant shall pay the required Public Benefit Payment, less the cost of the Direct Provision of Public Benefits, in cash to the Public Benefit Trust Fund, pursuant to the terms of Transfer of Floor Area Rights Ordinance No. 181,574, Article 4.5 of the LAMC. The Public Benefit Payment proof of cash payment and direct provision of public benefits is required upon the earliest occurrence of either:
 1. The issuance of the building permit for the Project; or

2. Twenty-four months after the final approval of the Transfer and the expiration of any appeals or appeal period; should the Applicant not make the required payments within the specified time, subject approval shall expire, unless extended by the Director in writing.
3. **Uses.** The project shall be limited to a maximum density of 239 residential dwelling units and 5,614 square feet of commercial uses.
4. **Sustainability.**
 - a. The project shall comply with the Los Angeles Municipal Green Building Code, Section 99.05.211, to the satisfaction of the Department of Building and Safety.
 - b. Prior to the issuance of the Certificate of Occupancy, the applicant shall install a minimum of 997 square feet of solar panels. The solar panels may be installed within multiple areas; however, the total area shall not be less than 997 square feet.
5. **Parking.**
 - a. The minimum number of residential and commercial automobile parking spaces shall be provided as required by LAMC Section 12.21 A,4(a), (i), and (p), and no more than 295 automobile parking spaces shall be provided.
 - b. **Electric Vehicle Parking.** The project shall include at least twenty percent (20%) of the total provided parking spaces provided for all types of parking facilities, but in no case less than one location, shall be capable of supporting electric vehicle supply equipment (EVSE) and installed with EV chargers to immediately accommodate electric vehicles within the parking areas. Plans shall indicate the 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 capacity. When the application of the 20% 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.
 - c. **Bicycle Parking.** Residential and commercial bicycle parking shall be provided consistent with LAMC 12.21 A,16.
 - d. Prior to the issuance of a building permit, the driveway and parking plan shall be submitted for review and approval to the Department of Transportation.
 - e. The project shall provide unbundled parking leases for residential units and commercial tenant spaces. Residential and commercial tenants shall have the option to lease parking spaces separately from the residential dwelling units or commercial tenant space, or to opt out of leasing parking spaces.
6. **Landscaping.**
 - a. **Tree Wells.**
 - i. The minimum depth of tree wells on the rooftop shall be as follows:
 1. Minimum depth for trees shall be 42 inches
 2. Minimum depth for shrubs shall be 30 inches.

3. Minimum depth for herbaceous plantings and ground cover shall be 18 inches.
 4. Minimum depth for an extensive green roof shall be 3 inches.
 - ii. The minimum amount of soil volume for tree wells on the rooftop shall be based on the size of the tree at maturity:
 1. 600 cubic feet for a small tree (less than 25 feet tall at maturity).
 2. 900 cubic feet for a medium tree (25-40 feet tall at maturity).
 3. 1,200 cubic feet for a large tree (more than 40 feet tall at maturity).
 - b. New trees planted within the public right-of-way shall be spaced not more than an average of 30 feet on center, unless otherwise required by the Urban Forestry Division, Bureau of Public Works.
 - c. Green wall landscaping and screening shall be installed along the eastern elevation (along the alley) of the parking structure to the satisfaction of the Department of City Planning.
7. **Construction.** The project contractor shall use power construction equipment with state-of-the-art noise shielding and muffling devices. On-site power generators shall either be plug-in electric or solar powered.
8. **Noise.** All exterior windows having a line of sight of an Avenue (Major or Secondary Highway) shall be constructed with double-pane glass and use exterior wall construction which provides a Sound Transmission Coefficient (STC) value of 50, as determined in accordance with ASTM E90 and ASTM E413, or any amendment thereto. Or, the applicant, as an alternative, may retain an acoustical engineer to submit evidence, along with the application for a building permit, any alternative means of sound insulation sufficient to mitigate interior noise levels below a CNEL of 45 dBA in any habitable room.
9. **Aesthetics (Light).**
- a. 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.
 - b. LED Backlighting located on the west elevation (elevator tower) shall not flash, blink, change colors, or have any other type of movement.
10. **Aesthetics (Glare).** The exterior of the proposed structure shall be constructed of materials such as, but not limited to, high-performance and/or non-reflective tinted glass (no mirror-like tints or films) and pre-cast concrete or fabricated wall surfaces to minimize glare and reflected heat.

B. Environmental Conditions

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

- a. The project will result in the removal of vegetation and disturbances to the ground and therefore may result in take of nesting native bird species. Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R Section 10.13). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA).

- b. Proposed project activities (including disturbances to native and non-native vegetation, structures and substrates) should take place outside of the breeding bird season which generally runs from March 1- August 31 (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 (Fish and Game Code Section 86).
- c. If project activities cannot feasibly avoid the breeding bird season, beginning thirty 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 project site, as access to adjacent areas allows. The surveys 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 3 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 surveys 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. The applicant shall record the results of the recommended protective measures described above 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 project.

