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TO:	CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE
FROM:	GEORGE KOTSIFAS, P. Eng. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL DEVELOPMENT & COMPLIANCE SERVICES
SUBJECT:	PROPOSED BOULEVARD AGREEMENT AT 1365 DUNDAS STREET, HIGHBURY FORD MEETING JULY 22, 2014

RECOMMENDATION

On the recommendation of the Manager, Development Services & Engineering Liaison, the following actions **BE TAKEN**:

- a) The form of the agreement attached as **Appendix A BE USED** for the purpose of authorizing the use of widened land by 21303115 ONTARIO LIMITED (HIGHBURY FORD).
- b) That the Mayor and Clerk **BE AUTHORIZED** to execute this agreement as prepared by Development Services for the use of the lands deeded to the City as a result of development on the abutting lands, under the authority of the A1 By-law.

PURPOSE

This report brings forward a proposed boulevard agreement specific to the property located at 1365 Dundas Street to provide for continued use of road widening lands dedicated to the City as a requirement of site plan approval.

DISCUSSION

In June 2012, the owners of 1365 Dundas Street initiated Site Plan Consultation to establish the requirements for a complete application for a proposed expansion to their auto dealership. Agents for the owners of Highbury Ford then requested delegation status at the July 16, 2012 PEC in order to raise concerns over the received consultation comments, mainly the requirement to provide road widening dedications as per the Official Plan and the requirements for complete site plan application.

As a result of that discussion, on July 24 and 25, 2012, Municipal Council resolved that:

- a) The proposal **BE SUBJECT TO** a scoped site plan approval;
- b) Any required road widening dedications **BE TAKEN**, and the Civic Administration **BE DIRECTED** to review the by-laws relating to boulevard rental fees and establish a nominal fee for this application while the City of London Policy is being reviewed by the Civic Administration;
- c) The Civic Administration **BE DIRECTED** to consider the proposed site plan with limited scope when addressing the oil/grit separator and parkland requirements; and,

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- d) The Civic Administration **BE DIRECTED** to confirm the road widening requirement for this site; it being noted that road widening requirements will not include areas where there are existing buildings;

It being noted that the Planning and Environment Committee reviewed and received a communication, dated July 9, 2012, from A.R. Patton, Patton Cormier & Associates, with respect to this matter. (2012-D25-00) (15/20/PEC)

Following Council direction, Development Services Staff met with the Highbury Ford owners on several occasions to establish terms for the road widening dedications and requirements for a scoped site plan application.

Road Widening Dedications

The lands at 1365 Dundas Street include frontage on each of Highbury Avenue, Dundas Street, and Florence Street resulting in a particularly large area of land required for road widenings. The Highbury Ford owners were seeking relief from the full road widening requirements. Staff were not able to provide any such relief but was able to establish agreeable terms for the continued use of the dedicated lands by Highbury Ford until such time as the City shall require the lands to undertake road works. It was confirmed the road widenings would not include lands where existing buildings are sited.

Highbury Ford went onto retain an O.L.S. to survey this property and prepare the appropriate plan in order to dedicate the road widening and Geomatics has worked closely with the Owner to confirm the extent of the road widening.

Modified Boulevard Parking Agreement

In February 2013, staff met with the owners of Highbury Ford and established the principles for the use of the dedicated land and the terms/parameters of the future agreement. Subsequently, a modified boulevard agreement was developed incorporating the agreed upon items.

The parties have agreed to the terms set out in the attached modified boulevard agreement for the use of the boulevard after road widening dedication.

The lands dedicated to the City are shown on a schedule of the modified boulevard parking agreement to accommodate the "use" of the lands dedicated to the City, provision of standard insurance by the applicant to indemnify and save the City harmless from actions, notice to terminate the use of the lands, notice to remove any structures (such as fencing, lights, signs) and/or surface works such as paving, curbs, and landscaping. The agreement has no fee and will automatically be renewed unless the insurance is not maintained or one party terminates the agreement.

Scoped Site Plan Approval

Through various discussions with the Applicant, Development Services established a revised record of consultation identifying the requirements for a scoped complete site plan application. As per Council direction, the scoped site plan requirements recognized the value of this long-

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established London business being able to remain at this prominent intersection in the City's core as it undertakes site improvements to maintain the Ford Corporate Standard. The scoped requirements ensured all minimum requirements for site design and servicing were met and were specific to this site.

