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**PLANNING AND PROGRAMMING COMMITTEE
JANUARY 14, 2015**

**SUBJECT: METRO RED & PURPLE LINES – WESTLAKE/MACARTHUR PARK
STATION JOINT DEVELOPMENT**

**ACTION: AUTHORIZE EXECUTION OF A SECOND REVISED AMENDED AND
RESTATED JOINT DEVELOPMENT AGREEMENT AND GROUND
LEASE AND APPROVE CEQA FINDINGS**

RECOMMENDATION

- A. Authorize the Chief Executive Officer to enter into the following documents and agreements, each in substantial accordance with the Summary of Key Terms and Conditions included as Attachment A and the site plan and renderings included as Attachment B:
1. A Second Revised Amended and Restated Joint Development Agreement (“JDA”) with MacArthur Park Metro, LLC, (“MPM”), or another development entity created by McCormack Baron Salazar (“MBS”) for the development of the second phase of a mixed-use project (the “Phase B Project”) which consists of (a) 81 affordable apartments, an unrestricted property manager’s apartment, 6,000 to 12,000 square feet of retail space and 83 structured parking spaces on Metro’s 1.8-acre Westlake/MacArthur Park Metro Red/Purple Line station site depicted on Attachment C (the “Phase B Site”), and (b) the closure of the existing north portal to the Westlake/MacArthur subway station and its adjoining, subterranean access, and the construction of a new “replacement” subway portal at Westlake Avenue, subject to appropriate construction, engineering and operational approvals.
 2. A 68-year ground lease (the “Ground Lease”) with MPM, MPM Apartments II, L.P. or another development entity created by McCormack Baron Salazar, and other documents and agreements to implement the Phase B Project, including, without limitation, licenses, utility easements, covenants and dedications.
- B. Adopt the CEQA Findings set forth on Attachment D and authorize the Chief Executive Officer to file a Notice of Determination with respect to the Phase B Project under the California Environmental Quality Act (“CEQA”) within five (5) days after Board action.

ISSUE

On December 31, 2013, the Revised Amended and Restated Joint Development Agreement (Westlake/Macarthur Park) between MPM and Metro, which, among other things, provided for the construction and operation of the Phase B Project (the “Original Agreement”), expired. Staff worked with MPM during the first quarter of 2014 to complete a Ground Lease transaction for the Phase B Project, but terminated their relationship with MPM in March, 2014, when it became apparent that the cost of the Phase B Project would exceed MPM’s funding commitments by approximately \$5 million.

Since then, MPM has been evaluating funding alternatives that would fully fund the proposed development and, in November, they approached staff with an alternate funding plan for the \$48.1 million Phase B Project. This plan proposes to add approximately \$4.9 million in Cap and Trade funding from the Affordable Housing and Sustainable Communities Program, to the funding previously committed to the Phase B Project, which included tax credit equity (\$25.3 million), State funding (\$8 million), City of Los Angeles housing funds (\$7.9 million) and a bank loan (\$2 million). Except for the State funding, all prior funding commitments for the Phase B Project have lapsed, and project completion requirements associated with the State funding need to be extended or the State funding will lapse as well. Much of the funding MPM is targeting for the Phase B Project is allocated through competitive processes, and, except for the Cap and Trade funding (which is a new funding source), MBS has a good track record of securing this type of funding for their projects.

The JDA will revise, amend and restate the Original Agreement in its entirety. The JDA will extend the term of the Original Agreement to October 31, 2016. If MPM obtains funding commitments necessary for the construction of the Phase B Project that are acceptable to Metro by this date, the term will be extended further to April 31, 2017. If such funding commitments are not secured by October 31, 2016, the JDA will expire and the Ground Lease will not be executed. The October 31, 2016 deadline should provide MPM with adequate opportunity to secure project funding and the six month extension of the term to April 31, 2017, if such funds are secured, would provide MPM and staff time to finalize construction plan approvals, and complete the Ground Lease and other development documents.

Prior to the expiration of the Original Agreement, staff had performed a considerable amount of work with respect to the Phase B Project, including extensive review of MPM’s plans for the replacement portal and the remainder of the Phase B Project by construction, engineering and operations staff. Once the JDA is executed, staff will pick up where they left off earlier this year, thus leveraging their prior efforts. The executed JDA will also provide MPM with “site control” over the Phase B Site, a condition precedent to securing project funding.

