

ORDINANCE NO. 2022-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VISALIA RECOMMENDING APPROVAL OF AMENDMENT TO CONDITIONAL ZONING AGREEMENT NO. 2021-11: A REQUEST BY CENTERPOINT INTEGRATED SOLUTIONS TO AMEND CONDITIONAL ZONING AGREEMENT NO. 2003-01, REMOVING PROVISIONS THAT PROHIBIT THE ESTABLISHMENT OF A “STAND-ALONE” USED AUTOMOBILE SALES USE, AND ADDING DEVELOPMENT STANDARDS FOR “STAND-ALONE” USED AUTOMOBILE SALES USES FOR THE VISALIA AUTO PLAZA LOCATED WITHIN THE C-S (SERVICE COMMERCIAL) ZONE. THE VISALIA AUTO PLAZA IS LOCATED WEST OF NORTH NEELEY STREET, NORTH OF WEST CAMP DRIVE, AND SOUTH OF THE MILL CREEK DITCH (APN: 081-020-085)

WHEREAS, the amendment to Conditional Zoning Agreement No. 2021-11 is a request by CenterPoint Integrated Solutions to amend Conditional Zoning Agreement No. 2003-01, removing provisions that prohibit the establishment of a “stand-alone” used automobile sales use, and adding development standards for “stand-alone” used automobile sales uses for the Visalia Auto Plaza located within the C-S (Service Commercial) Zone. The Visalia Auto Plaza is located west of North Neeley Street, north of West Camp Drive, and south of the Mill Creek Ditch (APN: 081-020-085); and

WHEREAS, the Planning Commission of the City of Visalia, after duly published notice, held a public hearing before said Commission on December 13, 2021, considered the amendment to Conditional Zoning Agreement No. 2021-11 in accordance with Section 17.60.030 and Section 1760.050 of the Zoning Ordinance of the City of Visalia and on the evidence contained in the staff report and testimony presented at the public hearing; and

WHEREAS, the Planning Commission adopted Resolution No. 2021-60, recommending that the City Council approve Amendment to Conditional Zoning Agreement No. 2021-11, adopting the requested amendments removing provisions that prohibit the establishment of a “stand-alone” used automobile sales use, and adding development standards for “stand-alone” used automobile sales uses for the Visalia Auto Plaza located within the C-S (Service Commercial) Zone; and,

WHEREAS, the City Council of the City of Visalia, after duly published notice, held a public hearing on January 18, 2022, and considered the amendment to Conditional Zoning Agreement No. 2021-11 in accordance with Section 17.60.040 and Section 1760.050 of the Zoning Ordinance of the City of Visalia and on the evidence contained in the staff report and testimony presented at the public hearing; and,

WHEREAS, Categorical Exemption No. 2021-52 was prepared for the project consistent with the California Environmental Quality Act, Section No. 15305, which is appropriate as the project as the project will not produce significant changes in land use or density; and

WHEREAS, the City Council of the City of Visalia finds as follows:

1. That the Amendment to Conditional Zoning Agreement No. 2021-11 is compatible with existing and planned land uses on the site and surrounding areas as the change will continue to facilitate the sale of automobiles, on sites compatible in size to adjacent parcels.
2. That the Amendment to Conditional Zoning Agreement No. 2021-11 will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity.
3. That Categorical Exemption No. 2021-52 was prepared for the project consistent with the California Environmental Quality Act, Section No. 15305, which is appropriate as the project will not produce significant changes in land use or density.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VISALIA:

That Amendment to Conditional Zoning Agreement No. 2021-11 is approved as contained in Exhibit "A" of this Ordinance.

EXHIBIT "A"

AMENDED AND RESTATED CONDITIONAL ZONING AGREEMENT NO. 2003-01

THIS AMENDED AND RESTATED AGREEMENT is made this ____ day of ____ 2021, by BP Pearla Properties LP, hereinafter called the "Owner" and the CITY OF VISALIA, a municipal corporation and charter law city of the State of California, hereinafter called, "City."

WITNESSETH

WHEREAS, on August 26, 2003, American Properties Holdings, LLC and the City entered into Conditional Zoning Agreement No. 2003-01 ("CZA No. 2003-01") which required certain conditions to the rezoning of certain property situated in the City of Visalia, hereinafter referred to as "the Property" which is more particularly described in Exhibit I of this Agreement; and

WHEREAS, prior to CZA No. 2003-01, the Property was zoned as specified in Item (a) of Exhibit I; and

WHEREAS, as part of the approval process and adoption of CZA No. 2003-01, the Property was rezoned to the classifications further specified in Item (a) of Exhibit I; and

WHEREAS, during the hearings held before the City Council of the City of Visalia, State of California, and after having considered the matter presented, certain conditions were imposed and included in CZA No. 2003-01 so as not to create any problems inimical to the health safety and the general welfare of the City of Visalia and its residents; and

WHEREAS, CZA No. 2003-01 was entered into between American Properties Holdings, LLC, a California limited liability company, Land Securities Investors, LTD., a Colorado limited partnership, and the City of Visalia, and recorded with the Tulare County Recorder on October 3, 2003, as Document No. 2003-0096292; and

WHEREAS, after to the adoption of CZA No. 2003-01, title to the Property was transferred to BP Pearla Properties LP; and

WHEREAS, BP Pearla Properties LP, through its designated agent CenterPoint Integrated Solutions and CarMax, wishes to amend the agreement to allow for the development of a CarMax used automobile sales and service facility on the Property and has submitted an application to revise certain conditions of Amended CZA No. 2003-01, limited to removal of the prohibition on the establishment of standalone used auto sales dealerships, subject to a five acre minimum lot size limitation, as set forth in Exhibit I; and

WHEREAS, it is deemed necessary to execute this "Amended and Restated Conditional Zoning Agreement No. 2003-01" in order to properly reflect current ownership, conditions and remaining obligations for completing development of the Property.