12. 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.
13. **Green House Gas Emissions.** 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 to reduce VOC emissions to the maximum extent practicable.
 14. **Temporary Groundborne Vibration.** All new construction work shall be performed so as not to adversely affect the historic designations surrounding the Project Site. Specifically, this mitigation measure is provided to ensure vibration from construction of the proposed project does not adversely impact nearby buildings, which include the May Company Garage Building, at 912 S. Hill Street. Prior to commencement of construction, a qualified structural engineer shall survey the existing foundations and structures of the nearby buildings listed above, and provide a plan to protect them from potential damage. Pot holing or other destructive testing of below grade conditions on the project site and immediately adjacent historical resources may be necessary to establish baseline conditions and prepare the shoring design. If feasible, the project and shoring designs shall avoid pile driving within twenty-five feet of immediately adjacent historical resources. The shoring design shall specify threshold limits for vibration causing activities. The performance standards of the structure monitoring plan shall including the following: The qualified structural engineer shall monitor vibration during the pile driving or other vibration-causing construction activities to ensure that the established impact threshold and shoring design is not exceeded. If feasible, alternative means of setting piles such as predrilled holes or hydraulic pile driving shall be employed to avoid exceeding the impact threshold established. At the conclusion of vibration causing activities, the qualified structural engineer shall issue a follow-on letter describing damage, if any, to immediately adjacent historical resources and recommendations for any repair, as may be necessary, in conformance with the Secretary's Standards. Repairs shall be undertaken and completed in conformance with all applicable codes including the California Historical Building Code (Part 8 of Title 24) prior to issuance of any temporary or permanent certificate of occupancy for the new building. The monitoring program shall survey for vertical and horizontal movement, as well as vibration thresholds. If the thresholds are met or exceeded, or noticeable structural damage becomes evident to the project contractor, work shall stop in the area of the affected building until measures have been taken to stabilize the affected building to prevent construction related damage to historic resources. The structure monitoring program shall be submitted to the Department of Building and Safety and received into the case file or the associated discretionary action permitting the project prior to initiating any construction activities.
 15. **Increased Noise Levels (Demolition, Grading, and Construction Activities)**
 - a. Construction and demolition shall be restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, and 8:00 a.m. to 6:00 p.m. on Saturday.
 - b. Demolition and construction activities shall be scheduled so as to avoid operating several pieces of equipment simultaneously, which causes high noise levels.
 - c. The project contractor shall use power construction equipment with state-of-the-art noise shielding and muffling devices.
 - d. The construction contractor shall use on-site electrical sources or solar generators to power equipment rather than diesel generators where feasible.

- e. The project contractor shall erect a minimum 8-foot high temporary noise barrier around the perimeter of the site (excluding the northern and southern property line where adequate space is not available) for the purpose of attenuating construction noise impacts. The temporary noise barrier shall be a solid surface material with a minimum of 4 pounds per square foot capable of achieving a sound attenuation of 10 dBA.

16. 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.

17. Increased Noise Levels (Mixed-Use Development). Wall and floor-ceiling assemblies separating commercial tenant spaces, residential units, and public places, shall have a Sound Transmission Class (STC) value of at least 50, as determined in accordance with ASTM E90 and ASTM E413.

18. Increased Noise Levels. Central HVAC systems for the project shall be placed on the podium and/or tower roof. The project shall not place individual units on balconies.

19. 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.

20. Transportation/Traffic.

- a. The 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 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. The 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.

C. Administrative Conditions

21. Approvals, Verification and Submittals. Copies of any approvals, guarantees or verification of consultations, reviews 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.

22. **Code Compliance.** All area, height and use regulations of the zone classification of the subject property shall be complied with, except wherein these conditions explicitly allow otherwise.
23. **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.
24. **Definition.** Any agencies, public officials or legislation referenced in these conditions shall mean those agencies, public offices, legislation or their successors, designees or amendment to any legislation.
25. **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.
26. **Building Plans.** A copy of the first page of this grant and all Conditions and/or any subsequent appeal of this grant and its resultant Conditions and/or letters of clarification shall be printed on the building plans submitted to the Development Services Center and the Department of Building and Safety for purposes of having a building permit issued.
27. **Corrective Conditions.** The authorized use shall be conducted at all times with due regard for 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.
28. **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 \$50,000. 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 (ii).
- 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 in paragraph (ii).
- e. If the City determines it necessary to protect the City's interest, 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, commissions, committees, employees, and volunteers.

"Action" shall be defined to include suits, proceedings (including those held under alternative dispute resolution procedures), claims, or lawsuits. Actions include 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.