DISCUSSION

In June 2009, Metro and MPM entered into the Original Agreement. It provided for the construction of a mixed-use, affordable housing development to be constructed and operated by MPM or another development entity created by McCormack Baron Salazar on Metro property situated at and adjacent to the Red/Purple Line station at Westlake/MacArthur Park. This agreement contemplated a two-phased project, with each phase being constructed and financed separately from the other. In March 2010, the CEO entered into ground leases with MPM and other development entities created by MBS that provided for the first phase of the development (the "Phase A Project"). This phase was completed in May 2012 and contains 89 affordable apartments, an unrestricted property manager's apartment and approximately 20,000 square feet of retail space. This project also provides 233 structured parking spaces, a portion of which were entitled and constructed to support retail development in the Phase B Project.

To accommodate the Phase B Project, MPM needs to close the existing north portal to the Westlake/MacArthur subway station and its adjoining, subterranean access. (The south portal to the subway station will remain open.) Due to the extent of Metro's subterranean improvements at the Phase B Site (see Attachment C), structural support for the Phase B Project cannot be accommodated by spanning these improvements. As such, the Phase B Project's design contemplates the construction of structural supports in the area of the existing north subway station entrance and its adjoining, subterranean access. The Phase B Project will replace the closed portal with a new portal at the southeast corner of the project fronting on Westlake Avenue. This new portal will provide more convenient access to transit users accessing the station from the southeast. It is currently anticipated that the existing north station portal and its adjoining subterranean access will not be closed prior to the new portal's opening, but staff could allow for closure of the north portal prior to the opening of the new portal, if acceptable to Metro Operations.

As part of the entitlement process for the Phase B Project, MPM conducted approximately 20 meetings with various community stakeholders. These meetings included locally based non-profit organizations, local property and business owners, local community activists, and the neighborhood council. Stakeholder concerns were addressed during the entitlement process and MPM received stakeholder support for the Phase B Project.

MBS is an experienced affordable housing developer and, to date, has successfully completed several projects on Metro property, including (a) the Phase A Project located across Westlake Avenue from the Phase B Site; (b) an affordable housing/retail project at the Hollywood/Western Red Line station; and (c) two affordable housing projects in Taylor Yard. In addition, MBS started construction last month on an affordable, senior housing/retail project in Taylor Yard and anticipates construction of another affordable housing/retail project on the southeast corner of 1st Street and Boyle Avenue in Boyle Heights in the first quarter of 2015.

CEQA

MPM is required to obtain environmental approval of the Phase B Project under CEQA from the City of Los Angeles, as the lead agency under CEQA. On July 16, 2008, the City adopted a Mitigated Negative Declaration for the Phase A and Phase B Projects, which were considered together as one integrated project (the “Mitigated Negative Declaration”). The City also approved certain findings in conjunction with the Mitigated Negative Declaration. The findings and the Mitigated Negative Declaration indicated that, with certain required mitigations, the Phase B Project would not have a significant effect on the environment.

Metro’s role in the Phase B Project may qualify it as a responsible agency under CEQA, because Metro is executing the JDA and Ground Lease, which will provide for the construction and operation of the Phase B Project. Accordingly, the Board should:

- A) Consider the Mitigated Negative Declaration, CEQA Findings and Mitigation Monitoring Program for the Mitigated Negative Declaration pursuant to CEQA Guidelines Section 15096(a);
- B) Find that no environmental impact report is required pursuant to CEQA Guidelines Section 15073.5(d);
- C) Consider the environmental effects of the Phase B Project, pursuant to CEQA Guidelines Section 15096(f);
- D) Find that on the basis of the whole record, there is no substantial evidence that the Phase B Project will have a significant effect on the environment, pursuant to CEQA Guidelines Section 15074(b)
- E) Find that changes or alterations have been required in, or incorporated into, the Phase B Project that avoid all the significant environmental effects identified in the Mitigated Negative Declaration; and
- F) Find that the Mitigated Negative Declaration, the CEQA Findings and the Mitigation Monitoring Program are adequate under CEQA for approval of the proposed Phase B Project and authorization to execute the JDA and Ground Lease.

Attachment D sets forth the specific findings that the Board should approve in order to comply with CEQA.

Policy Implications

The recommended actions are consistent with the goals of Metro’s Joint Development Policies and Procedures to (i) enhance the land use and economic development goals of the surrounding community and conform to applicable local and regional development plans (as such plans may be amended from time to time); (ii) promote and enhance transit ridership; (iii) reduce auto use and congestion through transit-linked development and (iv) generate value to Metro based on a fair market return on public investment.

DETERMINATION OF SAFETY IMPACT

Approval of this item will have no impact on safety. During the design review and construction processes under the JDA and Ground Lease, Metro's operations staff will review and comment on the proposed Phase B Project to ensure that the station, portal and public areas on Metro's property are protected and maintained to the highest levels of safety.