On December 12, 2013, Highbury Ford's consultant applied for site plan approval. The Approval Authority has recently granted Site Plan Approval for the scoped site plan. The servicing details were addressed and the plans have been approved. The development agreement has been entered into following the site plan approval.

This report has been prepared in consultation with the City Solicitors' Office, the Division Manager & Chief Surveyor's Office and Development Services.

CONCLUSION

Staff would agree that it is reasonable for 21303115 ONTARIO LIMITED to continue to use lands given to the City for the purpose of road widening. The Property Owner will enter into this agreement (modified boulevard parking) to provide for the use of lands dedicated to the City, provided the Owner (licensee) provides insurance which indemnifies and saves the City harmless. The City Clerk and the Mayor will be authorized to execute the agreements prepared by Development Services, under the authority of the A1 By-law.

PREPARED BY:	
B. HENRY MANAGER, DEVELOPMENT PLANNING	
RECOMMENDED BY:	SUBMITTED BY:
J. RAMSAY, P. Eng. MANAGER, DEVELOPMENT SERVICES & ENGINEERING LIAISON	GEORGE KOTSIFAS, P. Eng. MANAGING DIRECTOR, DEVELOPMENT & COMPLIANCE SERVICES & CHIEF BUILDING OFFICIAL DEVELOPMENT & COMPLIANCE SERVICES/BUILDING

c: John Braam, Managing Director - Environmental & Engineering Services & City Engineer

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Appendix A

This Agreement made in duplicate this 10th day of June, 2014.

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON,
hereinafter called "the Corporation" OF THE FIRST PART;

- and -

21303115 ONTARIO LIMITED
hereinafter called "the Licensee" OF THE SECOND PART;

WHEREAS by Section 11 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, the Corporation is authorized and empowered to pass by-laws and to license the untraveled portions of certain highways;

AND WHEREAS as part of a proposed development which will be formalized in a development agreement between the Licensee and the Corporation, the Licensee has been requested to dedicate in favour of the Corporation, and has applied to the Corporation for permission to use, the land and premises designated as Part 1, Part 4, Part 5 and Part 6 on Plan 33R-18740 (collectively hereinafter called "the licensed premises") on the survey by FKS Land Surveyors described in Schedule A, upon the terms and conditions hereinafter set forth.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the sum of Two Dollars (\$2.00) of lawful money of Canada now paid by each of the parties to the other, the receipt and sufficiency of which is hereby acknowledged, the respective covenants of each of the parties contained herein and for other good and valuable consideration, the parties hereto covenant and agree as follows:

1. Upon the completed execution of this Agreement and a development agreement between the City and the Licensee, the Licensee at its cost will cause the licensed premises to be transferred into the name of the Corporation.
2. The Corporation hereby licenses exclusive use of the licensed premises to the Licensee until such time as the Corporation requires all or a portion of the licensed premises for the widening of highway(s) or until it is transferred to the owners of the abutting lands as hereinafter provided.
3. The Licensee shall, at its own expense, reasonably maintain the licensed premises in accordance with the conditions of the site plan attached hereto as Schedule B and consistent with the use of land by an automobile dealership in the City of London (the

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“permitted usage”) and shall make no permanent alteration or additions to the licensed premises without the approval of the Corporation, such approval not to be unreasonably withheld.

4. The Licensee covenants:
 - a) to use the licensed premises solely for the permitted usage;
 - b) to remove from the licensed premises, upon receiving written notice from the Corporation, any inoperable, unserviceable or incapacitated motor vehicles;
 - c) not to permit nor to undertake the repair or servicing of motor vehicles on the licensed premises;
 - d) to reasonably maintain the licensed premises consistent with the permitted usage;
 - e) to use the licensed premises in a proper and orderly manner and not to permit anything to be done upon the licensed premises which is in violation of any by-law of the Corporation in force during the said term or which may reasonably be viewed as a nuisance or as objectionable, provided however that the permitted usage shall not be deemed to be a nuisance or to be objectionable;

5. The Licensee shall be permitted to, and shall be deemed to have automatically assigned, transferred and/or sublet, as applicable, its rights hereunder to any tenant(s) or subsequent purchaser(s) of land(s) abutting the licensed premises but shall not otherwise assign, transfer or sublet its rights hereunder without consent in writing of the Corporation, acting reasonably.