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD AND AGREED that inasmuch as the rezoning specified in Item (b) of Exhibit I has been granted subject to the conditions specified in the following paragraphs:

1. That this "Amended and Restated Conditional Zoning Agreement No. 2003-01 shall replace and supersede those portions of CZA No. 2003-01 dealing with prohibition of standalone used

automobile sales, and that all other portions of the prior Amendment are not intended to be altered or modified by this Amendment.

2. That Exhibit I, as completed and attached hereto, is incorporated into and made a part of this Agreement with the same force and effect as if fully set forth herein.

3. That First Parties shall comply with the additional conditions, if any, specified in Item (e) of Exhibit I of this Agreement.

4. In the event the Owner, or any successor in interest to Owner, or any person in lawful possession of the Property described in Item (d) of Exhibit I violates or fails to perform any of the conditions of this Agreement within, thirty (30) days after notice thereof has been provided in accordance with Section 6, the City Council of the City of Visalia may instruct the City Attorney of the City of Visalia to institute legal proceedings to enforce the provisions of this Agreement. Any failure by the Owner to perform or comply with any of the conditions under Item (e) of this agreement within thirty (3) days after written notification from City to do so, shall constitute a default in this agreement by the Owner. In addition to any other remedy it may have at law or equity, City may, but is not obligated to, perform any such conditions or requirements set forth in Item (e) of this agreement either through its own employees or through parties with whom it may contract, Owner shall reimburse City said costs and expenses within thirty (3) days after a written invoice from the City.

5. The prevailing party in any legal action arising from the failure of either party to perform the duties and obligations required by and contained in this Agreement shall be entitled to reasonable attorney's fees, expert witness fees and costs of suit.

6. Notice of violation of provisions of this Agreement shall be sent to the Owner at the addresses specified in Item (c) of Exhibit I. Any subsequent title holder, any lien holder, or party in possession of the Property shall also receive notice of such violation if they are reflected on the tax roll.

7. Each and every one of the provisions of this Agreement herein contained shall run with the land and bind and inure to the benefit of the successor in interest of each and every party hereto, in the same manner as if they had herein been expressly named.

8. Zoning of the Property as indicated in Item (b) of Exhibit I will be consummated when this "Amended and Restated Conditional Zoning Agreement No. 2003-01" is recorded in the office of the Tulare County Recorder.

9. This Agreement is the product of negotiation and compromise on the part of each party and the parties agree, notwithstanding Civil Code § 1654, that in the event of uncertainty the language will not be construed against the party causing the uncertainty to exist.

10. This Agreement may be amended by mutual consent if in writing and, in the case of City, authorized by its City Council.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

“Owner”

BP PEARLA PROPERTIES LP

BY: _____

“City”

CITY OF VISALIA, A political subdivision
of the State of California

ATTEST: _____
Chief Deputy City Clerk

BY: _____
City Manager

EXHIBIT I

AMENDED AND RESTATED CONDITIONAL ZONING AGREEMENT NO. 2003-01

(a) The property described in Exhibit “A,” was originally zoned Agriculture (A) prior to the entering of CZA No. 2003-01.

(b) Upon the entering into CZA No. 2003-01, the classification changed from its present zoning to Service Commercial (C-S).

(c) Notice to Owner shall be addressed to:

BP Pearla Properties LP
PO Box 1530
Turlock, CA 95381-1530

(d) “Property” as used in this Agreement, includes:

APN Nos. 081-020-071, 072, 078, 084, 085, located within the Visalia Auto Plaza west of Neeley Street, north of Camp Drive, and south of the Mill Creek Ditch, in the City of Visalia, Tulare County, State of California.

(e) The additional conditions with which the Owner shall comply, pursuant to Paragraph No. 3, of this Agreement are as follows:

1) That the Design Guidelines attached as Exhibit II apply to the subject parcels and any future parcels.

2) That Page 4, Site Planning Concepts Item “B” of the Design Guidelines attached as Exhibit II shall be amended as follows:

~~B. Proposed uses; Uses within the project and restricted to new car dealerships with ancillary used car sales and normal service components. No stand alone used car facilities will be allowed in the project.~~ *That uses within the Visalia Auto Plaza are restricted to new automobile dealerships, with ancillary used car sales and normal service components, and standalone used automobile dealerships on parcels of no less than five-acres in size, with ancillary normal service components.*

EXHIBIT II

**CONDITIONAL ZONING AGREEMENT NO. 2003-01
Design Guidelines**