FINANCIAL IMPACT

New Business Development activities and Metro design review related to the JDA, Ground Lease and Phase B Project will be performed by existing Metro staff. MPM will provide Metro with a \$50,000 deposit at execution of the JDA to cover Metro design review. Metro construction oversight, which will occur in FY16, at the earliest, after execution of the Ground Lease, will be performed by existing Metro staff or third party contractors. If performed by third party contractors, these services are estimated to cost \$275,000, of which \$100,000 will be funded by a deposit provided by MPM at execution of the Ground Lease and the remainder will be funded by local right-of-way lease revenues. The Ground Lease, if executed, will provide Metro with at least an additional \$1,695,000 in prepaid, capitalized rent at execution.

Since the JDA and Ground Lease are multi-year contracts, the Managing Executive Officer, Countywide Planning & Development and Chief Planning Officer will be accountable for budgeting any costs associated with the JDA, Ground Lease and the proposed Phase B Project in future years.

Impact to Budget

Metro costs associated with the JDA, Ground Lease and Phase B Project will be funded with a combination of local right-of-way lease revenues and developer funds. Local right-of-way lease revenues are eligible for bus/rail operating and capital expenses. Execution of the JDA and Ground Lease will not impact ongoing bus and rail operating and capital costs, Proposition A and C and TDA administration budget or Measure R administration budget.

ALTERNATIVES CONSIDERED

The Board could choose not to proceed with the recommended actions and could direct staff to (a) not proceed with development of the Phase B Site and hold on to the property for future development, or (b) seek new development proposals for the Phase B Site from the development community via a new competitive process. Staff does not recommend proceeding with either of these alternatives because such action would delay development of the Phase B Site and may not result in a development proposal that is more preferable than the current MPM proposal. Also, a new solicitation would not leverage staff's prior efforts with respect to the proposed Phase B Project or take advantage of entitled retail parking constructed as part of the Phase A Project for the

benefit of the Phase B Project. A developer other than MPM would not have access to this parking to support any commercial construction on the Phase B Site. As such, they would have to include retail parking as part of their project or eliminate retail uses from their proposal. Adding commercial parking to the Phase B Site, which is already impacted by the configuration of the existing subway improvements, would further limit the scope of any project other than the Phase B Project.

NEXT STEPS

Upon approval of the recommended actions, the JDA will be executed in substantial accordance with the Summary of Key Terms and Conditions included as Attachment A. Thereafter, MPM will attempt to secure financing for the Phase B Project, and, staff and the MPM team will recommence their dialogue regarding the Phase B Project's design and impact, especially as it relates to the construction of the new portal at Westlake Avenue. In addition, staff will have an existing appraisal of the Phase B Site updated for purposes of calculating prepaid, capitalized rent under the proposed Ground Lease. Once these efforts have been satisfactorily concluded and other closing conditions under the JDA have been met, the Ground Lease will be executed in accordance with the Summary of Key Terms and Conditions included as Attachment A. If funding commitments necessary for the construction of the Phase B Project have not been received by MPM by October 31, 2016, the JDA will expire at that time and the Ground Lease will not be executed. Likewise, if any of the other efforts noted above are not satisfactorily concluded or if the closing conditions under the JDA have not been met by April 31, 2017, the JDA will expire at that time and the Ground Lease will not be executed.

ATTACHMENTS

- Attachment A: Summary of Key Terms and Conditions Relating to the
Westlake/MacArthur Park (Phase B) Joint Development Project
- Attachment B: Site Plan and Renderings of the Phase B Project
- Attachment C: Plat of the Phase B Site
- Attachment D: CEQA Findings

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**Summary of Key Terms and Conditions
Relating to the Westlake/MacArthur Park (Phase B) Joint Development Project
(Dated: January 14, 2015)**

GENERAL DESCRIPTION:

Developer: MacArthur Park Metro, LLC, (“**MPM**”), a development entity created by McCormack Baron Salazar, Inc.

Development Site: A T-shaped property as depicted on Attachment C (the “**Phase B Site**”). The Phase B Site totals approximately 1.8 acres in area and has frontage on Alvarado Street and Westlake Avenue. All of the Phase B Site is owned by the Los Angeles County Metropolitan Transportation Authority (“**Metro**”).