6.
 - a) The Licensee shall, at all times, indemnify and save harmless the Corporation of and from all loss, costs and damages which the Corporation may suffer, be at or be put to, for or by reason or on account of any matter or thing which may occur, be done or arise by reason of the use of the licensed premises or anything which may be done thereon or which may be neglected to be done thereon by the Licensee, his agents, servants, or others for whom the Licensee is in law responsible.

 - b) The Licensee shall at its own expense obtain and maintain and provide the Corporation with evidence of comprehensive general liability insurance for an amount not less than Five Million (\$5,000,000.00) Dollars and shall include the Corporation as an additional insured with respect to the Licensee’s use and operations on the licensed premises; such policy to include non-owned automobile liability, personal injury, broad form property damage, contractual liability, owners’ and contractors’ protective, completed operations, contingent employers liability, cross liability and severability of interest clauses except as otherwise requested by the Licensee and approved by the Corporation, acting reasonably. The aforementioned policy will not be cancelled or permitted to lapse unless the insurer notifies the Corporation in writing at least thirty (30) days prior to the date of cancellation or expiry. The Licensee will provide evidence of such insurance to the Corporation, in the form attached hereto as Schedule C, promptly at inception of this Agreement and thereafter on the insurance

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renewal date.

7. If at any time after the date of Council's approval that the Corporation shall require possession of all or part of the licensed premises for the widening of highway(s) (the "required lands"), the Corporation may terminate this agreement as it relates to the required lands upon giving the Licensee ninety (90) days' notice in writing (the "Notice"). Upon giving the Notice, the Licensee shall return the required lands, before the end of the ninety (90) days, into the approximate condition in which they existed at the time of dedication to the Corporation unless otherwise requested by the Licensee and agreed to by the Corporation, acting reasonably, based upon the planned construction/usage for the required lands. At the end of the ninety (90) days' specified in the Notice, the licensed premises will be deemed to exclude the required lands and this Agreement will continue to apply to the remaining licensed premises as otherwise provided herein unless all of the licensed premises are included in the Notice as being required for the widening of highway(s) in which case this Agreement will terminate at the end of the ninety (90) days except as otherwise provided herein.
8. In the event that after giving a Notice, the Corporation has not commenced to utilize the required lands for the widening of highway(s) after an extended and unreasonable length of time, the licensed premises will once again be deemed to include the required lands unless and until the Corporation provides a new notice in accordance with Paragraph 7, and the Corporation will compensate the Licensee for any reasonable out-of-pocket costs incurred by the Licensee in preparing the required lands for possession by the Corporation for the widening of highway(s) that did not proceed.
9. In the event that the City By-laws and/or the Official Plan for the City is amended to reduce the extent of the highway widening specified therein on lands that form part of the licensed premises, steps will be taken by the Corporation to convey any surplus lands forming part of the licensed premises that are no longer specified for the widening of highway(s) to the owners of the lands abutting such surplus lands for nominal value.
10. Notwithstanding anything contained herein, the Corporation shall have the right of free, uninterrupted and unobstructed access at all times to the licensed premises for the purpose of installing and maintaining services and utilities and the Corporation shall only be liable to restore the licensed premises to the approximate condition in which it existed at the time of each and every entry upon the licensed premises.
11. Wherever the singular and masculine are used throughout this agreement they shall be construed as meaning the plural, neuter, or the feminine where the context of the parties hereunto so required, and the Licensee, its heirs, executors, administrators, successors and assigns, are and shall be bound by the covenants herein and all covenants herein shall be construed as both joint and several.

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- 12. Notice: Any notices required or permitted to be given pursuant to the terms of this Agreement shall be given in writing sent by prepaid registered post, addressed in the case of notice given by the City to the Licensee, addressed to: **21303115 ONTARIO LIMITED, 1365 Dundas Street, London, Ontario, N5W 3B5** and in the case of notice given by the Licensee to the Corporation, addressed to: The City Clerk, P.O. Box 5035, London, Ontario, N6A 4L9.

- 13. This Agreement shall endure to be binding upon and for the parties and their respective successors and authorized assigns.