Proposed Phase B Project: The proposed development project (the “**Phase B Project**”) will be constructed on the Phase B Site by MPM, or another development entity created by McCormack Baron Salazar, Inc., at MPM’s or such entity’s sole cost and expense. The Phase B Project will include, without limitation, (a) 81 affordable apartments, an unrestricted property manager’s apartment, 6,000 to 12,000 square feet of retail space and 83 structured parking spaces, and (b) the closure of the existing north portal to the Westlake/MacArthur subway station and its adjoining, subterranean access, and the construction of a new “replacement” subway portal at Westlake Avenue, subject to appropriate Metro construction, engineering and operational approvals.

A site plan and renderings detailing the proposed Phase B Project are included as Attachment B and are subject to modification and revision as set forth in this Attachment A.

No Phased Development: The proposed project will be constructed in a single phase.

Metro Support Costs: MPM acknowledges and agrees that Metro has incurred and will incur certain costs related to (1) the design and construction of the Phase B Project (including the oversight and monitoring of the same), (2) the protection of Metro property, facilities and operations from Phase B Project

impacts, (3) the avoidance and mitigation of such Phase B Project impacts, (4) oversight and support of geotechnical and hazardous substances investigations, (5) CEQA compliance and (6) the acquisition of Phase B Project entitlements (collectively, the “**Support Costs**”), which costs have included and may include, without limitation, the cost of third-party services and Metro’s in-house staff, but have not included and shall not include the cost of legal counsel, third-party financial advisors and joint development staff. MPM will provide \$50,000 to Metro on the JDA Effective Date (the “**Advanced Funds**”) for Metro to apply to Support Costs (whether accruing prior to or after the JDA Effective Date). These Advanced Funds are not refundable for any reason. MPM will not be required to provide additional Advanced Funds during the term of the JDA, except as Metro deems reasonably necessary to cover Support Costs resulting from changes to the Phase B Project’s design that are not Logical Evolutions. (“**Logical Evolution**” means the logical, natural and foreseeable development, refinement or amplification of the Phase B Project’s design through the design process, starting with the site plan and renderings attached hereto as Attachment B and reflecting, among other things, good architectural and engineering design that is in compliance with the terms of the JDA and all legal requirements.) Ground Lessee will provide Metro with \$100,000 in Advanced Funds at Closing for Metro to apply to Support Costs accruing prior to and during the Ground Lease Term. These Advanced Funds are not refundable for any reason.

Dedications:

MPM has indicated to Metro that the entitlements for the Phase B Project will require Metro to dedicate to the City of Los Angeles (“**City**”) a 15.75 foot wide strip of property extending along Metro’s Alvarado Street frontage, which is approximately 295 feet in length. The dedication will provide for the future widening of Alvarado Street. Metro will make such dedication to the City to the extent required to receive City approval of the necessary entitlements for the Phase B Project. Metro will consider such other dedications and grants of Metro real property rights to the City or other public or quasi-public entities as are reasonably necessary to support the development, construction and operation of the Phase B Project.

Federal, State and Local Funding

Source Approval:

Initial investigation by Metro indicates that the parcels comprising the Phase B Site were acquired by Metro using Federal and local funds and the subway line and station at the Phase B Site were constructed using similar funding sources. Therefore, the construction and operation of the Phase B Project, and the Ground Lease transaction and dedications and other development-related matters contemplated in this Summary of Key Terms and Conditions are subject to: (a) applicable Federal approval/concurrence, (b) Metro confirmation that such actions will not violate any bond funding related requirements or restrictions imposed on Metro, the Phase B Site or the subway project, and (c) applicable bond trustee and bond holder approval. No State funds appear to have been used to acquire any property comprising the Phase B Site or to construct the subject subway line or station, but, should Metro determine that State funds were used for such purposes the construction and operation of the Phase B Project, and the Ground Lease transaction and dedications and other development-related matters contemplated in this Summary of Key Terms and Conditions will be subject to applicable State approval/concurrence.

Development Entitlements and Other Legal Requirements:

MPM shall, at its sole cost and expense: (a) obtain all required entitlements for the Phase B Project, and (b) comply with all applicable City of Los Angeles zoning and planning requirements and other legal requirements related to the development, construction and operation of the Phase B Project.

As-Is Condition:

The Phase B Site is being offered to MPM in it's as-is condition, without any warranty by Metro.

SECOND REVISED AMENDED AND RESTATED JOINT DEVELOPMENT AGREEMENT ("JDA"):

JDA - Generally:

After staff and MPM reach agreement on the specific terms and conditions to be contained therein, Metro and MPM will enter into a Second Revised Amended and Restated Joint Development Agreement ("**JDA**") containing terms and conditions that are substantially consistent with those set forth in this Summary of Key Terms and Conditions, as the same may be modified by the Metro Board. The JDA will contain certain conditions (the "**Closing Conditions**")

specific to the closing of the Ground Lease transaction (the “**Closing**”), which conditions must be satisfied or waived before Metro or MPM will effectuate such Closing. The Closing Conditions will require, among other things, that MPM (a) obtain all necessary entitlements for the construction and operation of the Phase B Project; (b) obtain financing sufficient to fund the construction and operation of the Phase B Project; (c) receive Metro and City of Los Angeles approval of full, complete and final construction documents for the Phase B Project; (d) receive a “Ready to Issue” letter from the City of Los Angeles for all building permits necessary for the construction of the Phase B Project; and (e) provide Metro with the Financial Assurances (defined and described below).

JDA Term:

The December 31, 2014 expiration of the June 1, 2009 Revised Amended and Restated Joint Development Agreement (Westlake/MacArthur Park) by and between Metro and MPM (the “Original Agreement”) shall be waived by Metro and MPM. The term of the JDA shall include the term of the Original Agreement and shall expire on (a) October 31, 2016, if funding commitments necessary for the construction of the Phase B Project that are reasonably acceptable to Metro have not been received by MPM prior to October 31, 2016, or (b) April 31, 2017, if such funding commitments are received by MPM prior to October 31, 2016. Evidence of all necessary funding commitments shall be provided to Metro prior to October 31, 2017. The JDA shall be effective upon execution of the JDA by Metro and MPM (the “**JDA Effective Date**”).

JDA Closing:

The JDA will contemplate a single Closing, which will occur upon satisfaction or waiver by the appropriate party of all the Closing Conditions. At Closing, Metro will ground lease the Ground Lease Premises (defined below) to MBS, subject to the Retained Rights (defined below) in exchange for the payment of Capitalized Rent and Advanced Funds to be paid under the Ground Lease in accordance with this Attachment A. Documents related to Closing, including, without limitation, the Ground Lease, will be executed by the parties as is necessary to properly effectuate the Closing.

**JDA Consideration/
Holding Rent:**

Commencing with the JDA Effective Date and continuing throughout the remainder of the term of the JDA, MBS will pay annual holding rent (“**Holding Rent**”) to Metro under the

JDA in an amount equal to \$42,375, as such amount shall be increased (but not decreased) annually on the anniversary of the JDA Effective Date based on the increase in the Consumer Price Index occurring between December 2014 and the December occurring just prior to the date of each such annual increase. Holding Rent shall be due and payable to Metro in advance on the JDA Effective Date and on each annual anniversary of the JDA Effective Date, until the earlier to occur of (i) the Closing, (ii) expiration of the JDA term, or (iii) termination of the JDA.

At Closing, all unearned Holding Rent held by Metro will be applied to the capitalized rent due under the Ground Lease. If the JDA is terminated pursuant to its terms, all unearned Holding Rent held by Metro will be refunded to MPM.

Design Review:

The design of the Phase B Project shall be substantially consistent with the Phase B Project defined in the “Proposed Phase B Project” section of this Summary of Key Terms and Conditions, and shall be a Logical Evolution of the site plan and renderings included as Attachment B, subject to (a) entitlement approvals by the City of Los Angeles, and (b) necessary accommodations to (i) protect Metro property, facilities and operations from Phase B Project impacts, (ii) avoid or mitigate such impacts, (iii) accommodate the Retained Rights, and (iv) accommodate Metro requirements with respect to the closure of the existing north portal and its adjoining access and the design and construction of the replacement portal at Westlake Avenue. Construction documents for the Phase B Project have been completed by MPM and shall be provided to Metro for Metro’s review and approval within thirty (30) days after the JDA Effective Date. All material changes to Metro-approved final construction documents shall be subject to further Metro approval.

Financial Assurances:

MPM shall provide for the benefit of Metro, as a condition precedent to Closing, (a) a completion guarantee from a McCormack Baron Salazar entity that is acceptable to Metro and (b) payment and performance bonds (collectively, the “**Financial Assurances**”) that, in each case (i) are acceptable to Metro in form and substance, and (ii) demonstrate and guarantee MBS’s ability to complete the construction of the Phase B Project in the event of an MBS default.

Transfers, Assignment and Subletting:

Except as otherwise approved in writing by Metro in its sole and absolute discretion, MPM shall not transfer or assign its rights or obligations under the JDA or any portion thereof.