IN WITNESS WHEREOF the Licensee has hereunto set its hand and seal, or caused to be affixed its corporate seal duty attested by the hands of its proper signing officers, as the case may be, and SIGNED, SEALED AND DELIVERED in the presence of (witness):

21303115 ONTARIO LIMITED

(Authorized officer)

I have the authority to bind the Corporation.

THE CORPORATION OF THE CITY OF LONDON

Mayor

Catharine Saunders, City Clerk

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Description of Schedules

Schedule "A" Page 1 of 1

Drawing Title: **Survey Plan (33R-18740)**
Drawing Author: FKS Land Surveyors
Drawing Number: 12-474-1
Date of Drawing: October 30, 2013
Items Amended by Hand: Vehicle Display Area Labelled
Date Amended by Hand: May 25, 2014
Municipal Address: 1365 Dundas Street
Drawing Sealed by: Robert D. Stirling, (O.L.S)
City File Number: SP13-036412

Schedule "B" Page 1 of 1

Drawing Title: **Site and Site Data**
Drawing Author: Santarelli Engineering Services
Drawing Number: A008
Date of Drawing: March 20, 2014
Items Amended by Hand: N/A
Date Amended by Hand: N/A
Drawing Latest Revision Date: May 9, 2014
Municipal Address: 1365 Dundas Street
Drawing Sealed by: W.G. Santarelli, (P. Eng)
City File Number: SP13-036412

Schedule "C"

Title: **Certificate of Insurance**

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Schedule 'C' (Page 1 of 1)



Certificate of Insurance - Standard

This is to certify that the Insured named below is insured as described:

***** This form must be completed and signed by your insurer or insurance broker.*****
 Note: Proof of liability insurance will be accepted on this form only (with no amendments).

Named Insured				E-mail address					
Insured's address (street name, city, province and postal code)				Telephone number					
				Fax number					
Type of insurance	Insurance Company (full legal name)	Policy Number	Effective Date			Expiry Date			Limits of Liability (bodily injury & property damage - inclusive)
			Year	Month	Day	Year	Month	Day	
Commercial General Liability									Occurrence \$ Aggregate \$
<input type="checkbox"/> Umbrella <input type="checkbox"/> Excess									Occurrence \$ Aggregate \$
Other (Explain.)									Occurrence \$ Aggregate \$

Commercial General Liability: **Occurrence Basis**, Including Personal Injury, Property Damage, Broad Form Property Damage, Contractual Liability, Non-Owned Automobile Liability, Owner's and Contractor's Protective Coverage, Products - Completed Operations, Contingent Employers Liability, Cross Liability Clause and Severability of Interest Clause.

Tenant's Legal Liability: NO or YES... (Limit) \$ _____
 Liquor Liability: NO or YES

THE CORPORATION OF THE CITY OF LONDON, the London Convention Centre, Covent Garden Market Corporation, Museum London o/b London Regional Art & Historical Museums, London Public Library Board, Middlesex-London Health Unit, London Police Service, Tourism London and London Middlesex Housing Corporation have been added as an additional Insured but only with respect to their interest in the operations of the Named Insured.

If cancelled or changed in any manner, that would affect the City of London or other scheduled additional Insured for any reason, so as to affect this certificate, thirty (30) days prior written notice by registered mail or facsimile transmission will be given by the insurer(s) to:

The Corporation of the City of London
Attention: Risk Management Division
 Office location: **520 Wellington Street, Unit 1** Fax: **519 661-4631**
 Mailing address: **P O Box 5035** E-mail: **certificates@london.ca**
London, ON N6A 4L9

Motor vehicle liability	Insurance Company	Policy Number	Effective Date (YYYYMMDD)	Expiry Date (YYYYMMDD)	Limits of Liability \$
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Motor Vehicle Liability - must cover all vehicles owned, or operated by, or on behalf of the insured.

This is to certify that the Policies of Insurance as described above have been issued by the undersigned to the Insured named above and are in force at this time.

This certificate is executed and issued to the aforesaid Corporation of the City of London, the day and date herein written.

Name of insurance company or broker (completing form)		Telephone number
Address		Fax number
Name of authorized representative or official (Please print.)	E-mail address	
Signature of authorized representative or official	Date (YYYY-MM-DD)	