GROUND LEASE:

Ground Lease – Generally:

At Closing, Ground Lessee, as tenant, and Metro, as lessor, will enter into a ground lease (the “**Ground Lease**”), which will provide for the construction and operation of the Phase B Project on the Ground Lease Premises. The Ground Lease will contain terms and conditions that are substantially consistent with those set forth in this Summary of Key Terms and Conditions, as the same may be modified by the Metro Board.

Unsubordinated Ground Lease:

Metro’s interests under the Ground Lease will be *unsubordinated* to any interest that MPM, Ground Lessee, McCormack Baron Salazar or its lenders or investors will have in the Phase B Site.

Ground Lessee:

MPM, MPM Apartments II, L.P. or another McCormack Baron Salazar development entity controlled and managed by McCormack Baron Salazar, Inc. and reasonably approved by Metro (“**Ground Lessee**”).

Ground Lease Premises:

The premises under the Ground Lease (the “**Ground Lease Premises**”) will consist of the Phase B Site, less any portions of the Phase B Site that become unavailable for development because they are retained by Metro for purposes of Metro’s transit operations (or for some other purpose) (the “**Metro Retained Area**”). Metro Retained Area does not include the area of any dedications described above in this Summary of Key Terms and Conditions.

Ground Lease Term:

The term of the Ground Lease will be sixty-eight (68) years (the “**Ground Lease Term**”).

Capitalized Rent (Year 1 through 57):

Upon execution of the Ground Lease, Ground Lessee shall pay Metro a capitalized rent payment (the “**Capitalized Rent**”) for the first fifty-seven (57) years of the Ground Lease

Term in an amount equal to the greater of the following amounts:

- a. The fair market value of the Ground Lease Premises, as determined by an appraisal to be performed prior to Closing, as such fair market value is increased (but not decreased) based on the increase in the Consumer Price Index over the period between the month containing the appraisal's date of value and the month occurring two months prior to the month containing the Closing; and
- b. \$1,695,000.

The fair market value of the Ground Lease Premises shall consider (i) the costs and benefits associated with closing the subway station's north portal and constructing a replacement portal as part of a development project; and (ii) the unusual construction costs associated with constructing a development project directly over the existing subway infrastructure and station box.

**Annual Base Rent
(Year 58 through 68):**

Beginning with the 58th year of the Ground Lease Term and each year thereafter, Ground Lessee shall pay Metro annual rent in an amount equal to the "Fair Market Ground Rent" for the Ground Lease Premises, where the "Fair Market Ground Rent" shall be based on an appraisal of the Ground Lease Premises considering all covenants, conditions and encumbrances recorded against the Phase B Premises in accordance with the Ground Lease and assuming that such premises are vacant and usable only for those uses permitted under the Ground Lease, consistent with the improvements then constructed on the Ground Lease Premises, provided that such improvements have been designed, constructed and maintained in accordance with the Ground Lease. Such annual rent will be subject to annual increases (but not decreases) based on increases in the Consumer Price Index.

Percentage Rent:

Ground Lessee shall pay Metro percentage rent in an amount equal to three percent (3%) of the gross rent and other income received by Ground Lessee from all retail and other non-residential economic activity conducted on the Ground Lease Premises. Such percentage rent shall be paid annually, in arrears, over the Ground Lease Term,

commencing upon the earlier to occur of (a) the date occurring five (5) years after the issuance of a Temporary Certificate of Occupancy by the City for the Phase B Project's retail space, and (b) the date that 80% of the Phase B Project's retail space is subleased, used or occupied.

Maintenance and Operation:

Ground Lessee shall maintain and operate all portions of the Phase B Project and the Ground Lease Premises at its sole cost and expense.

Demolition Reserve:

Prior to commencement of the fifty eighth (58th) year of the Ground Lease Term, Ground Lessee shall deliver a report to Metro prepared no later than ninety (90) days before the commencement of the fifty eighth (58th) year of the Ground Lease Term by a construction and demolition expert reasonably approved by Metro. The report shall detail (a) how the Phase B Project will be demolished and removed from the Phase B Site at the end of the Ground Lease Term, (b) the estimated cost of the demolition and removal work, and (c) a plan (the "**Tenant Security Plan**") that sets forth Tenant's proposed method of securing the sums needed to discharge Tenant's obligations with respect to the demolition and removal work indicated in Items (a) and (b) (the "**Demolition Security**"). The Tenant Security Plan shall detail (1) the form of the Demolition Security proposed by Tenant, which Demolition Security shall be a deposit of funds, a letter of credit, bond or other form of security, in form and amount, and from an issuer, reasonably satisfactory to Metro, and (2) a schedule reasonably satisfactory to Metro for the delivery by Tenant of the Demolition Security, which schedule shall in all events provide for the full funding of the full estimated cost of the demolition and removal work by not later than five (5) years prior to the expiration of the Ground Lease Term. Ground Lessee may use that portion of the Phase B Project's replacement reserve that is not projected to be expended prior to the expiration of the Ground Lease Term as a portion of the Demolition Security and may use replacement reserve funds to make capital repairs and improvements to the Phase B Project, provided that the Ground Lessee ensures that the Demolition Security remains fully funded at all times in accordance with the Tenant Security Plan. Except as set forth in the preceding sentence, the Demolition Security shall not be useable by Ground Lessee for any purpose other

than demolition and removal of the Phase B Project and will only be useable upon Metro's written consent.

Demolition:

At the expiration of the Ground Lease, Ground Lessee shall, at the request of Metro: (a) demolish and remove all of the Phase B Project from the Ground Lease Premises; (b) demolish and remove a portion of the Phase B Project from the Ground Lease Premises, leaving certain improvements in place (provided that such a demolition is technologically feasible and the cost of the same is commercially reasonable); or (c) leave the entirety of the Phase B Project in place for Metro's use. All demolitions shall be at Ground Lessee's sole cost and expense.

**Financing/
Encumbrances:**

Ground Lessee may encumber its leasehold estate with mortgages, deeds of trust or other financing instruments. Such encumbrances and financings shall be subject to Metro's reasonable approval, except with respect to certain "permitted financing events" meeting specific criteria set forth in the Ground Lease, which shall not require Metro's approval. The Ground Lease will include mutually acceptable mortgagee protection provisions. Except as set forth in the following sentence, Metro's fee title and amounts payable to Metro under the JDA and the Ground Lease, shall not be subordinated or subject to Ground Lessee's financing or other claims or liens.

**Transfers, Assignment
and Subletting:**

Except for reasonable permitted Transfers or Transfers that are otherwise approved in writing by Metro in its sole and absolute discretion, Ground Lessee shall not transfer, assign or sublet (except for the typical subleasing of the apartments and retail space within the Phase B Project) its rights or obligations under the Ground Lease, or beneficial interests in Ground Lessee (each, a "Transfer"):

- a. Prior to completion of the Phase B Project; and
- b. After completion of the Phase B Project, except in accordance with reasonable transfer criteria (including, without limitation, criteria regarding the creditworthiness and experience of any proposed transferee) to be negotiated by Metro and MBS, and included in the Ground Lease.

Retained Rights: Metro shall retain from the Ground Lease and the Ground Lease Premises those rights necessary to provide for access to and the maintenance, repair and operation of Metro rail service, bus service and other transit service in, under, on and around the Ground Lease Premises (the “**Retained Rights**”).

Covenants: Ground Lessee may encumber its leasehold estate with affordable housing and other covenants reasonably required by Ground Lessee’s funding sources or the City of Los Angeles as a condition to granting Phase B Project entitlements and building permits. Metro will reasonably consider the encumbrance of its feehold estate with certain restrictive covenants, if required by Ground Lessee’s funding sources or the City of Los Angeles as a condition to granting Phase B Project entitlements and building permits; provided that Ground Lessee agrees to perform all obligations under said covenants during the Ground Lease Term and indemnify Metro for all claims and losses resulting from Ground Lessee’s failure to do the same.

Supersedure: This Summary of Key Terms and Conditions supersedes and replaces any and all term sheets or summaries of key terms and conditions relating to the Phase B Site, the Phase B Project or any joint development agreement or ground lease dated prior to January 14, 2015.

Other: Other customary provisions contained in recent Metro ground leases will be included in the Ground Lease, including, without limitation, provisions relating to (a) Ground Lessee’s assumption of risk related to the Phase B Project’s proximity to rail and other transit operations, (b) insurance, and (c) indemnity.

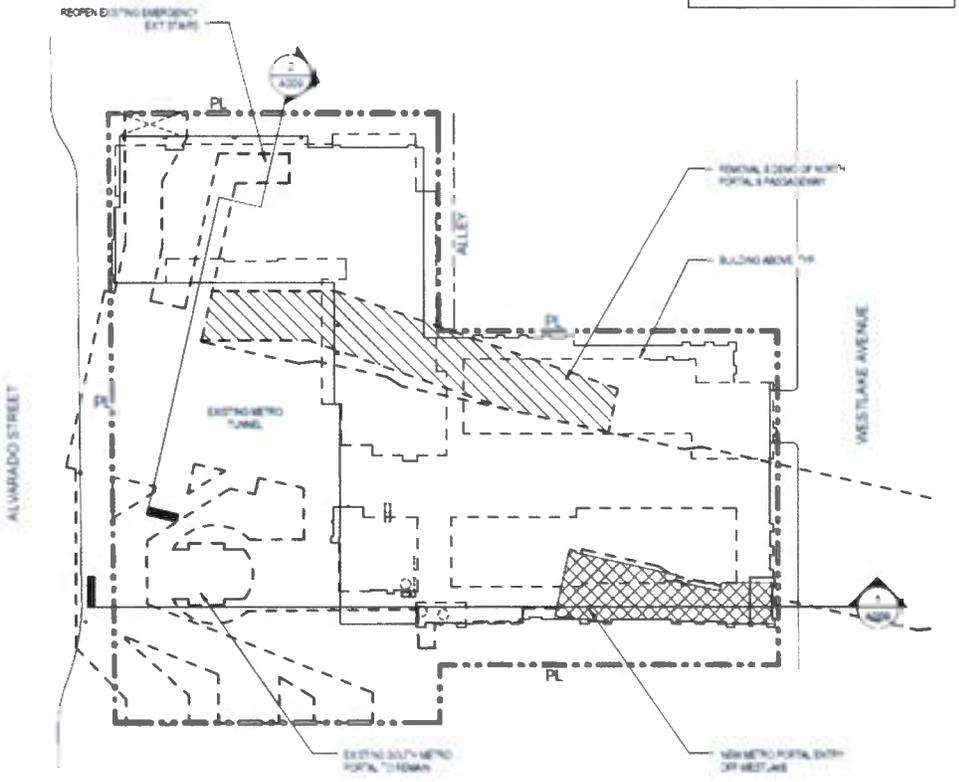




Plat of the Phase B Site

KEY PLAN LEGEND

-  Metro's existing subterranean improvements to remain
-  Metro's existing north portal and adjoining subterranean access
-  Replacement portal



3 METRO KEY PLAN
1" = 40'-0"



CEQA Findings

As part of the Metro Board's approval of the Second Revised Amended and Restated Joint Development Agreement ("JDA") and Ground Lease with MacArthur Park Metro, LLC, or another development entity created by McCormack Baron Salazar for the development of the second phase of a mixed-use project (the "Phase B Project") on Metro's 1.8-acre Westlake/MacArthur Park Metro Red/Purple Line station site depicted on Attachment C ("Phase B Site"), the Metro Board makes these findings ("CEQA Findings") with respect to the Phase B Project:

- 1) The proposed Phase B Project will consist of (a) 81 affordable apartments, an unrestricted property manager's apartment, 6,000 to 12,000 square feet of retail space and 83 structured parking spaces on the Phase B Site, and (b) the closure of the existing north portal to the Westlake/MacArthur subway station and its adjoining, subterranean access, and the construction of a new "replacement" subway portal at Westlake Avenue, subject to appropriate construction, engineering and operational approvals.
- 2) On July 16, 2008, the City adopted the Mitigated Negative Declaration for the first phase of the development (also known as the "Phase A Project") and the Phase B Project, which were considered together as one integrated project. The City also approved certain findings in conjunction with the Mitigated Negative Declaration. The findings and the Mitigated Negative Declaration indicated that, with certain required mitigations, the Phase B Project would not have a significant effect on the environment.
- 3) Metro may be a responsible agency under the California Environmental Quality Act ("CEQA") with respect to the proposed Phase B Project. Accordingly, the Metro Board:
 - A) has considered the Mitigated Negative Declaration for the integrated Phase A and Phase B Projects dated July 16, 2008, these CEQA Findings and the Mitigation Monitoring Program for the Mitigated Negative Declaration pursuant to California Code of Regulations ("CEQA Guidelines") Section 15096(a);
 - B) hereby finds and determines, based on substantial evidence in the record, that no environmental impact report is required pursuant to CEQA Guidelines Section 15073.5(d);
 - C) has considered the environmental effects of the Phase B Project, pursuant to CEQA Guidelines Section 15096(f);
 - D) hereby finds that on the basis of the whole record, there is no substantial evidence that the Phase B Project will have a significant effect on the environment, pursuant to CEQA Guidelines Section 15074(b);

- E) hereby finds that changes or alterations have been required in, or incorporated into, the Phase B Project that avoid all the significant environmental effects identified in the Mitigated Negative Declaration; and
- F) hereby finds that the City's Mitigated Negative Declaration, these CEQA Findings and the Mitigation Monitoring Program are adequate under CEQA for approval of the proposed Phase B Project and authorization to execute the JDA and Ground Lease.